

Canada Take Note

A Comparative

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Les USA et le Canada se sont engagés face à l'ONU par le « Protocole du trafic » qui a établi des normes pour les

have involved forced prostitution and forced labour (Toronto Network Against Trafficking in Women, et

(c) To promote cooperation among State Parties in order to meet those objectives. (UN Office on Drugs and Crime, Articles 1-11)

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services rendus, les protections légales et sur les droits humains en rapport avec le trafic des personnes, particulièrement celui des femmes et des enfants. En comparant l'approche des deux pays, cet article conclut que le Canada, qui a déjà pris les mesures légales pour contrôler l'émigration et persécuter les trafiquants, n'est pas allé au bout de ses engagements quant aux besoins et aux droits des personnes victimes de trafic.

According to recent U.S. estimates, at least 700,000 people are trafficked within or across international borders each year (U.S. Trafficking in Persons Report, 2003). As many as 20,000 people, mostly women and children, are brought into the United States each year as victims of trafficking into slavery, involuntary servitude, peonage, and forced labour (U.S. Department of State 2003). Although Canada has no comparable estimates, there is growing evidence that it is a destination country for trafficked persons as well as a transit country for trafficking persons to the United States (Toronto Network Against Trafficking in Women, et al). Canada has had a number of high profile trafficking cases in recent years, many of which

al). With profits for traffickers in the billions, it is an enterprise that appeals to organized criminal networks, corrupt agencies, and opportunistic individuals.

There is international recognition that trafficking in human beings is a global problem. With the adoption of the United Nations (UN) Convention Against Transnational Organized Crime in Palermo, Italy in 2000, and the two supplementary protocols dealing with smuggling and trafficking, governments worldwide have an important tool that sets standards for addressing the issue of trafficking, and provides a framework that specifically responds to the needs of victims.¹ The relevant Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Trafficking Protocol") addresses the issue of trafficking in persons and states its purpose as:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children

(b) To protect and assist the victims of such trafficking, with full respect for their human rights, and

As signatory to the Trafficking Protocol Canada has committed itself not only to international participation in combating trafficking, but also, crucially, to providing support to victims. This is a core element of the Trafficking Protocol:

The basic purpose of the Protocol is to prevent and combat trafficking, to protect and assist victims and to promote international cooperation. Victims and witnesses are also dealt with in the parent Convention, but the protection of, and assistance to, victims is specified as a core purpose of the Protocol in recognition of the acute needs of trafficking victims and the importance of victim assistance, both as an end in itself and as a means to support the investigation and prosecution of trafficking crimes. (UN Office of Drugs and Crime)

Canada has a responsibility to address the needs of trafficked persons as per the UN protocols. Currently, Canada relies on its social service network, high standard of living, its relationship to other countries, its efforts to prevent trafficking in persons through its diplomatic work, and its efforts of international develop-

Perspective on Trafficking

ment, as a means to addressing the needs of trafficked persons. However, at the national level there has been no specific response to the needs and rights of trafficked people.

Canadian Context

In 2002 Canada passed the Immigration and Refugee Protection Act (IRPA), a new act that replaces the Immigration Act of 1976. The IRPA includes new considerations in family reunification and humanitarian assistance, as well as new measures to monitor and control migration. Despite organized efforts to call to attention the need for an expanded definition and response to trafficking in persons,² the IRPA is limited in its scope and in how it addresses trafficking in persons. Part 3 of the IRPA, under "Enforcement," refers to Human Smuggling and Trafficking. S. 118 (1) defines trafficking by way of stating,

No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use of threat of force or coercion.

The focus of the sections of the IRPA pertaining to trafficking and smuggling defines the problem from a law enforcement perspective which affords severe penalties for traffickers who engage in the various aspects of human trafficking and smuggling, including document fraud, subjecting persons to mistreatment or exploitation, or profiting from criminal activities. This is an important aspect to combating trafficking since

many of these elements are common to trafficking cases. Alternatively, the Trafficking Protocol identifies an approach in which not only are the prosecution efforts necessary to curtail trafficking activities, but there is a need to ensure persons who are trafficked have access to state protections such as: access to necessary social services; the right to due process; and eligibility for legal status (whether temporary or permanent).

Although the activities related to trafficking and smuggling are defined as criminal activities and the penalties enshrined in the IRPA can be regarded as a deterrent for traffickers, the Act is not explicitly defining such activities from a victim-centered and human rights framework. Such a framework for analyzing human trafficking ensures victims of trafficking are protected under federal laws as

ing trafficked victims the protections required, they may be more easily identified and their safety and security may be ensured more quickly.

With the absence of such a framework in the current federal legislation, the needs of trafficked victims are not, from a policy and legal perspective, a priority. The Canadian Council for Refugees (CCR) states, "There is an urgent need to develop and put in place a legal, policy, and administrative framework, so that the rights and dignity of trafficked women and girls in Canada are respected."

Without adequate legislated protections, decisions related to the protection of victims is highly discretionary and arbitrary and relies on the judgment of immigration officials, as well as various law enforcement agencies. In addition, the lack of a social service network that ad-

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well as international treaties. A human rights analysis aids in identifying barriers that trafficked victims face in their home countries as well as those barriers to freedom that may exist in the transit or destination country. Trafficked victims, without explicit legal protections, have little recourse when faced with the experience of dangerous work conditions, sexual slavery, and in many cases, an undocumented status within a destination or transit country. By afford-

equately addresses the protection and rights specific to trafficked victims leaves a gap in the service sector. These gaps result in a lack of standards of treatment when victims are found or come forward.

For example in late 1999 hundreds of Chinese, mainly from Fujian Province, were intercepted, in four ships, off the shores of British Columbia. Of those a significant number were youth. While some were detained in British Columbia, a number

of youth were intercepted by Citizenship and Immigration Canada in January 2000 while attempting to cross into the United States from various sites in Southern Ontario. These youth were reportedly placed in young offender facilities and later transferred to an adult immigration holding center near Pearson Airport. These youth were suspected of being trafficked for the purposes of labour and prostitution (Wong). It was reported that these youth remained in

This is not to say, however, that there are no remedies for a person who has been trafficked to Canada. Trafficked victims in Canada are able to apply for status in Canada on humanitarian/compassionate grounds through the refugee determination process. Coupled with this process, eligible victims can then be afforded benefits, like other refugee claimants, which include access to health, financial, and support services. Finally, other avenues to address the

removal proceedings resulting in their re-victimization by the law enforcement and immigration processes.

- The potential for victims to be re-trafficked without an adequate social service network that consists of dedicated agencies to assist trafficked persons, including counseling, shelter, and language/interpretation assistance.
- A lack of national standards that results in regional disparities and inequalities in how trafficked persons are treated.

- A high risk of victimization and vulnerability for trafficked persons, particularly children, who continue to fall between the gaps in provincial and federal responsibilities and policies.

- A return of trafficked persons to their home countries without adequate protections and assurances.

- Risks to the families of victims. Groups as well as individual victims coming forward without adequate government preparation or response for their needs.. Disappearance of trafficked persons.

While these are only a few of the effects of a lack of a federal policy that is victim-centered, they emphasize the risks and implications of not taking a human rights approach.

U.S. Context

In contrast to the Canadian response, the passing of trafficking legislation in the United States in 2000 demonstrates a different take on the issue of trafficking in persons. For comparative purposes we can look at the *Victims of Trafficking and Violence Protection Act (VTVPA)* which is the first comprehensive U.S. law to address the various aspects of trafficking in persons. The VTVPA is "an Act to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain federal programs

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immigration detention, some for up to eight months. In a hearing at the Ontario Superior Court of Justice, Judge Chapnik stated, "I am deeply troubled by the length of time these minors have been detained and by the conditions of their detention." Furthermore, it was reported that the youth in prolonged detention

reported health problems including loss of sleep, dizziness, fatigue, bleeding gums. All wished to see a Mandarin speaking doctor ... many of the detainees were without basic necessities. There has also been an absence of educational, recreational and religious activities. (Gao v. Canada, July 27, 2000)

This situation demonstrates the lack of due process afforded to the minors who quite possibly had been trafficked. There was fear that many, once released, would fall prey to the same traffickers that brought them to Canada. Jurisdictional issues were raised once an application to provincial court was made by the Windsor-Essex Children's Aid Society citing concerns for the protection and safety of the youth in detention.

crimes of trafficking of persons may include, victim compensation, victim support services, as well access to the network of immigrant services, and language programs.

Victims of trafficking suffer from unique experiences based upon the clandestine nature of the trafficking experience. A common mode of trafficking includes domestic workers who are sponsored by an employer and brought to Canada to work, only to discover extreme mistreatment, often involving physical and/or sexual abuse, isolation, and violation of wage and hour laws. Other forms of trafficking involve men forced to work long hours without adequate food, shelter or compensation for farm labour, sweatshops, or restaurant work. The unique experience of victims of trafficking and the methods employed by traffickers suggest that Canada needs to develop a specific response to those who are trafficked within Canada's borders.

Without adequate processes in place to protect trafficked victims Canada has seen, and will continue to see:

- Trafficked persons, including children, in detention and re-

to prevent violence against women and for other purposes.” With the passing of the VTVPA which consists of three Divisions.³ Division A, *The Trafficking Victims Protection Act* (TVPA), indicates the U.S. government recognizes the international scope of trafficking in persons and specifically addresses the three-pronged approach to trafficking in persons set out in the UN protocols. The TVPA addresses not only the prosecution of traffickers and their networks and assigns heavy penalties, but the prevention of trafficking through education, increasing public awareness, and economic alternatives, as well as providing for the protection of victims and their families (including immigration relief, and benefit eligibility). The U.S. has recognized, with the passing of the TVPA, that an effective strategy for combating trafficking in persons requires a comprehensive approach.

Section 103 (8) of the TVPA defines a “severe form of trafficking in persons” as,

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or

(b) the recruitment, harboring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery. (VTVPA, 2000).

These two clauses not only define trafficking but indicate the elements in which trafficking can occur. Trafficking is not necessarily defined by the intent of the individual but more specifically refers to the conditions the individual is met with. For example, in some cases an individual may pay someone to smuggle them from one country to another. However, upon arrival if they are forced or co-

erced to work under conditions that they did not agree to, and/or their freedom to choose is restricted, then this can be considered trafficking.

The VTVPA established two new immigration categories, called the T-visa and U-Visa for victims of a severe form of trafficking who cooperate with federal law enforcement efforts to prosecute traffickers.⁴ T-Visas are available for those who have complied with any reasonable requests for assistance in the federal investigation or prosecution of acts of trafficking, and if he or she would suffer extreme hardship involving unusual and severe harm upon removal. A victim of a severe form of trafficking is eligible to receive a T-visa only if he or she is physically present in the United States, or its territories or possessions. U-Visa’s may be available to those who have suffered substantial physical or mental abuse as a result of being the victims of certain crimes designated by the VTVPA—including trafficking—that violate federal, state, or local laws or that have occurred while in the United States or its territories or possessions.⁵

Identified victims of a severe form of trafficking are therefore eligible to apply for status within the U.S. and

eligible trafficked victims in order to access benefits. It also directly funds, through a “request for proposals” process, agencies to provide services to trafficked victims.⁷ A network of agencies exists in many parts of the U.S. that are dedicated to serving victims of human trafficking.

In addition the TVPA recognizes the extreme vulnerability and special status of minors who are trafficked into the United States for a variety of purposes including: sexual exploitation, sweatshop or service industry labour, false adoptions, and peddling. Unlike adult victims of trafficking, minors are not required to cooperate with law enforcement investigation efforts in order to apply for benefits. In applying for immigration relief, those under the age of 15 are not required to prove cooperation with law enforcement, however 16 and 17-year-olds are. The federally funded Unaccompanied Refugee Minor Program that assists eligible youth refugees overseas, and asylum seekers within the U.S., are charged with the authority to also provide support, shelter, reunification assistance (where possible), and a designated representative, to minors who are victims of trafficking.

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receive, to the same extent as refugees, benefits which may include medical coverage, eligibility for refugee employment programs, language programs, victim assistance programs, cash assistance, food stamps, and access to social service networks that can assist with housing, counseling, repatriation, and advocacy.⁶ The federal Office of Refugee Resettlement, a division of the federal agency, Department of Health and Human Services issues letters of certification to

Since February 2003 the former Immigration and Naturalization Service has received approximately 150 T-visa applications, 23 of which have resulted in T-visa grants (U.S. Department of State 2003).

“TIP” Report

Each year the U.S. Department of Health and Human Services, in consultation with other relevant federal departments, is mandated under the

TVPA, to produce a Trafficking In Persons Report that reports on the state of trafficking worldwide by assessing those countries with a “significant number” of trafficking victims. The TVPA delineated three “tier” categories for ranking international efforts to combat trafficking in persons. The tier placements are based upon the US State Departments’ development of seven criteria that are used to assess each country ranking. Tier 1 countries are those that the Department believes have made significant efforts to comply with the Act’s minimum standards. Tier 2 are those countries whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards. And Tier 3 are those countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.⁸ Those countries with Tier 3 status are subject to certain types of sanctions due to their non-compliance in eliminating trafficking in persons.

From the 2002 report to the 2003 report Canada has been downgraded from Tier 1 to Tier 2 status. From the perspective of the U.S. government, Canada is not fully complying with the minimum standards. Furthermore, the report indicates that Canada has relied on provincial government agencies for protection and services and states, “there are no specific efforts to work with and rehabilitate trafficking victims” (U.S. Department of State, 2003).

It is to be noted that there has been criticism that the tier placements lack meaningful analysis and evaluation of governments’ efforts, and that the tier placements of specific countries are not reflective of a country’s efforts. Human Rights Watch issued a report criticizing the tier placements in which the report described particular concern with the Tier 2 category. This Tier contains 75 countries in the 2003 report, and Human Rights Watch described it as a “catch-

all” category that includes countries on either end of the spectrum in terms of their response to trafficking in persons.

The United States TVPA is by no means perfect and there are many problems with the current implementation of this legislation. With a federal focus on terrorism and homeland security many fear investigating cases of trafficking is no longer the priority it once was for the US administration. Cases can be reported to federal agencies sometimes with little or no follow up, often leaving victims in extremely vulnerable situations, particularly since benefits are intricately linked to the law enforcement involvement. Continual monitoring, legal analysis, and advocacy are necessary in order to ensure the intentions of the TVPA are producing the desired effects. Agencies working with trafficked persons are continually monitoring how the legislation is evolving into practice and some have taken on advocacy efforts on behalf of victims to ensure a timely response to federal investigations, as well as authorization for benefits.⁹

Due to the nature of trafficking in persons to North America, it is important to examine the problem as an international one that crosses borders. It is therefore all the more relevant to compare the response to the problem of trafficking in persons between the US and Canada. It has been documented in numerous cases that trafficked persons are forced into dangerous and exploitative situations within Canadian borders. As signatory to the United Nations Convention and the Trafficking Protocol, Canada must address not only the criminal aspects of this internationally growing crime but also those who are forced into slavery-type conditions. The current focus on the criminal elements leaves the victims of these crimes extremely vulnerable. Canada needs to create a comprehensive response to the needs and rights of trafficked people—not doing so has had, and will continue to have, dire consequences.

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¹The Ratification of the Convention is expected to enter into force on September 29, 2003.

²See Bill C-11 Submission to House of Commons Standing Committee on Citizenship and Immigration by Coalition Against Trafficking in Women, Gunilla S. Ekberg, representative.

³*Division A, The Trafficking Victims Protection Act (TVPA); Division B, The Violence Against Women Act (VAWA); and miscellaneous provisions in Division C.*

⁴TVPA states that there is a cap of 5,000 T-visas to be issued each year.

⁵For further information see the U.S. Department of Justice, Civil Rights Division Trafficking in Persons a Guide for Non-Governmental Organizations at <http://www.usdoj.gov/crt/crim/wetf/trafficbrochure.html>

⁶T-non-immigrant status allows an eligible applicant for temporary status and eligibility to apply for legal permanent resident after three years.

⁷The “Request for Proposals” process issues grants to eligible agencies wishing to apply for funding to provide direct services, outreach and education, as well as technical assistance.

⁸For a full list of country placements see U.S. Department of State Trafficking in Persons Report, 2003 at www.state.gov/g/tip/rls/tiprpt/2003/21262pf.htm.

⁹For further information on US advocacy efforts see <http://www.freedomnetworkusa.org/>

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**ANDRÉE
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sheets of ice on the river
as we leave the city
slowly
slow and cold
there can only be a future
filled with plenty
when nature has already
taken that much away

Andrée Lachapelle has worked as a graphic artist, web designer and a photographer. She lives in Toronto.

DONA STURMANIS

Mother surmises on Dad's demise

"You did a good job."
the home nurses told me.
They wanted to move him
to a hospital to die.
I said no:
My husband will die
at home and I
will be his doctor
and his nurse,
as I have been
for fifty years.
My son-in-law and I
sat at the diningroom table
the morning he died,
drank coffee, smoked
cigarettes,
looked over at his body
til the cremation people
arrived.
His beret,
His Haida-carved paddle,
To take him across the river,
went with his body
into the final fire.
It was really that simple.
Let's get rid of that bed, I said
to my son-in law.
The one in which he had
slowly
disappeared over two years.
I had sat there and watched
him
become an outline of a man.

After he died,
I was hungry, so hungry.
I ate everything he could
not.
The afternoon
they took him away
my son-in-law & I
had Welsh rarebit
at an English pub.

I went to live with his wife,
my oldest daughter. "Eat,"
she said and I did.
Fresh orange juice,
Bagels with cream cheese.
Tuna melts and mushroom
soup.
Rainbow color salads,
crisp to the teeth.
Melons, sweet melons.
She fed me herbs. I told my
friends
she was experimenting on
me.
I didn't want to eat,

but I was so hungry.
I didn't want to be fat
but I was so thin.

I ate until the outline
of my woman
became filled in

Dona Sturmanis teaches writing at Okanagan University College in Kelowna, B.C. Her poetry has appeared in many magazines including Grain, Antigonish Review, White Wall Review, CV2 and The Dalhousie Review. She has published two poetry books: Violen(t) Culture (Word is Out Press, 1996) and You Mistook Heaven (Kalamalka Press, 1998).