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EXECUTIVE SUMMARY

Trafficking in persons is an increasingly pressing issue in global migration policy, particularly in the wake of the COVID-19 pandemic that has exacerbated many contributing factors. The United Nations describes trafficking in persons as “the recruitment, transportation, transfer, harbouring or receipt of persons ... for the purpose of exploitation,” through prostitution or other forms of sexual slavery, forced labour or services, or organ removal. While initial efforts to combat trafficking in persons have targeted international criminal networks, governments and policy-makers are learning that traffickers can be individuals operating alone and within the borders of a single country. Likewise, while the classic image of trafficking victims is that of sexually exploited women and children, awareness of forced labour and its role in international supply chains is growing among civil society organizations and governments.

Canada is a source, transit and destination country for trafficking in persons. The vast majority of trafficking convictions in Canada involve Canadian citizens or permanent residents. Foreign nationals who are trafficked in Canada usually enter the country willingly, only to later find themselves in exploitative situations. For both internationally and domestically trafficked persons, vulnerability to being trafficked is heightened by economic deprivation, lack of opportunity and/or social isolation. In Canada, this includes population groups such as Indigenous women and girls, migrants and new immigrants, members of the LGBTQ2 community, persons with disabilities, children in care and other at-risk youth.

Trafficking in persons is directly addressed in sections 279.01 to 279.04 of the *Criminal Code* and in section 118 of the *Immigration and Refugee Protection Act* (IRPA). Additionally, a 2020 amendment to section 132(1) of the *Customs Tariff* bans the import of goods made using forced labour. Trafficking offences committed outside of Canada by permanent residents or citizens can be prosecuted in Canada. Between 2008–2009 and 2018–2019, a total of 697 court cases involving *Criminal Code* trafficking charges were heard, 28% of which resulted in a guilty finding. Four cases were prosecuted under the IRPA between 2009 and 2016.

Recognizing trafficked persons as victims of crime rather than as criminals is an important first step in uncovering trafficking networks and bringing the perpetrators to justice. Immigration protection measures are available for trafficked foreign nationals, such as the temporary resident permit or the open work permit for vulnerable workers. For domestically trafficked individuals, who form the majority of those trafficked in Canada, support services like housing, counselling and legal assistance are largely provided by non-governmental organizations. The quality and availability of these services vary considerably between provinces and regions.

In 2019, Canada's federal government introduced its National Strategy to Combat Human Trafficking: 2019–2024, a whole-of-government approach supported by \$75 million in federal funding and led by Public Safety Canada. It seeks to build on the successes of the National Action Plan to Combat Human Trafficking that was in place from 2012 to 2016, while addressing some of the remaining challenges that were identified in its reviews. A special advisor on human trafficking was appointed in 2019 to help implement the strategy.

While Canada's overall approach to trafficking has been praised by experts and advocates, gaps have also been noted in Canada's response to date. These include the ad hoc nature of victim services, the lack of specialized trauma care consistently available to formerly trafficked individuals, the widespread lack of awareness of labour trafficking and the insufficient resources dedicated to it compared to those earmarked for trafficking for the purpose of sexual exploitation.

TRAFFICKING IN PERSONS

1 INTRODUCTION

Trafficking in persons is an increasingly pressing issue in global migration policy, particularly in the wake of the COVID-19 pandemic that has exacerbated many of the factors that contribute to trafficking. 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 and Walk Free Foundation, in partnership with the United Nations (UN) International Organization for Migration; they estimate that 24.9 million people were in forced labour globally at any given time in 2016.² However, although the term “forced labour” encompasses trafficking in persons, the two concepts are not identical, and a more precise breakdown that focuses specifically on the number of trafficked persons in the world is not available.³

This paper discusses the concept of trafficking in general terms and provides an overview of the legislative framework around the issue at the international level and within the Canadian context. It concludes 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 or exploitation. The traditional images of victims of trafficking are of women and children⁴ forced into the sex industry, but trafficked persons also include men, women and children exploited through farm, domestic or other labour. These victims also include those who are trafficked for the removal of their organs. In some countries, children may be forced into work as beggars or child soldiers.

Trafficking can occur through various 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 tactics to control them, such as violence, deception or blackmail.⁵ What is clear and consistent is that trafficked persons are subjected to various forms of physical, sexual and/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 2014, the International Labour Office estimated that illegal profits generated by the broader category of forced labour amounted to US\$150.2 billion annually, a figure that continues to be cited widely.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 trafficked persons. 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 perform in exploitative conditions. In 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. In 2021, Canada was 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 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 work in the entertainment industry or jobs as waitresses or nannies. In one example, a live-in Filipina nanny in Vancouver alleged that she was kept in the country illegally while she worked 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 the country 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 irregularly are particularly vulnerable to such exploitation, as they may avoid turning to the police for fear of deportation.

According to the United States (U.S.) State Department's 2021 *Trafficking in Persons Report*, persons trafficked into Canada from abroad for the purpose of sexual exploitation arrive primarily from Asia and Eastern Europe, while those trafficked for labour exploitation are generally from Asia, Eastern Europe, Latin America and the Caribbean, and Africa. Traffickers often 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 received 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 the sex trade. These Canadians include Indigenous women and girls, migrants and new immigrants, members of the LGBTQ2 community, persons with disabilities, children in care and other at-risk youth, and persons who are socially or economically disadvantaged.¹² 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. In other scenarios, a “boyfriend” convinces his partner to support them both through prostitution or exotic dancing. The vast majority of persons trafficked domestically are recruited by someone known to them.¹³

Law enforcement agencies and service organizations are becoming increasingly aware that the trafficking of Canadians exists in major urban centres across the country and that trafficking is particularly significant among Indigenous women and girls.¹⁴ As of November 2017, more than 95% of all trafficking convictions in Canada were domestic in nature and involved Canadian citizens or permanent residents, a vast majority of whom were trafficked for the purposes of sexual exploitation.¹⁵

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 the trafficking of 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 United Nations Convention against Transnational Organized Crime* (UN Trafficking Protocol). This protocol was adopted by the UN General Assembly in November 2000 and ratified by Canada in May 2002; one of its primary goals is to maintain a careful balance between law enforcement and victim protection.

Article 3 of the UN Trafficking 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.¹⁶

This definition is intended to include a wide range of cases where individuals are exploited by organized criminal groups, or where an element of duress with a transnational aspect exists. The UN Trafficking Protocol specifically provides that a person's consent to exploitation is irrelevant if any coercion or deception was involved, or any benefit was granted by the trafficker. Although the definition does not specifically require cross-border movement, this is clearly the focus of the UN Trafficking Protocol, given its context within the *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* and its emphasis on border control.

Essentially, the UN Trafficking Protocol is an important model for national legislation. It indicates what 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 related 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 given the clear need to balance prevention strategies and criminal mechanisms for deterrence with a strong framework for victim protection, the UN Trafficking Protocol:

- calls for states to protect trafficked persons from their traffickers and to ensure confidentiality when trafficked persons 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, because 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 that focus on forced labour and minimum age for employment.¹⁷ 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 it 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 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.¹⁸ 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; it 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.¹⁹

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.²⁰ 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 their safety or the safety of someone known to the individual if they fail to comply. Thus, the trafficking offence does not require direct exploitation, but it could include coercion, deception or abuse of authority to induce an offer of service.²¹ The Department of Justice Canada also notes, "Exploitation need not have actually occurred. Evidence that exploitation is intended is sufficient."²² Section 279.04(2) lists the factors that a court may consider when determining whether exploitation was intended or has taken place. Lastly, 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 by a maximum sentence of 14 years' imprisonment, or life imprisonment if there are aggravating circumstances (with a range of mandatory minimum sentences [MMSs], 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.²³ Finally, the third prohibition outlaws withholding or destroying 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, An Act to amend the Criminal Code (trafficking in persons) added the offence 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*.²⁴ In 2019, Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts amended section 279.01 to facilitate the ability to prove trafficking offences by adding that living with an exploited person or being habitually in their company is evidence of exercising control over that person for the purpose of exploitation. The bill also added the offence of trafficking in persons to the list of offences in which the reverse onus to forfeit the proceeds of crime applies.²⁵ These amendments came into force when the bill received Royal Assent on 21 June 2019.

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 offender, or where offences involve children, a long-term offender.

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 offences include the use of fraudulent documentation, prostitution-related offences, physical harm, abduction and confinement, intimidation, conspiracy and organized crime.

Between 2008–2009 and 2018–2019, a total of 697 court cases were completed that involved trafficking-specific provisions and other more generic provisions of the *Criminal Code*; 28% of these resulted in a guilty finding. Of those, 80% of offenders were sentenced to a term of imprisonment and 14% received probation.²⁶ According to a 2015 survey, sentences for convictions that included trafficking-specific offences ranged from three years and one day of probation to a term of imprisonment of five and a half years (net sentence after credit for time served).²⁷

3.2.2 *Immigration and Refugee Protection Act*

As does the *Criminal Code*, the *Immigration and Refugee Protection Act*²⁸ (IRPA) targets cross-border trafficking in persons. Section 118 of the IRPA defines the offence of trafficking as “to knowingly organize the entry into Canada of one or more persons by means of abduction, fraud, deception, the use or threat 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, whether a criminal organization was involved, whether the offence was committed for profit and whether the trafficked person was subjected to humiliating or degrading treatment, including sexual exploitation. Statistics Canada reports that about one-third of trafficking charges laid in Canada involve IRPA violations. Researchers

analyzed court data and found that only 6.5% of the trafficking cases prosecuted between 2009 and 2016 involved cross-border offences, and four of these cases were prosecuted under the IRPA.²⁹ The first conviction, handed down 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.³⁰

Section 117 of the IRPA explicitly lays out the distinction between trafficking and smuggling. It 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.³¹

Finally, section 122 outlines the additional offences of using travel documents to contravene the IRPA, and buying or selling 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, decisions by the Immigration and Refugee Board of Canada 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,³² the departments (as they were then known) 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.³³

3.2.3 Forced Labour in Canadian Supply Chains

In recent years, awareness of the ways in which forced labour is enmeshed in global supply chains has grown, and many governments, like the Government of Canada, have introduced legislation that seeks to reduce its prevalence. Labour trafficking, although not the same, is encompassed in the definition of forced labour, and consequently, it is addressed by these efforts. As part of implementing the *Canada–United States–Mexico Agreement*, the Government of Canada amended section 132(1) of the *Customs Tariff* to exclude the import of goods made with any involvement of forced labour.³⁴

Additionally, in 2018, the federal government announced the creation of the Canadian Ombudsperson for Responsible Enterprise. The mandate of this ombudsperson is to review allegations of human rights abuses, including trafficking in persons, associated with Canadian companies operating abroad in the garment, mining, and oil and gas sectors. Its complaints portal opened to the public in March 2021.³⁵

4 VICTIM PROTECTION IN CANADA

4.1 CONTEXT

In contrast with the 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 victims' rights is often sidelined – compared to the immediate scourge of the traffickers themselves, victim protection is often seen as a secondary concern. Another reason for according less attention to victims' rights than to trafficking, as raised during negotiations for the UN Trafficking Protocol, was that making special provisions for trafficked persons would 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.³⁶

However, recognizing trafficked persons as victims of crime rather than as criminals is an important first step in uncovering trafficking networks and bringing the offenders to justice. Given the options of deportation, possible criminal proceedings because of their perceived status as criminals or illegal migrants and potential retaliation by 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 they are entirely dependent on their trafficker. These individuals may not speak the language of the destination region or country. They may be unaware of their rights or of the services available to victims of abuse, and they 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. Trafficked persons may also fear that harm will come to their families and friends based on threats made by their traffickers, or they fear they will put their fellow workers at risk by coming forward.³⁷

Regarding trafficking across borders, many experts acknowledge that it is more difficult to fulfill the protection needs of people who do not have legal status.³⁸ Certainly, states that have opted to facilitate temporary or permanent residence permits for trafficked persons have noted increased willingness among trafficked persons to testify against their traffickers, and among non-governmental organizations (NGOs) to encourage such individuals to report it to police.³⁹

International law and prevailing norms do not call for automatic permanent residency for trafficked persons, but they 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 offer victims 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 emphasized prevention and prosecution, while trafficked persons were generally treated as illegal immigrants or faced criminal charges, and were often deported.⁴⁰ 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 offence and a person under the age of 18 is called to testify, the judge now 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.⁴¹ As awareness of the need to focus on human rights issues and victim protection grew, the Department of Citizenship and Immigration announced a new policy in May 2006 to issue temporary resident permits (TRPs) specifically for trafficked persons. This policy was updated in June 2007.⁴² Working within the existing legislative framework, immigration officers may now issue a TRP, valid for up to 180 days, to a trafficked person. Recipients are exempt from the processing fee usually charged and are eligible for medical assistance, social counselling 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 usual processing fee.

The purpose of the TRP 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 TRP.

Trafficked persons may be granted a permit for a longer period or a subsequent TRP if an immigration officer determines that it is not reasonably safe and possible for them to return and re-establish a life in their country of origin or last permanent residence, taking any other relevant factor into account. A trafficked person also has the option to apply for permanent resident status based on humanitarian and compassionate grounds or make a claim for refugee protection.

In total, 110 trafficked persons and their dependents received TRPs between January and November 2020, compared with 228 such persons in 2019, 40 in 2018, 32 in 2017, and 67 in 2016.⁴³

Although advocacy groups and NGOs that provide services to trafficked persons laud this temporary permit regime, concerns remain. Organizations like the Canadian Council for Refugees have reservations about the implementation of the permit regime, citing inconsistent discretionary decision-making, the high evidentiary burden required of applicants and the restrictions on TRP applications for designated foreign nationals (a group which could include those trafficked into Canada by criminal organizations).⁴⁴

In addition, in 2019, Immigration, Refugees and Citizenship Canada (IRCC) introduced the open work permit for vulnerable workers. This permit can be issued to foreign nationals who are in Canada on a valid employer-specific work permit and who are experiencing or at risk of experiencing abuse in their employment. Between 4 June 2019 (the date the permit program was launched) and 13 June 2020, IRCC received more than 1,070 applications and approved more than 490 open work permits.⁴⁵

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 although each jurisdiction has a different approach to service provision, it is important to note that the federal Victims Fund does fund projects that provide services to trafficked persons.⁴⁶ 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. Noted gaps include an insufficient supply of emergency, medium-term and long-term housing, and limited trauma-informed care for individuals exiting a trafficking situation.⁴⁷

The situation for those trafficked from abroad is the most precarious. Undocumented 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.⁴⁸

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 irregular immigrants and others with short-term immigration status.⁴⁹ Generally, trafficked persons who have entered Canada surreptitiously would be considered ineligible for coverage, unless they are in possession of a TRP.⁵⁰

Lastly, 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 AND NATIONAL STRATEGY

In June 2012, the Government of Canada released a four-year 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.”⁵¹ A new entity called the Human Trafficking Taskforce, 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 Justice Canada. The task force oversaw the implementation of the action plan, coordinated the federal government's response to trafficking issues and produced annual progress reports.

When the action plan ended in 2016, Public Safety Canada released its *2016–2017 Horizontal Evaluation of the National Action Plan to Combat Human Trafficking (NAP-HT)*. It concluded that trafficking in persons persists in Canada, which warrants the continued need for a plan to coordinate efforts across jurisdictions and to fulfill Canada's ongoing international commitments. It also pointed out that the availability of data on trafficking in persons is limited as a consequence of not having a centralized database, underreporting and using inconsistent definitions.⁵²

In terms of the action plan's prevention efforts, the report commended the increased awareness among federal government institutions. However, civil society institutions reported that federal front-line workers struggled to recognize human trafficking and that poor relationships between law enforcement and sex workers potentially hampered the trafficked individuals' ability to come forward.⁵³

In terms of protection, the report noted the limited federal funding for protection projects, as well as the persistent and well-founded fears of deportation held by undocumented foreign nationals who are trafficked. Additionally, while IRCC's TRP was acknowledged for its important protection role when it was introduced, the review revealed that it was underused.⁵⁴

With respect to prosecution, the evaluation concluded that despite some efforts by various federal departments, the action plan largely failed to enhance intelligence collection, coordination and collaboration. In addition, the plan's contribution to disrupting crime groups was found to be limited.⁵⁵

Finally, the report underscored comments from NGOs that efforts to enhance the plan's partnership goals were largely unsuccessful and had had limited impact on policy development. It also highlighted comments from federal partners who said that success in international capacity building was achieved through initiatives other than the National Action Plan.⁵⁶ The report offered a series of recommendations that included developing a coordinated approach to trafficking, improving data collection and performance measures, widening and strengthening partnerships, and creating a mechanism to connect trafficked persons with services.⁵⁷

In 2019, the federal government presented the National Strategy to Combat Human Trafficking: 2019–2024, a whole-of-government strategy supported by \$75 million in federal funding over six years, led by Public Safety Canada. Like the National Action Plan, the national strategy continues to focus on prevention, protection, prosecution and partnerships, while adding a priority area of empowerment that enhances support for trafficked persons. Activities for empowerment include establishing an advisory committee of formerly trafficked individuals, increasing funding for organizations that address the root causes of trafficking, offering community reintegration services and outlining new policies that seek to address the issue of human trafficking in federal procurement supply chains.⁵⁸

The national strategy also describes its approach as victim-centred, culturally sensitive and gender-responsive, which shows responsiveness to some of the criticisms of the National Action Plan. As well, it places increased emphasis on addressing the disproportionate impact that trafficking has on Indigenous communities in Canada, and on the explicit aims to partner with these communities and the organizations that serve them.⁵⁹ To support the implementation of the strategy, a special advisor on human trafficking was appointed in September 2019.⁶⁰

6 COMMENTARY ON CANADA'S APPROACH TO ADDRESSING TRAFFICKING IN PERSONS

Canada's approach to addressing 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 TRPs. The U.S. Department of State's July 2021 *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 meets the minimum standards for the elimination of trafficking. The government continued to demonstrate serious and sustained efforts during the reporting period, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore Canada remained on Tier 1. These efforts included increasing funding for victim services; amending the Customs Tariff to prohibit the importation of goods produced by forced labor; and launching a five-year public awareness campaign informed by research on public awareness and attitudes on trafficking. Although the government meets the minimum standards, it did not provide comprehensive data on investigations, prosecutions, and convictions during the reporting period or on victims provided with services nationwide. The government's efforts to identify victims, provide protections to all victims – particularly forced labor victims – and investigate and prosecute forced labor crimes, remained inadequate. The range, quality, and timely delivery of trafficking-specific services varied nationwide, and service providers reported a shortage of victim services, including emergency shelters and longer-term housing.⁶¹

Despite praise for Canada's approach as a whole, 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.⁶²

6.1 VICTIM PROTECTION

One frequently cited gap in the victim protection scheme is 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. Some screening tools and policy and procedure manuals have been developed, and training programs have been implemented by Justice Canada, Employment and Social Development Canada, the Royal Canadian Mounted Police and the Canada Border Services Agency to help labour standard inspectors and immigration and law

enforcement officials identify victims and respond to their needs.⁶³ Various other government bodies have also carried out awareness-raising initiatives. The national strategy states that the government will be “[l]aunching a national public awareness campaign to educate Canadians of the serious implications of human trafficking and the different types of trafficking” and “[i]mplementing pilot projects for at-risk youth with the aim of addressing the core drivers and risks of human trafficking in vulnerable youth.”⁶⁴

Another gap relates to the services offered to trafficked persons. Critics say that TRPs 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 services, transportation, long-term counselling and economic services (access to welfare benefits, employment, education and skills development and language training).⁶⁵

As noted earlier, most of these services are offered at the provincial level in Canada, and consequently, they exist unevenly across the country. Agencies that provide assistance to trafficked persons include those that focus on the 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 Indigenous leaders. Temporary foreign workers, who are particularly vulnerable to trafficking, are often assisted by non-governmental organizations that work with refugees and migrants. However, the lack of funding for such organizations remains an obstacle.⁶⁶

One particular gap in Canada’s protection efforts that many service providers have identified is the lack of trauma-informed care and supports for formerly trafficked individuals. Advocates point out that for many individuals, emotional and psychological recovery is a long-term process and requires ongoing access to a wide variety of services, including the appropriate mental health care. While trauma-informed care is mentioned throughout the new national strategy, those who provide the services point out the varying service availability between regions and the lack of dedicated funding and resources for these services that remain unaddressed by the federal government.⁶⁷

Finally, while more attention has been paid to trafficking for the purposes of labour exploitation, sexual exploitation remains at the top of the agenda for many advocates, service providers, and government and enforcement agencies. Service providers who work with a wide range of trafficked persons are calling for closer monitoring of

labour conditions for temporary foreign workers, greater focus on the specific needs of these trafficked persons and further research into this growing phenomenon.⁶⁸

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.⁶⁹

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.⁷⁰

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 or in the other alternatives that may have been available to them.⁷¹ It also ignores the fact that some situations become increasingly exploitative over time, particularly given the specific vulnerabilities of those involved.

A frequent criticism of some anti-trafficking approaches is that these approaches conflate trafficking and sex work. Advocates argue that consenting adults who engage in sex work are not necessarily subject to exploitation and therefore should not be negatively impacted by measures to curb trafficking, such as criminalizing prostitution or using measures to reduce demand.⁷²

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 that it 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 both on exploitation as it arises (whether this be with respect to lies about the money promised, working conditions or outright violence) and on the wider structures in place that permit and even encourage labour exploitation, rather than emphasize the broad and emotionally charged victim-of-trafficking framework.⁷³

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 – at the same time, it involves people living a range of experiences.⁷⁴

7 CONCLUSION

Since Canada ratified the UN Trafficking Protocol in 2002, significant progress has been made domestically to prevent trafficking, prosecute traffickers and 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 increasingly use the *Criminal Code* as a tool to deal with trafficking.

Yet, gaps remain. Although the IRPA came into force 20 years 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 a lack of funding. An important next step in finding an effective solution to deal with trafficking in persons in Canada is proving to be careful attention to the diverse voices of those who work with individuals exploited for their labour and services across the country.

NOTES

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2. International Labour Office and Walk Free Foundation, [Global estimates of modern slavery: forced labour and forced marriage](#), 2017.
3. United Nations Office on Drugs and Crime (UNODC), [Global Report on Trafficking in Persons 2014](#), November 2014, p. 30; and Adam Cotter, "[Trafficking in persons in Canada, 2018](#)," *Juristat*, Statistics Canada, 23 June 2020, pp. 5–6. In the Canadian context, a total of 1,708 incidents of trafficking in persons were reported to police between 2009 and 2018; 32% of these involved international trafficking.
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6. International Labour Office, [Profits and Poverty: The Economics of Forced Labour](#), 2014, p. 13. It should be noted, however, that not all forced labour constitutes trafficking in persons.
7. United States (U.S.), Department of State, [2017 Trafficking in Persons Report: Canada](#).

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11. U.S., Department of State, "Canada: Tier 1," [Trafficking in Persons Report](#), June 2021, pp. 167 and 168.
12. Government of Canada, [National Strategy to Combat Human Trafficking: 2019–2024](#), 2019, p. 16.
13. Dyna Ibrahim, "[Trafficking in persons in Canada, 2019](#)," *Juristat Bulletin – Quick Fact*, Statistics Canada, 4 May 2021, p. 7.
14. Arina Roudometkina and Kim Wakeford, Native Women's Association of Canada, [Trafficking of Indigenous Women and Girls in Canada: Submission to the Standing Committee on Justice and Human Rights](#), 15 June 2018; National Inquiry Into Missing and Murdered Indigenous Women and Girls, [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#), Vol. 1a, pp. 656–673; and Yvonne Boyer and Peggy Kampouris, Red Willow Consulting Inc., [Building a Safe and Resilient Canada: Trafficking of Aboriginal Women and Girls](#), Report, May 2014.
15. Ontario Women's Justice Network, [The Law and Human Trafficking in Canada](#).
16. UNODC, "Annex II: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime," [United Nations Convention against Transnational Organized Crime and the Protocols Thereto](#), 2004, p. 42, art. 3.
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18. See [Bill C-49, An Act to amend the Criminal Code \(trafficking in persons\)](#), 38th Parliament, 1st Session (L.C. 2005, c. 43); [Bill C-268, An Act to amend the Criminal Code \(minimum sentence for offences involving trafficking of persons under the age of eighteen years\)](#), 40th Parliament, 3rd Session (S.C. 2010, c. 3); [Bill C-310, An Act to amend the Criminal Code \(trafficking in persons\)](#), 41st Parliament, 1st Session, S.C. 2012, c. 15; and [Bill C-36, 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](#), 41st Parliament, 2nd Session (S.C. 2014, c. 25).
19. Department of Justice Canada, [Information Sheet for Law Enforcement](#).
20. See [Criminal Code](#), R.S.C. 1985, c. C-46, ss. 279.01(2) and 279.011(2).
21. Ontario Women's Justice Network, [The Law and Human Trafficking in Canada](#).
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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

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- See 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, Library of Parliament, 4 June 2012.
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