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2015-16 Student Chapter Report

**Human Trafficking -
A Reflection on
Current International
and Domestic Trends**



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Introduction¹

Level (formerly Canadian Lawyers Abroad) is a charitable organization that brings together progressive thinkers and leaders in order to break down barriers and increase access to justice for marginalized populations worldwide.

Level believes that uniting the power of people, education and law will lead to a more equitable and just society. The organization pursues its mission through education and mentorship, which is reflected in Level's four main programs: Canadian Chapters, Global Internships, Youth Outreach and Research. Through the Canadian Chapters program, Level works with law students to elevate important issues relating to law and development and to promote social justice careers.

Annually, Level selects a theme and area of focus for its Student Chapters to facilitate a better understanding of challenging international and contemporary issues facing the legal community. The Student Chapters LEARN about the theme, THINK about the steps that Canada can take to address the issue, and ENGAGE in activities that raise awareness about the theme. In past years, Level has explored topics such as refugee rights, children's rights, indigenous rights, transitional justice and corporate social responsibility.

This year, Level has selected "human trafficking", also known as "trafficking in persons", as its theme. Within this theme, Level will focus primarily on sexual exploitation and forced labour and migrant workers.

Canada has been identified as both a transit and a destination point for international human trafficking, as well as for domestic trafficking within Canadian borders.² In the past, Canada has had a poor reputation regarding its legislative action on the issue of human trafficking; however, in recent years, the Government of Canada has taken concrete steps towards developing effective legislation and policies pertaining to human trafficking. In June 2012, Canada launched its *National Action Plan to Combat Human Trafficking* (herein, the *Action Plan*). Supported by 18 federal departments, the *Action Plan* serves as "a comprehensive blueprint to guide the Government of Canada's fight against the serious crime of human trafficking."³ In order to support the *Action Plan*, there have been a number of changes to federal infrastructure including: Bill C-49 (prohibiting trafficking in persons in Canada); Bill C-268 (offence for child trafficking with a five-year mandatory penalty); and, Bill C-310 (extra-jurisdiction established to prosecute Canadian citizens and permanent residents who engage in trafficking outside of Canada). These measures, alongside the *Action Plan*, have contributed to the development of legislation upon which Canada continues to advance initiatives to combat trafficking both domestically and abroad.

Beginning with a preliminary explanation of human trafficking and its legal definition, this report reviews two of the most common forms of trafficking: sexual exploitation and forced labour (specifically migrant workers). The distinct

¹ The following report has been written by Chelsea Sauvé, University of Ottawa J.D. Candidate 2017, in consultation with Brittany Twiss, Executive Director of Level.

² British Columbia Ministry of Justice, "Human Trafficking in BC," <http://www.pssg.gov.bc.ca/octip/>.

³ Public Safety Canada, "The Harper Government Launches Canada's National Action Plan to Combat Human Trafficking" June 6, 2012,

<http://www.publicsafety.gc.ca/cnt/nws/nws-rlss/2012/20120606-eng.aspx> [Harper Government Launches National Action Plan].

legal frameworks associated with sexual exploitation and forced labour are explored at both international and domestic (Canadian) levels, which includes reference to pertinent Canadian case law and a review of the effects that human trafficking has on: the economy, state interactions, and specific vulnerable groups.

This document is not intended to be an exhaustive analysis of all issues pertaining to human trafficking. Rather, it is an overview of key principles, central to the theme of human trafficking that will inform Level Student Chapters, and aid in effective activities and engagement of law students across Canada.

Basic Principles

While exact figures are difficult to attain on account of the clandestine nature of the industry, the United Nations (UN) estimates that trafficking is a \$5-7 US billion⁴ operation, with approximately 4 million people moved either across state borders, or within one state.⁵ In 2012, the International Labour Organization (ILO) noted that there were at least 20.9 million adults and children who were bought and sold worldwide into commercial sexual servitude, forced labour and bonded labour.⁶ However, that number is an estimate given that “the extent of human trafficking, either in Canada or internationally, is difficult to assess due to the hidden nature of these offences, the reluctance of victims and witnesses to come forward to law enforcement and the difficulty of identifying victims in practice.”⁷

What is Human Trafficking?⁸

In 2000, the United Nations Office on Crimes and Drugs (UNODC) created the United Nations Convention against Transnational Organized Crime⁹ and with it, two related protocols: a) *The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*¹⁰ (the *Palermo Protocol*) and b) *The United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air* (herein the *Smuggling of Migrants Protocol*).¹¹ The former of these two protocols established a global language and legislative platform through which trafficking could be addressed in a uniform manner.¹² This framework includes “the parameters of judicial cooperation and exchanges of information among countries” regarding occurrences of human trafficking.¹³

Article 3 of the *Palermo Protocol* defines trafficking as follows:

(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

⁴ This figure is American dollars.

⁵ Coalition Against Trafficking in Women, “Guide to the New UN Trafficking Protocol” (2001) at 1, online: http://www.no-trafficking.org/content/pdf/guide_to_the_new_un_trafficking_protocol.pdf.

⁶ International Labour Organization, *ILO global estimate of forced labour: results and methodology* (2012) at 13.

⁷ Canada, Public Safety, *National Action Plan to Combat Human Trafficking* (2012) at 5, online: <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf> [*National Action Plan*].

⁸ Human trafficking is also known as “trafficking in persons” in international law.

⁹ *United Nations Convention against Transnational Organized Crime*, 12 December 2000, A/RES/55/25. (entered into force 29 September 2003) [*UNCTOC*].

¹⁰ *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 12 December 2000, Doc A/55/383 (entered into force 25 December 2003) [*Palermo Protocol*].

¹¹ *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* 12 December 2000, A/45/49 (2001), (entered into force on 28 January 2004) [*Smuggling of Migrants Protocol*].

¹² *Supra* note 1.

¹³ *Ibid.*

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; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) "Child" shall mean any person under eighteen years of age.¹⁴

More succinctly, the UNODC defines trafficking as "the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them."¹⁵ In all circumstances of trafficking, the victims are understood to be the property of the exploiters, and in specific circumstances trafficking may constitute a crime against humanity and, in armed conflict, it may be considered a war crime.¹⁶

Human trafficking involves a multi-staged process, which includes recruitment, transportation, and exploitation. Each stage must occur in order to constitute an instance of trafficking. Facilitated by different individuals, human trafficking can be understood as "a collection of crimes bundled together rather than a single offence, a criminal process rather than a criminal event."¹⁷ The final stage, exploitation, is defined by the *Palermo Protocol*, which articulates the offence as being "any form of sexual exploitation, forced labour or services, slavery or life-practices, servitude, or the removal of organs."¹⁸

Two of the most common forms of human trafficking are sexual trafficking (sexual slavery and commercial sexual exploitation) and forced labour (migrant workers). As mentioned above, these two forms of trafficking will be the focus of the report.

Sexual Exploitation

Sexual exploitation, also referred to as sex trafficking, is defined as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another."¹⁹ When people conceive of human trafficking, it is often sexual exploitation, more specifically, commercial sexual exploitation and sexual slavery, which take centre stage.

Commercial Sexual Exploitation

¹⁴ *Supra* note 10.

¹⁵ United Nations Office on Crimes and Drugs, "UNODC on human trafficking and migrant smuggling," online: <http://www.unodc.org/unodc/en/human-trafficking/index.html>.

¹⁶ UNHCR, "Guidelines On International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked." 7 April 2006, HCR/GIP/06/07

at 2-3, online: <http://www.unhcr.org/443b626b2.html>.

¹⁷ Royal Canadian Mounted Police, "Human Trafficking: Reference Guide for Canadian Law Enforcement," (British Columbia: RCMP, May 2005) at 7, online:

http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/HT_Canadian_Law_Enforcement_Guide.pdf [*RCMP: Human Trafficking Reference Guide*].

¹⁸ *Palermo Protocol*, *supra* note 9 at art. 2.

¹⁹ UN Secretary-General (UNSG), *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse* (9 October 2003) at 6, online: <http://www.refworld.org/docid/451bb6764.html>.

Commercial sexual exploitation is defined by an exchange in which one or more parties gain a benefit – money, drugs, food, protection, or shelter – from the sexual exploitation of another individual.²⁰ This commercial form of sexual exploitation is most often associated with children, who are defined under international law as being any person under the age of 18.²¹

Sexual Slavery

Sexual slavery is not defined in international law.²² However, Article 7(2)(c) of the *Rome Statute* defines enslavement as the “exercise of any or all of the powers attached to the ‘right of ownership’ over a person.” Article 8 (b)(xxii) of the *Rome Statute* further defines sexual enslavement as a war crime, and thus a breach of the Geneva Conventions when committed in the midst of an international armed conflict or when committed indirectly during an internal armed conflict.

According to this definition, enslavement is characterized by “the repeated violation or sexual abuse or forcing the victim to provide sexual services.”²³ Despite this, many argue that the use of the term “sexual slavery” accounts for “the sexual aspect of the crime of slavery” and as such is more inclusive than the legal definition of the term enslavement.²⁴

Forced Labour: Migrant Workers

The ILO has defined forced labour in two important international legal instruments: the *1930 Forced Labour Convention (No.29)* and the *Abolition of Forced Labour Convention, 1957 (No.105)*. These Conventions concerning forced labour and its abolition have been ratified by more than 93 per cent of the member States of the ILO.²⁵

The *1930 Forced Labour Convention (No. 29)* sets out the basic legal blueprint for the prohibition of forced labour.²⁶ It defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2(1)).²⁷ This definition is premised upon two basic elements:

- 1) It requires that the work or service is completed under threat of penalty should the person refuse (identified as “the menace of penalty”); and
- 2) The work must be undertaken involuntarily²⁸

The threat of penalty referred to may include: “threats to denounce victims to the police or immigration authorities when their employment status is illegal, or

²⁰ ECPAT International, “CSEC Terminology,” online: http://resources.ecpat.net/EI/Csec_definition.asp.

²¹ Palermo Protocol, *supra* note 9 art. 3(d).

²² Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Leiden: Martinus Nijhoff Publishers, 2012) at 276 [Allain].

²³ *The Rome Statute of the International Criminal Court*, 17 July 1998, A/CONF.183/9 art 7(3)(g) (entered into force on 1 July 2002) [Rome Statute].

²⁴ *Ibid.*

²⁵ The International Labour Organization International Training Centre, *Forced Labour Booklet, Workers' Activities Programme (ACTRAV)* at 7 [ILO Training Centre: Forced Labour Booklet].

²⁶ *Ibid* at 2.

²⁷ The International Labour Organization, “Report Of The Director-General -A Global Alliance Against Forced Labour - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,” International Labour Conference, 93rd Session (2005) at 5, online: <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf> [ILO Report of the Director General].

²⁸ *Ibid.*

denunciation to village elders in the case of girls forced to prostitute themselves in distant cities” or “economic penalties linked to debts, the non-payment of wages, or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract or of national law.”²⁹

The second instrument, the *Abolition of Forced Labour Convention, 1957 (No.105)*, accepts the established international legal definition of forced labour and specifies in Article 1 that “forced education, discrimination, labour discipline, or punishment for having participated in strikes.”³⁰ This Convention seeks a “complete suppression of forced labour as a means of political coercion or education, labour discipline, punishment for taking part in strikes, discrimination or for the purpose of economic development.”³¹ According to this clarification, forced labour is defined as a “severe violation of human rights and restriction of human freedom.”³²

While there is no consensus on the structural causes of forced labour, many identify poverty, conflict, inequality and discrimination as root causes. It is these causes that often push people to migrate in search of opportunities, which then result in situations of forced labour.³³

Identifying situations of forced labour

The national law of the country is irrelevant to determining whether the work is considered forced labour under international law.³⁴ Instead, situations of forced labour are defined according to the relationship between an individual and their “employer” rather than by the type of activity performed.³⁵ The movement of people for forced labour involves a chain of people who play the roles of: agent/recruiter, transporter and final employer (the person that will extract a profit from the forced labour).³⁶

Forced labour generally exists in the following circumstances:

- Where a person is abducted and forced to work under physical threat or coercion;
- Where the state requires that free citizens provide a service under the threat of a fine or penal sanctions;
- Where workers are ordered to repay an exorbitant amount to the employer or landowner (wherein practically, the size of the debt makes impossible for the worker to work in any form of employment aside from that provided by the creditor); and/or
- Where workers migrate in search of employment, and unintentionally become committed to circumstances which make it impossible for them to leave.³⁷

The relationship between the worker and employer is assessed in accordance with the consent of the individual to complete the work in question (the route

²⁹ *Ibid* at 6.

³⁰ *Abolition of Forced Labour Convention, C105*, 25 June 1957, 320 UNTS 4648, (entered into force 25 June 1957) [*Abolition of Forced Labour Convention*].

³¹ *ILO Training Centre: Forced Labour Booklet*, *supra* note 24 at 2.

³² *ILO Report of the Director General*, *supra* note 26.

³³ Canadian Council for Refugees, “Trafficking in Persons for Forced Labour,” (September 2014) at 1, online: <http://ccrweb.ca/en/trafficking-forced-labour> [*Canadian Council for Refugees: Trafficking in Persons for Forced Labour*].

³⁴ *ILO Report of the Director General*, *supra* note 26 at 6.

³⁵ *Ibid* at 5.

³⁶ UN.GIFT, “Trafficking for Forced Labour,” (2015), online: <http://www.ungift.org/knowledgehub/en/about/trafficking-for-forced-labour.html> [*UN.GIFT*].

³⁷ *ILO Training Centre: Forced Labour Booklet*, *supra* note 24 at 2-3.

into forced labour) and the menace of penalty (the means by which someone is kept in forced labour).

Consent

The absence of consent is central to identifying situations of forced labour, as it is representative of the individual worker's involuntary presence as a labourer.³⁸ The route into forced labour is therefore defined in part by the employer's failure to obtain consent of the worker. It should also be noted that while the worker may have initially consented to the work at hand, the consent provided will be considered irrelevant if the means through which it was obtained involved either deception or fraud.³⁹

Menace of the penalty

The means by which someone is kept in forced labour, also known as the menace of the penalty, is assessed according to the presence or credible threat of any of the following: physical violence against the worker, family or close associate; sexual violence; threat of supernatural retaliation; imprisonment or other physical confinement; financial penalties; denunciation to authorities and deportation; dismissal from current employment; exclusion from future employment; exclusion from community and social life; removal of rights or privileges; deprivation of food, shelter and other necessities; shift to worse working conditions; and/or loss of social status.⁴⁰

The Main Actors

The following section of this report provides an exploration of the victims of trafficking and the perpetrators of trafficking. The analysis of victims of trafficking is broken down into victims of sexual exploitation (and further divided into: women, men and boys, children and LGBTQ) and victims of forced labour.

Victims of Trafficking

While the characteristics of victims of trafficking will vary, most victims share common characteristics that make them vulnerable to traffickers. These may include: "[coming from] countries or communities with high rates of crime, poverty, and corruption; lack opportunities for education; lack family support (e.g. orphaned, runaway/thrown-away, homeless, family members collaborating with traffickers); and/or... a history of physical and/or sexual abuse."⁴¹

Victims of Sexual Exploitation

Trafficking for the purpose of sexual exploitation is the fastest growing industry in the world.⁴² Amongst survivors of trafficking, almost six out of 10 have been trafficked for the purpose of sexual exploitation.⁴³

³⁸ *Ibid.*

³⁹ *ILO Report of the Director General, supra note 26 at 6.*

⁴⁰ *ILO Training Centre: Forced Labour Booklet, supra note 24 at 2-3.*

⁴¹ Heather J. Clawson and Nicole Dutch, "Identifying Victims Of Human Trafficking: Inherent Challenges And Promising Strategies From The Field," (20 January 2008), *US Department of Health and Human Services*, online: <http://aspe.hhs.gov/hsp/07/humantrafficking/IdentVict/ib.htm#Who>.

⁴² Amanda Walker-Rodriguez and Rodney Hill, "Human Sex Trafficking," *FBI Law Enforcement Bulletin*, (March 2011), online: <https://leb.fbi.gov/2011/march/human-sex-trafficking>.

⁴³ *Global Report on Trafficking in Persons 2012*, UNODC, (2012) at 7.

Recruitment of victims for sexual exploitation is typically accomplished through “a betrayal of trust or the promise of a better life,” false promises of a career, or the pursuit of a romantic relationship. Once recruited, victims are then “manipulated, intimidated, confined, threatened, and beaten... [where] many are forced into debt-bondage or drug addiction.”⁴⁴ It has been suggested that “many victims are more vulnerable due to their young age, past abuse, poverty, racial discrimination, addictions, family breakdown, or mental health.”⁴⁵

In the *2013-2014 Annual Report on Trafficking*, Statistics Canada revealed that “gender, poverty, social crisis, education, age, social isolation and drug or alcohol addiction were all cited by respondents as important factors in creating vulnerability to trafficking.”⁴⁶ Poverty was also indicated as being a primary driver of vulnerability for victims both domestic and international, as it is “linked to global economic inequality, and social isolation attributed to conditions such as troubled family life, history of sexual abuse and mental health problems.”⁴⁷

The following section divides the victims according to gender to provide a more in depth perspective of the root causes associated with trafficked peoples.

Women and Girls

Gender and age are perceived as being the biggest risk factors for sexual exploitation in Canada, making trafficking an issue related to both human rights and gender.⁴⁸ Of all victims of sexual exploitation, 98% are women and girls.⁴⁹ For trafficking victims who are transported internationally, “poverty and lack of opportunity disproportionately impact women in their countries of origin.”⁵⁰

It is widely agreed upon in the literature that young females are susceptible to trafficking recruitment, as “many victims are first trafficked around the age of thirteen or fourteen.”⁵¹ However, according to the Global Alliance Against Traffic in Women (GAATW), it is important to ensure that we do not group women and children into the same anti-trafficking initiatives. While women and girls suffer as victims, it is imperative that we discuss them separately as “some within GAATW’s network argue that grouping women and children together risks treating women as children and ignores the distinct human rights protection needs of children” and simultaneously infantilizes women.⁵²

In international law, there are distinct conceptual and international frameworks for women’s rights (the *Convention on the Elimination of All Forms of Discrimination Against Women* [CEDAW]) and children’s rights (the *Convention on the Rights of the Child* [CRC]) respectively.⁵³ It is prudent that these separate legal frameworks be utilized when discussing the rights and plights of female victims of trafficking.⁵⁴

⁴⁴ Canadian Women’s Foundation, “The Facts About Sex Trafficking in Canada,” online: <http://www.canadianwomen.org/facts-about-sex-trafficking-in-canada#Victim> [Canadian Women’s Foundation].

⁴⁵ *Ibid.*

⁴⁶ Jacqueline Oxman-Martinez, Marie Lacroix, and Jill Hanley, Canada, Department of Justice, “Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector” (Ottawa: Research and Statistics Division, 2005) at 10-11, online: http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/rr06_3/rr06_3.pdf [Oxman- Martinez, Lacroix, Hanley].

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* at 3.

⁴⁹ International Labour Organization, *Minimum Estimate of Forced Labour in the World*, (April 2005) at 6.

⁵⁰ *Ibid.*

⁵¹ Canadian Women’s Foundation, *supra* note 43.

⁵² Global Alliance Against Traffic in Women, “Beyond Borders: Exploring the Links between Trafficking and Gender,” GAATW Working Paper Series (2010) at 11, 23, online: http://www.gaatw.org/publications/WP_on_Gender.pdf [GAATW].

⁵³ *Ibid.* at 11.

⁵⁴ *Ibid.*

Men and Boys

While the preponderance of literature on human trafficking is focused upon women and girls, men and boys face are also at risk of becoming victims of sexual exploitation. In fact it has been suggested that 50 per cent of all trafficked children are male.⁵⁵ This reveals the realities of boys and victimhood in trafficking.

Men

Trafficked men are often excluded from international dialogue, research and policies on trafficking; however, the literature reveals that they constitute 2 per cent of commercial sexual exploitation.⁵⁶

GAATW's report titled *Beyond Borders: Exploring Links Between Trafficking and Gender*, has addressed cases of trafficking in men, but openly admit that "there [is] still a lack of comprehensive quantitative and qualitative data about the scope and nature of traffic in men."⁵⁷ Missing public data on trafficked men leaves open questions regarding where men are trafficked and whether the means by which victims are trafficked varies between male and female victims. Some suggest that the absence of data on men and sexual exploitation may indicate that men seek means outside of human trafficking legislation and the law to access justice for the harms they suffer when trafficked. For example, GAATW has speculated that some men may seek assistance through labour court cases.⁵⁸

One victim interviewed by GAATW suggested that "victimisation is often perceived as a feminine and feminising experience" and as such, one that is precluded for men.⁵⁹ This victim emphasized that when men are discussed as victims of sexual exploitation, they are often assigned more agency than female victims, and are most often times falsely assumed to be homosexual.⁶⁰

Boys

In April 2013, ECPAT-USA published a report titled *And Boys Too*, which drew attention to the plight of boy victims in human trafficking. The report stated that little boys are given little attention as victims of sexual exploitation and when attention is given, it "identifies them as exploiters, pimps and buyers of sex, or as active and willing participants in sex work, not as victims or survivors of exploitation."⁶¹ ECPAT-USA highlights that discussion of boys as victims and/or survivors of the commercial sexual exploitation of children is limited and must be invigorated.⁶²

And Boys Too revealed four central factors that have led to a void in the identification of male victims of the commercial sexual exploitation of children (CSEC):

⁵⁵ Logan Keziah, "Boys: the Under-mentioned Victims of Child Sex Trafficking and Sexual Exploitation," *Social Work Helper*, (25 June 2013), online: <http://www.socialworkhelper.com/2013/06/25/boys-the-under-mentioned-victims-of-child-sex-trafficking-and-sexual-exploitation/>

⁵⁶ Ashley Greeve, "Human Trafficking: What about the Men and the Boys?," *Human Trafficking Centre*, (18 September 2014), online: <http://humantraffickingcenter.org/posts-by-htc-associates/men-boys/> [Greeve].

⁵⁷ GAATW, *supra* 51 at 10.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ J Dennis "Women are Victims, Men Make Choices: The Invisibility of Men and Boys in the Global Sex Trade," (2008) 25:1.

⁶¹ *Ibid.*

⁶² ECPAT- USA, "And Boys Too," (2013) at 2, online:

<http://traffickingresourcecenter.org/sites/default/files/And%20Boys%20Too%20-%20ECPAT%20USA.pdf>.

- Boys unwillingness to self-identify as sexually exploited due to shame and stigma about being gay or being perceived as gay by family and community.
- A lack of screening and intake by law enforcement and social services agencies, rooted in the belief that boys are not victims of CSEC.
- Outreach by anti-trafficking organizations to areas, venues and tracks known for male prostitution.
- The manner in which the oversimplified message that boys are not generally pimped out conceals their needs and misinforms potential services.⁶³

This study resulted in a clear finding that the commercial sexual exploitation of boys is under-reported. There is much work must be done to protect young boys including raising awareness about the existence and scope of trafficked boys and broadening of specialized services to help victims.⁶⁴ For example, there is no infrastructure present to address the needs of male victims.⁶⁵ To date, there are no existing shelters for rescued male victims of domestic minor sexual exploitation and/or CSEC and few current providers of services to girls are equipped or willing to serve male victims.⁶⁶

Children

The ILO defines CSEC as “the exploitation by an adult with respect to a child or an adolescent – female or male – under 18 years old; accompanied by a payment in money or in kind to the child or adolescent (male or female) or to one or more third parties.”⁶⁷ CSEC includes a multitude of activities including: child prostitution (including child sex tourism and child marriage), child pornography and trafficking of children for sexual purposes.⁶⁸ Within this framework “the child is treated as a sexual object and as a commercial object” constituting “a form of coercion and violence against children, [amounting to] forced labour and a contemporary form of slavery.”⁶⁹

Typically, victims of child sex tourism are boys and girls between the ages of 10 and 18,⁷⁰ although recently children as young as seven have been victimized.⁷¹ Victims of child sex tourism are often forced into the industry by poverty, sexual abuse/abuse or neglect in the home, discrimination towards minority groups, lack of education, HIV/AIDS, family breakdown.⁷² While some children are tricked or forced into sexual exploitation by desperate family members wishing to sell their children for profit,⁷³ others are homeless and taken from the streets by predators seeking to make money.⁷⁴ Most often, brothel owners and human traffickers will lure children into prostitution with promises of a lavish life of financial stability.⁷⁵

⁶³ *Ibid* at 5.

⁶⁴ *Ibid*.

⁶⁵ Greeve, *supra* note 55.

⁶⁶ *Ibid*.

⁶⁷ International Labour Organization. “Commercial Sexual Exploitation of Children”, online: <<http://www.ilo.org/ipec/areas/CSEC/lang--en/index.htm>> (*ILO Commercial Sexual Exploitation of Children*).

⁶⁸ ECPAT International. “Combatting Child Sex Tourism: Questions and Answers” (2008) at 3, online:

<http://www.ecpat.net/sites/default/files/cst_faq_eng.pdf> (*ECPAT International*).

⁶⁹ *Ibid*.

⁷⁰ Naomi L. Svensson, “Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws” (2006) 28 *Loy LA Int'l & Comp LJ* 641 at 643 [*Svensson*].

⁷¹ *R v Bakker*, 2005 BCPC 289 at para 18.

⁷² *ECPAT International*, *supra* note 6 at 15.

⁷³ *Svensson*, *supra* note 69 at 644.

⁷⁴ International Programme on the Elimination of Child Labour, “Commercial sexual exploitation of children and adolescents: The ILO’s response”, International Labour Organization at 2 [*International Programme on the Elimination of Child Labour*].

⁷⁵ *Svensson*, *supra* note 69 at 644.

While historically these children were trafficked to areas of high demand, now perpetrators have begun to travel to areas where children are readily available for sex. Once in captivity, these children are forced to perform in sex shows, pornography and sexual services.⁷⁶ The risks of sexually transmitted diseases, unwanted pregnancy and substance abuse are high, resulting in lasting effects including low self-esteem, humiliation, guilty and problems with verbal and written communication.⁷⁷ In addition to these factors, the stigma and fear of retribution result in low social acceptance in adulthood.⁷⁸

LGBTQ - Transgender

The binary categories of women and men, female and male, fail to address the plight of Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) victims of sexual exploitation. The degree of homophobia and discrimination faced by the LGBTQ community has resulted in an increased vulnerability to traffickers “who prey on the desperation of those who wish to escape social alienation and maltreatment.”⁷⁹ For example, in South Africa there are instances of traffickers threatening the revelation of an LGBTQ child’s sexual orientation should they leave prostitution.⁸⁰

The specific plight of transgendered people and human trafficking is one that is all too often ignored in discussions of sexual exploitation.⁸¹ Transgendered people, specifically transgender women, are prime targets for trafficking on account of “a combination of vulnerable situations” including lack of economic opportunity, discrimination, and ignorance in law enforcement concerning the specific plight of this minority group. This is especially true for transgendered women who are trafficked internationally on account of absent social and political protection in their country of origin.⁸²

The LGBTQ community and its particular vulnerability to human trafficking is further discussed under the “Special Topics” section below.

Victims of Forced Labour

Many victims enter initially forced labour situations of their own accord (albeit through fraud and deception), only to later discover that they are not at liberty to withdraw from the labour, and are at the mercy of their employers. The ILO reports that there are almost 21 million victims of forced labour - 11.4 million women and girls and 9.5 million men and boys.⁸³

According to the 2014 ILO Report, *Profits and Poverty: The Economics of Forced Labour*, income shocks and poverty are the main economic drivers making individuals vulnerable to instances of forced labour. Victims of forced labour, men, women and children alike, are often former victims of physical and verbal

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ The United States, US Department Of State, *Topics Of Special Interest, Office To Monitor And Combat Trafficking In Persons, Trafficking In Persons Report 2014*, online: <http://www.state.gov/j/tip/rls/tiprpt/2014/226646.htm>.

⁸⁰ *Ibid.*

⁸¹ Crystal DeBoise, “Human Trafficking of Immigrant Transgender Women: Hidden in the Shadows,” 11 January 2012, online: http://freedomnetworkusa.org/wp-content/uploads/2012/05/race_talk_article_investigation_and_follow_up_sienna.pdf

⁸² *Ibid.*

⁸³ International Labour Organization, “Forced Labour, Human Trafficking and Slavery,” online: <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> [*ILO: Forced Labour, Human Trafficking and Slavery*].

abuse. Other factors that contribute to this vulnerability include lack of education, illiteracy, gender and migration.⁸⁴

Trafficking for the purpose of forced labour can include: domestic servitude, bonded labour, involuntary servitude and child labour. These terms are defined as follows:

Bonded Labour/ Debt Bondage: This form of forced labour is referred to in the *Palermo Protocol*, and involves the use of a bond or debt to maintain a person's ongoing service.⁸⁵ Instances of debt bondage are pervasive on account of workers assuming debt as a component of their terms of employment when agreeing to the employment in question.⁸⁶ In South Asia, it is common for bonded labour to be inherited generationally.⁸⁷

Involuntary Servitude: This refers to one of two circumstances: 1) when a person in servitude believes that any attempt to escape would result in physical harm to their person, or 2) when a person in servitude is threatened with legal action should they leave (e.g. deportation to their country of origin).⁸⁸ These workers are most often economic migrants or low-skilled labourers who are transported or trafficked from a less developed country to a more developed country, and most often do not view themselves as being in captivity.⁸⁹

Domestic Servitude: This form of servitude involves the use of force or coercion, usually physical (sexual) or emotional abuse. These victims often fall victim to involuntary servitude.⁹⁰

Child Labour: Child labour can take many forms, and as such, the ILO has prioritized the elimination of the worst forms of child labour in the *ILO Worst Forms of Child Labour Convention, 1999 (No. 182)*.⁹¹ The ILO defines child labour as "work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development."⁹² Therefore, it refers to work which: "is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work."⁹³ Article 3 of the *Worst Forms of Child Labour Convention, 1999 (No. 182)* defines the worst forms of child labour as the following:

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.

(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.

⁸⁴ International Labour Organization, "Economics of forced labour: ILO says forced labour generates annual profits of US\$ 150 billion," (20 May 2014), online: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm [ILO: Economics of forced labour].

⁸⁵ *Palermo Protocol*, supra note 9.

⁸⁶ *UN.GIFT*, supra note 35.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ International Labour Organization, "What is Child Labour?," online: <http://www.ilo.org/ipec/facts/lang-en/index.htm>.

⁹² *Ibid.*

⁹³ *Ibid.*

(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁹⁴

Traffickers

Despite the role that traffickers maintain in facilitating human trafficking, there is limited research available regarding the very people who “enable and partake” in the trafficking of people.⁹⁵ As such, there is little insight into the networks of traffickers or of the relationships that they maintain with one another and with their victims. On account of this void in research, traffickers and their associated networks are difficult to identify. This absence of information impedes the prevention of trafficking, and places an increased reliance upon the victims to report incidence of trafficking as a means to procure information about their traffickers.⁹⁶

The term trafficker is defined in the *UN High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Trafficking*, as “recruiters, transporters, those who exercise control over trafficked persons, those who transfer and/or maintain trafficked persons in exploitative situations, those involved in related crimes, those who profit either directly or indirectly from trafficking, its component acts and related offences.” In accordance with this definition, it becomes clear that the term trafficker is used to describe a multitude of actors in the trafficking ring. See the table below for a division of roles (Table 1).

Table 1: Actors in the Trafficking Ring

Title	Role
Recruiters	Those who recruit victims
Transporters	Those who transport victims to the place of exploitation (whether across borders or internally)
Exploiters	Those who exploit the victims in any number of ways including: 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. ⁹⁷

*Please note that while this report has focused upon into the distinctions between the specific roles of traffickers, inquiry into the gender, age and marital status of the traffickers is also required, as it is integral to the development of this area of law.

What is a Pimp?

According to Canadian common law, a pimp is defined as “a person who lives parasitically off a prostitute’s earnings” and encourages prostitution through

⁹⁴ *Worst Forms of Child Labour Convention, C182*, 17 June 1999, 2133 UNTS 37245 at art 3 (entered into force 19 November 2000).

⁹⁵ *UN.GIFT*, *supra* note 35 at 2.

⁹⁶ *Ibid.*

⁹⁷ *Ibid* at 11.

violence.⁹⁸ The majority of laws surrounding pimps are engaged with the procurement of victims under Section 212(1) of the *Criminal Code*,⁹⁹ and the manner in which pimps target “particularly vulnerable segment[s] of society.”¹⁰⁰

The Economics of Human Trafficking

Human trafficking is the most profitable criminal activity in the world next to trafficking in drugs and firearms.¹⁰¹ As of 2013, the ILO estimated that human trafficking generated profits upwards of US\$32 billion a year.¹⁰²

While the supply of trafficked persons is widely discussed, both within the scope of sexual exploitation and forced labour, there is little discussion regarding the “johns” (men who purchase sexual services from prostitutes) or the employers of forced labour. However, human trafficking is market driven industry, and as such, if there were no demand for paid sexual services or for forced labour, there would be no supply.

Sexual Exploitation - The Johns

Men who purchase sexual services, referred to in the existing literature as johns, are a difficult group to study on account of the anonymity sought throughout the transaction. As a result of the covert nature of purchasing sexual services, there have been very few studies conducted on the behaviour of johns.

In 2010, a rare international research study sought to uncover “the reality of why men buy sex” through interviews conducted with 700 men who identify as men who have or continue to purchase sexual services.¹⁰³ These interviews spanned over six countries.¹⁰⁴ This process revealed that men did not fit obvious stereotypes, rather they ranged in age (from 18-70) and race (Caucasian, Black, Asian).¹⁰⁵ For the most part the men interviewed were employed, educated beyond high school, demonstrated good social skills, and a little more than half were married or in a relationship with a woman.¹⁰⁶

While many of the 700 participants of the 2010 study revealed a sense of “intense guilt and shame about paying for sex,” stating that they found the experiences “unfulfilling, empty, terrible”, the majority revealed that they continued to seek out the company of prostitutes.¹⁰⁷ Further, some of these men expressed misogynistic sentiments which revealed a deep hatred towards women.¹⁰⁸ Other studies suggest that men have a wide spectrum of reasons to pay for sexual services which moves beyond misogyny. Such motivations include: variety in sexual experience, a supplement to their regular sex lives, exploration of personal fantasies that they will not pursue with their current partners, the secrecy of the act, lack of time to seek out a relationship and/or poor social skills with women, and those who seek the “girlfriend experience.”¹⁰⁹

⁹⁸ *R v Downey*, [1992] 2 SCR 10.

⁹⁹ Katrin Roots, “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications,” (April 2013) 28:1 CJLS at 21-41 [Roots].

¹⁰⁰ *Ibid* at 32.

¹⁰¹ Ontario Women’s Justice Network, “The Law and Human Trafficking in Canada,” (May 2014), online: http://owjn.org/owjn_2009/component/content/article/53/366-law-human-trafficking#_edn3.

¹⁰² International Labour Organization, “ILO Action Against Trafficking in Human Beings,” (2008), online:

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf

¹⁰³ Julie Bindel, “Why men use prostitutes,” *The Guardian* (15 January 2010), online:

<http://www.theguardian.com/society/2010/jan/15/why-men-use-prostitutes>.

¹⁰⁴ *Ibid*.

¹⁰⁵ *Ibid*.

¹⁰⁶ *Ibid*.

¹⁰⁷ *Ibid*.

¹⁰⁸ *Ibid*.

¹⁰⁹ *Ibid*.

Despite the differences in motivation which bring men to seek prostitutes, and the diverse backgrounds of these men, Victor Malarek, author of the book *The Johns: Sex for Sale and the Men Who Buy It* suggests that all johns share a common perspective of the prostitutes as individuals. Malarek argues that all men who purchase sexual services fail to consider how the women in question became prostitutes in the first place.¹¹⁰ Sociologist Martin Monto suggests that “prostitution requires the creation and maintenance of a comfortable illusion”¹¹¹ and as such, demands a separation between the woman as a person and the woman as a satisfier of sexual fantasy.

Women Who Purchase Sexual Services

While the literature acknowledges that women, not only men, purchase sexual services, there is little known about their behaviour on account of their small number. At the moment however, there is a study being conducted by Lancaster University and Manchester Metropolitan University in the UK, which has revealed that an increasing number of women are purchasing sexual services.¹¹²

The study titled *Women Who Buy Sexual Services in the UK* reveals that women who pay for sexual services come from diverse backgrounds; however, they converge in their common motivation to purchase sexual services – that is, not having enough time to seek and maintain a conventional, romantic relationship.¹¹³ The study has interviewed 21 escorts and is in the process of seeking female customers in order to continue the study. One of the lead researchers, Dr. Sarah Kingston revealed that “[they have already] made some fascinating early findings, but [they] still have much work to do.”¹¹⁴ The study is still “seeking to explore motivations and experiences of women who book escorts; who and where they buy sex from and to explore how physical and sexual safety is negotiated.”¹¹⁵

Forced Labour - The Employers

The demand for labour is a consequence of globalization and associated growing economies within which employers seek to maximize profit and minimize spending. To do so, they seek a cheap labour supply through forced labour.¹¹⁶

Of the almost 21 million victims of forced labour, approximately 19 million victims are exploited by private individuals or enterprises, while just over two million are exploited by the state or by rebel groups.¹¹⁷ Forced labour in the private economy alone earns US\$150 billion in illegal profits per year.¹¹⁸ Such figures are revealing of how profitable this form of exploitation has become.

The ILO has established a number of initiatives in order to deter employers from seeking forced labour despite its potential to result in high profit earnings. One of such initiatives is the creation of handbooks that seek to help employers and

¹¹⁰ Victor Malarek, *The Johns: Sex for Sale and the Men who Buy It*, (Toronto: Key Porter Books, 13 April 2009).

¹¹¹ Jay Dixit, “Sex Ed: Keeping Up with the Johns,” *Psychology Today*, (1 November 2009), online: <https://www.psychologytoday.com/articles/200911/sex-ed-keeping-the-johns>

¹¹² Sam Rkaina, “More women than ever are paying for sex because they are too busy for conventional relationships research claims,” *Mirror: UK*, (21 May 2015), online: <http://www.mirror.co.uk/news/uk-news/more-women-ever-paying-sex-5733702>.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *UN.GIFT*, *supra* note 35.

¹¹⁷ *ILO: Forced Labour, Human Trafficking and Slavery*, *supra* note 82.

¹¹⁸ *ILO: Economics of forced labour*, *supra* note 83.

businesses recognize instances of forced labour.¹¹⁹ The most recent handbook titled *Combating Forced Labour: A Handbook for Employers and Business* provides guidance material and tools for employers “to strengthen their capacity to address the risk of forced labour and human trafficking in their own operations and in global supply chains.”¹²⁰ This handbook focuses upon the importance of spotting instances of forced labour to ensure that employers do not mistakenly engage in exploitative employment.

International Law and Human Trafficking

While existing international law refers to forced labour, the bulk of international law is committed to the prevention of human trafficking and is predominately focused upon the prevention of sexual exploitation.

This portion of the report has been divided into two sections, sexual exploitation and forced labour, in order to facilitate a coherent analysis of international instruments in these areas. Please note that the international legal instruments described under the sexual exploitation heading are also applicable to situations of forced labour.

Sexual Exploitation

As mentioned previously, in 2000, the United Nations Office on Crimes and Drugs (UNODC) created the United Nations Convention against Transnational Organized Crime¹²¹ and two related protocols: the *Palermo Protocol*¹²² and the *Smuggling of Migrants Protocol*.¹²³ These entered into force in 2003 and 2004 respectively.¹²⁴ In order to enforce compliance with these conventions, the UNODC established the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007.¹²⁵

The *Palermo Protocol* developed a uniform, accepted definition of trafficking in persons (which is defined above under the heading “What is Human Trafficking?”).¹²⁶ The agreed upon definition is premised in the presence of three central elements: the act, the means and the purpose.

- a) **The act (what is done):** In order to be identified as trafficking in international law, the act must include one of the following elements: recruitment, transportation, transfer, harbouring, or receipt of persons, across or within borders.¹²⁷
- b) **The means (how it is done):** To be considered a trafficked person, international law requires the threat or use of force or coercion acting against the person’s will. Therefore, to qualify as trafficking, there must be the “threat or use of force, coercion, abduction, fraud, deception, abuse of

¹¹⁹ The International Labour Organization, *Combating forced labour: A handbook for employers and business*, (25 June 2015), online: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm.

¹²⁰ *Ibid.*

¹²¹ *UNTOC*, *supra* note 8.

¹²² *Palermo Protocol*, *supra* note 9.

¹²³ *Smuggling of Migrants Protocol*, *supra* note 10.

¹²⁴ *Ibid.*

¹²⁵ Lindsey King, “International Law and Human Trafficking,” *Human Rights Law and Trafficking - Topical Research Digest: Human Rights And Human Trafficking* at 88, online: <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>.

¹²⁶ *RCMP: Human Trafficking Reference Guide*, *supra* note 16 at 8.

¹²⁷ *Ibid.*

power or vulnerability, or giving payments or benefits to a person in control of a victim.”¹²⁸

- **Children:** Children are the exception to this requirement; to be considered trafficked, a child must only fulfill the requirements of the act and the purpose.¹²⁹ The means by which a child is transferred will always be considered exploitative (see *Palermo Protocol* Article 3) and therefore, even if a child is not threatened, not taken by means of force, and he or she is not coerced, abducted or deceived, the child cannot provide consent to engage in the act of trafficking for the purpose of exploitation.¹³⁰

c) **The purpose (why it is done):** Trafficking must involve an exploitive purpose (e.g. to facilitate prostitution or servitude).¹³¹

Thus far, more than 150 countries have signed the *Palermo Protocol*, and more than 140 countries (including Canada) have made human trafficking a domestic criminal offence.¹³²

There are a number of other international documents which address human trafficking, including:

The *Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution, and Child Pornography*; *ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*; and *The Rome Statute (1998) of the International Criminal Court (ICC)*. There are also a number of regional initiatives worth mentioning, such as the *Council of Europe Convention on Action against Trafficking in Human Beings*.

As a standard definition of trafficking in persons begins to emerge, data collection and research must become more easily accessible in order to assist in the identification of trafficking patterns, both regionally and globally.¹³³

Forced Labour: Migrant Workers

The expansion of economic globalization has increased the movement of people from the developing to the developed world. As unemployment and poverty continue to plague the developing world, simultaneously the developed world's need for unskilled labour has increased. This has created a demand for workers, resulting in the mass movement of approximately 87 million unskilled workers and their families to the developed world in search of employment.¹³⁴

The *UN Convention on the Rights of Migrants* defines a migrant worker as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."¹³⁵ According to the ILO, "migrant workers contribute to the economies of their host countries, and the

¹²⁸ UNODC, "Trafficking in Persons and Migrant Struggles," *Liaison and Partnership Office in Brazil*, online: <https://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>.

¹²⁹ UNHCR, "Refugee Protection and Human Trafficking Selected Legal Reference Materials First Edition - December 2008," at 14, online: <http://www.unhcr.org/4986fd6b2.pdf> [*UNHCR: Refugee Protection*].

¹³⁰ UNODC, "Trafficking in Persons," (2007) at 3, online: http://www.unodc.org/documents/human-trafficking/HT_GPATleaflet07_en.pdf.

¹³¹ *UNHCR: Refugee Protection*, *supra* at note 128.

¹³² *Criminal Code of Canada*, RS 1985, c C-46, ss 279.01 [*Criminal Code of Canada*].

¹³³ *RCMP: Human Trafficking Reference Guide*, *supra* note 16 at 8.

¹³⁴ The International Labour Organization, "International Labour Standards on Migrant Workers," <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang-en/index.htm>.

¹³⁵ The United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families, Article 2(1).

remittances they send home help to boost the economies of their countries of origin. Yet at the same time migrant workers often enjoy little social protection and are vulnerable to exploitation and human trafficking.”¹³⁶

There are three primary international documents that work to protect the rights of migrant workers and provide international legal tools to manage migration flows while protecting this vulnerable group.¹³⁷ These tools are pertinent for both migrant sending and receiving countries;¹³⁸ Created by the UN and the ILO, they are as follows:

1) *The United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families, 2003*

- This Convention was entered into force July 1 2003, with the primary purpose of “protect[ing] migrant workers and their families, a particularly vulnerable population, from exploitation and the violation of their human rights.”¹³⁹
- Part 1 of the Convention defines “migrant workers families” in Article 4 as those “persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.”¹⁴⁰
- Part III of the Convention (Arts. 8 to 35) grants all migrant workers and members of their families a broad series of rights, which are granted irrespective of their migratory status.
- This Convention also references the rights granted to migrant workers in the *International Covenants on Civil and Political Rights* (such as provisions on the right to life (Art. 9) and the prohibition of slavery and forced labour (Art. 11) and *Economic, Social and Cultural Rights* (such as the right to just and favourable conditions of work and to rest and leisure (Art. 25), the right to social security (Art. 27) and the right to education (Art. 30)).¹⁴¹
- It highlights specific rights, including: basic freedoms, due process, right to privacy, equality with nationals, transfer of earnings, right to information, right to be temporarily absent, freedom of movement, employment contract violations, and the rights of undocumented illegal migrants.¹⁴²
- Implementation and compliance with this Convention is monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.¹⁴³

2) *Migration for Employment Convention (Revised), 1949 (No. 197)* - ILO Convention

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ OHCHR, “The International Convention on Migrant Workers and its Committee Fact Sheet No. 24 (Rev.1),” (2005) at 1, online: <http://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf> [*OHCHR: Migrant Workers Fact Sheet*].

¹⁴⁰ *The United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families*, 18 December 1990, Doc. A/RES/45/158 at art 4 (entered into force 1 July 2003).

¹⁴¹ *OHCHR: Migrant Workers Fact Sheet*, *supra* note 138 at 5.

¹⁴² UNESCO, *International Migration Convention*, 69th plenary meeting, A/RES/45/158 (18 December 1990), online: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/international-migration-convention/>.

¹⁴³ United Nations Office of the High Commissioner for Human Rights, “Committee on Migrant Workers,” online: <http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx>.

- All ratifying States must establish a free assistance and information service for migrant workers in order to ensure that all workers are well informed of their rights such as medical services and the transfer of earnings and savings.
- Treatment of migrants must be no less favourable than that which is applied to a country's national workers (e.g. conditions of employment, freedom of association and social security).

3) *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)* - ILO Convention

- This Convention advances the human rights of all migrant workers, and extends the equality between the migrant worker and the national worker provided for in the *1949 Convention*. It extends to the equal treatment and opportunity in: employment and occupation, social security, trade union and cultural rights, and individual and collective freedoms for workers and their families who are lawfully in the ratifying state.
- It also extends to the state's responsibility to facilitate the reunification of families of migrant workers legally residing in the territory.

Canada ratified the *Forced Labour Convention 1930* in 2011¹⁴⁴, and the *Abolition of Forced Labour Convention, 1957 (No.105)* when it came into force in 1959.¹⁴⁵ However, Canada has yet to ratify any of the international instruments specifically designed to protect the precarious rights of migrant workers and their families (listed above). This has led to criticism of Canada's failure to protect migrant worker rights, and as such, "failing in its responsibility under international labour and human rights standards to deter such attacks and protect workers' rights."¹⁴⁶

Most recently, the UN Office of the High Commissioner for Human Rights released a report revealing that a Canadian owned mine in Eritrea was guilty of "gross human rights violations."¹⁴⁷ According to the June 2015 report, forced labour violations are ubiquitous in Eritrea and include those committed by subcontractors of Nevsun, a Canadian mining company, whose workers reported being taken to work against their will while under the false pretense of fulfilling national military conscription.¹⁴⁸ Developing Canadian case law is seeking to address these violations; please refer to the "Canadian Case Law: Sexual Exploitation and Forced Labour" section below.

Canadian Legislation on Human Trafficking

On May 13, 2002, Canada became one of the first countries to ratify the United Nations Convention against Transnational Organized Crime,¹⁴⁹ as well as its accompanying protocols: the *Palermo Protocol* and the *Smuggling of Migrants Protocol*.

¹⁴⁴ ILO, "Ratifications of C029 - Forced Labour Convention, 1930 (No. 29)," *Normalex*, online:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174.

¹⁴⁵ ILO, "Ratifications of C105 - Abolition of Forced Labour Convention, 1957 (No. 105)," *Normalex*, online:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312250.

¹⁴⁶ Canadian Foundation for Labour Rights, "Canada's Record at the ILO," online: <http://www.labourrights.ca/issues/fact3-canadas-record-ilo>.

¹⁴⁷ OHCHR, "UN Inquiry reports gross human rights violations in Eritrea," (8 June 2015), online:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16054&LangID=E>.

¹⁴⁸ *Ibid.*

¹⁴⁹ *UNCTOC*, *supra* note 8.

Below is a compilation of domestic legislative initiatives that inform Canadian anti-trafficking measures.

National Legislation

Since 2002, human trafficking has been a crime under the auspice of the *Criminal Code*. These offences include crimes committed under the auspices of both sexual exploitation and forced labour.

Enacted in 2005, the *Criminal Code of Canada (Criminal Code)*¹⁵⁰ has four indictable offences specific to addressing human trafficking; they are Sections: 279.01 (Trafficking in persons), 279.011 (Trafficking of a person under the age of eighteen years), 279.02 (Material benefit), and 279.03 (Withholding or destroying documents).

- 1) Section 279.01 Trafficking in Persons
 - a. This offence “carries a maximum penalty of life imprisonment and a mandatory minimum penalty of five years where the offence involved kidnapping, aggravated assault, aggravated sexual assault or death, and a maximum penalty of 14 years and a mandatory minimum penalty of four years in all other cases.”
- 2) Section 279.011 Trafficking of a person under the age of eighteen years
 - a. This offence carries a maximum penalty of life imprisonment and a mandatory minimum penalty of six years where the offence involved kidnapping, aggravated assault, aggravated sexual assault or death, and a maximum penalty of 14 years and a mandatory minimum penalty of five years in all other cases.
- 3) Subsection 279.02(1) Receiving a Financial or Other Material Benefit for the purpose of committing or facilitating trafficking in persons [Adult Victim]
 - a. This offence carries a maximum penalty of 10 years imprisonment.
- 4) Subsection 279.03(1) Withholding or Destroying a Person’s Identity Documents (for example, a passport) for the purpose of committing or facilitating trafficking of that person [Adult Victim]
 - a. This offence carries a maximum penalty of five years imprisonment.

Laws related specifically to child trafficking include:

- 5) Subsection 279.02(2) Receiving a Financial or Other Material Benefit for the purpose of committing or facilitating trafficking in persons [Child Victim]
 - a. This offence which carries a maximum penalty of 14 years imprisonment and a mandatory minimum penalty of two years.
- 6) Subsection 279.03(2) Withholding or Destroying a Person’s Identity Documents (for example, a passport) for the purpose of committing or facilitating trafficking of that person [Child Victim]
 - a. This offence carries a maximum penalty of 10 years imprisonment and a mandatory minimum penalty of one year.

¹⁵⁰ Any reference to the *Criminal Code* refers to the Canadian *Criminal Code: Criminal Code*, RSC 1985, c46.

Additionally, Section 212(h) of the *Criminal Code* defines procurement as “the attempt to procure or solicit a person to have illicit sexual intercourse with another person.”¹⁵¹ This definition is elaborated upon in Section 212(1) where it states that the “procurer who entices, encourages, or importunes a person to engage in prostitution” shall be criminalized. This definition of procurement refers only to sexual exploitation, while Section 279.01 is inclusive of all forms of trafficking including “organ harvesting, forced labour, and begging.”

As discussed previously, trafficking in persons is founded in the exploitation of another person. The *Criminal Code* qualifies the traits which define exploitation, and states that a person exploits another person if they “cause someone to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service [and/or] cause a person, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.”¹⁵² Therefore, under the law, exploitation requires that “the victim believes that disobeying the trafficker puts their safety or the safety of loved ones at risk.”¹⁵³

While international law requires that human trafficking be committed by a criminal organization, Canadian human trafficking provisions will charge an individual exploiting another individual under national anti-trafficking legislative measures.¹⁵⁴

The Immigration and Refugee Protection Act (IRPA)

Section 118 of the *Immigration and Refugee Protection Act (IRPA)* addresses cross-border trafficking and prohibits “knowingly organizing the coming into Canada of one or more persons by means of abduction, fraud, deception, or use or threat of force or coercion.”¹⁵⁵ This criminal offence has been in force since the *IRPA* was implemented in 2001,¹⁵⁶ and is punishable by a maximum penalty of life imprisonment, as well as a fine of up to CAN\$1 million.¹⁵⁷

Royal Canadian Mounted Police (RCMP) Human Trafficking National Coordination Centre

Created in 2005, the Human Trafficking National Coordination Centre (HTNCC) is led by the RCMP and is committed to raising funds for anti-trafficking measures. Its priorities include: the development of tools, protocols and guidelines to facilitate investigations into human trafficking; the coordination of national awareness, training and anti-trafficking initiatives; the identification and maintenance of lines of communication; the identification of issues for integrated coordination and support; the development and maintenance of international partnerships and coordination of initiatives internationally; and the coordination of intelligence and dissemination of sources of information.¹⁵⁸

¹⁵¹ *Roots*, *supra* note 98 at 32.

¹⁵² *Criminal Code of Canada*, *supra* note 131 at ss279.04.

¹⁵³ Holly Moore and Joanne Levasseur, “Human traffickers going unpunished in Canada, experts say,” CBC News (25 March 2014), online: <http://www.cbc.ca/news/canada/manitoba/human-traffickers-going-unpunished-in-canada-experts-say-1.2584944> [Moore and Levasseur].

¹⁵⁴ *Roots*, *supra* note 98 at 40.

¹⁵⁵ *Immigration and Refugee Protection Act*, (SC 2001, c27).

¹⁵⁶ Bethany Hastie and Alison Yule, “Milestone Or Missed Opportunity? A Critical Analysis Of The Impact Of Domotor On The Future Of Human Trafficking Cases In Canada,” 19 *Appeal* 85 (2014) at 85 [Hastie and Yule].

¹⁵⁷ *Roots*, *supra* note 98 at 29.

¹⁵⁸ The Royal Mounted Police, “Human Trafficking National Coordination Centre,” (9 March 2015), online: <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>.

Inter-Departmental Working Group on Trafficking in Persons (The Working Group)

The Working Group, a multi-sectoral response formed to address the complex issue of human trafficking, fosters dialogue between federal departments and agencies in order to coordinate a national response to trafficking.¹⁵⁹ Led by Public Safety Canada, the Working Group is comprised of members from 17 federal departments and agencies including the Department of Justice, Foreign Affairs, Immigration and Status of Women, RCMP, CSIS and the Border Agency.¹⁶⁰

In the past, the Working Group created a 14 language anti-trafficking pamphlet which served to warn potential victims of trafficking of the threat of the traffickers, and the Canadian legislation aimed at preventing human trafficking.¹⁶¹

National Action Plan to Combat Human Trafficking (NAPCH)

The *NAPCH* was launched on June 6, 2012 and serves as a comprehensive “blueprint to guide the Government of Canada’s fight against the serious crime of human trafficking” to consolidate efforts in human trafficking prevention.¹⁶² Intended to consolidate the Government of Canada’s efforts to combat human trafficking through the introduction of “aggressive new initiatives,” the *NAPCH* is anticipated to increase the Government of Canada’s capacity to “prevent, detect and prosecute” instances of human trafficking.¹⁶³

Premised in the practices outlined in the *Palermo Protocol*, the *NAPCH* focuses on four core areas known as the four Pillars (the 4 Ps): the prevention of human trafficking, the protection of victims, the prosecution of offenders, and working in partnership to combat trafficking (both domestically and internationally). Within this scope, Canada has sought to launch its first integrated law enforcement team dedicated to combating human trafficking as well as increase front-line training to identify and respond to human trafficking and enhance prevention in vulnerable communities.¹⁶⁴

These new measures were allotted a budget of CAN\$25 million over a four-year period.

National Legislation Specifically Addressing Migrant Workers

In Canada, trafficking for the purpose of labour most affects migrant workers who come to Canada with valid work permits under the “low-skilled” streams of the Temporary Foreign Workers Program (TFWP). This program includes the Low-wage and Primary Agricultural Streams and the Live-in Caregiver Program. The TFWP, which came into existence in 1973, is situated within the legal framework of the *IRPA* and the *Immigration and Refugee Protection Regulations*.¹⁶⁵

¹⁵⁹ Foreign Affairs, Trade and Development Canada, “Human Trafficking and Migrant Smuggling,” (28 May 2015), online: <http://www.international.gc.ca/crime/human-traf-personne.aspx?lang=eng> [DFATD: *Human Trafficking and Migrant Smuggling*].

¹⁶⁰ *Roots*, supra note 98 at 28.

¹⁶¹ DFATD: *Human Trafficking and Migrant Smuggling*, supra note 158.

¹⁶² *Harper Government Launches National Action Plan*, supra note 3.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ Delphine Nakache and Paula Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?,” (2010) *IRPP Study*, No. 5. at 5.

Within this legal scope, temporary foreign workers may be employed in “restaurants, hotels or other hospitality services, on farms, in food preparation, in construction or in manufacturing, as well as in domestic work.”¹⁶⁶ According to the Canadian Council for Refugees “trafficking in persons is the most extreme form of exploitation faced by migrant workers in Canada,” as they have fewer rights than other labourers and the absence of employment options make them more vulnerable to abuse.¹⁶⁷

The specific vulnerabilities faced by these labourers include:¹⁶⁸

- Lack of permanent status in Canada
 - This affords migrant workers little protection of rights or legal recourse in the event abuse occurs in the work place.
- Employer-specific work permits
 - These tie migrant workers’ immigration status to a single employer, which facilitates a monopoly of the employer over the employee given that any attempt to leave their job opens them to the risk of deportation. This limits complaints and the prospect of seeking alternative job options in cases of mistreatment and unpaid wages.
- Tied Housing
 - Housing is often tied to the employer, which can result in the monetary exploitation of the worker. It can also result in the forced isolation of these workers.
- Physical and social isolation
 - Many workers are isolated on account of language barriers which further alienate them from the rest of society.
- Limited access to public services
- Lack of monitoring/ enforcement by the Government of Canada

Cases of abuse are particularly revealing of the vulnerabilities described above. Recently, there was a case wherein two female temporary foreign workers of Mexican citizenship were forced to perform sexual acts for their employer under the threat of deportation.¹⁶⁹ The migrant women refused to perform the sexual tasks ascribed, so they had their work permits revoked and were deported to Mexico.¹⁷⁰ In the resulting court case, *Group of Employees v. Presteve Foods*, the Ontario Human Rights Tribunal found that the women were exposed to sexual solicitation, sexual harassment, discrimination in employment and a sexually poisoned work environment.¹⁷¹ Their former employer was convicted on one charge, and the women are now living as new immigrants in Canada.¹⁷²

Canada has three programs committed to bringing migrant workers to Canada: The TFWP, the Seasonal Agricultural Workers Program (SAWP) and the Live-in

¹⁶⁶ *Canadian Council for Refugees: Trafficking in Persons for Forced Labour*, supra note 32 at 3.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ “Temporary foreign workers’ vulnerability noted in sexual harassment case” CBC News: Business (27 May 2015), online: <http://www.cbc.ca/news/business/temporary-foreign-workers-vulnerability-noted-in-sexual-harassment-case-1.3089970> [CBC: Temporary Foreign Workers Sexual Harassment].

¹⁷⁰ *Group of Employees v. Presteve Foods*, 2012 HRTO 1365 [Group of Employees].

¹⁷¹ CBC: Temporary Foreign Workers Sexual Harassment, supra note 168.

¹⁷² *Group of Employees*, supra note 169.

Caregiver Program (LCP). The TFWP is managed by Human Resources and Skills Development Services Canada (HRSDC) but created by Citizenship and Immigration Canada (CIC). Various provisions of the program are administered by different bodies – it is divided as follows: HRSDC administers the “employment validation” (also known as a “labour market opinion”) and deals exclusively with employers; CIC addresses the workers’ immigration documents and matters pertaining to admissibility requirements; and the Canada Border Services Agency (CBSA) administers immigration processing at the port of entry (they maintain the final say as to whether a worker can enter Canada).¹⁷³

Canada’s TFWP allows Canadian employers to hire foreign nationals to “fill labour and skill shortages when qualified Canadian citizens or permanent residents are not available.”¹⁷⁴ While the program indicates that most temporary foreign workers are only hired for short term labour needs, there are opportunities for labourers to transition from filling a temporary vacancy, to a permanent position and residence in Canada should they “meet certain requirements.” According to the CIC, 39,000 temporary foreign workers were granted permanent residence in Canada in 2009.¹⁷⁵

Canadian legislation addressing migrant workers however, is quite limited. In 2013 alone, there was an estimated 338,000 foreign workers in Canada.¹⁷⁶ Activists argue that “workers registered in these programs are among the most vulnerable and victimized in the country”, and are left unprotected by domestic law.¹⁷⁷ In 2014, there were amendments made to the TFWP’s enforcement and monitoring mechanisms, however, the changes introduced fail to protect foreign workers as the program continues to rely on a complaints system which migrant workers are unlikely to utilize given that it can still lead to deportation.¹⁷⁸ This results in the continued vulnerability of this population.¹⁷⁹

On April 1, 2011, the Government of Canada implemented a new law that limited low-skilled migrant workers to a stay of four years in Canada, after which they would be forced to leave the country for a time of at least four years before they would be granted permission to work in Canada again.¹⁸⁰ This was intended to reinforce the temporary nature of the program, in line with its design to “help employers fill short term gaps in Canada’s labour market.”¹⁸¹ As of April 2015, the Canadian government announced that it would be enforcing this controversial policy, and forcing up to 70,000 temporary foreign workers to return to their countries of origin.¹⁸²

¹⁷³ *Nakache and Kinoshita, supra* note 164.

¹⁷⁴ Canada, Citizenship and Immigration Canada, “Fact Sheet – Temporary Worker’s Program” (19 February 2015), online: <http://www.cic.gc.ca/english/resources/publications/employers/temp-foreign-worker-program.asp> [*CIC Fact Sheet: Temporary Worker’s Program*].

¹⁷⁵ *Ibid.*

¹⁷⁶ Tim Harper, “Jason Kenney suspends food services sector from foreign worker program,” *The Star* (24 April 2014), online:

http://www.thestar.com/news/canada/2014/04/24/a_flood_of_foreign_workers_drives_up_western_unemployment_t_i_m_harper.html

¹⁷⁷ *Canadian Council for Refugees: Trafficking in Persons for Forced Labour, supra* note 32 at 4.

¹⁷⁸ Canadian Council for Refugees, Media Release “Upcoming mass ejection of Canada’s “disposable” workers” (25 March 2015), online: <http://ccrweb.ca/en/media/upcoming-mass-ejection-workers>.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *CIC Fact Sheet: Temporary Worker’s Program, supra* note 173.

¹⁸² Les Whittington and Nicholas Keung, “Temporary foreign workers warned to leave Canada as required,” *The Star* (1 April 2015), online: <http://www.thestar.com/news/canada/2015/04/01/foreign-workers-warned-not-to-dodge-deportation.html>.

Provincial Legislation

For the purpose of this report, British Columbia and Manitoba were selected as provinces of focus on account of their advanced legislation in the realm of human trafficking.

British Columbia

British Columbia: Office to Combat Trafficking in Persons (OCTIP)¹⁸³

- The *United States Trafficking in Persons Report* has identified “Canada...as both a transit and a destination point for human trafficking,” as well as a source of trafficked peoples.¹⁸⁴ In past years, the report has specifically named the city of Vancouver as “a port of major concern.”¹⁸⁵
- In 2007, British Columbia established the Office to Combat Trafficking in Persons (OCTIP) which is “responsible for the development and overall coordination of British Columbia’s strategy to address human trafficking,” placing the rights and needs of the victims at the centre of its work.¹⁸⁶ OCTIP takes a human rights centered approach.
- The OCTIP assists law enforcement and Crown Counsel in the prosecution of human trafficking cases.

Manitoba

Manitoba: Child Sexual Exploitation and Human Trafficking Act, 2012¹⁸⁷

- This Act came into force on April 30, 2012 and established a protection order for victims of human trafficking of child sexual exploitation. To do so, the law: 1) requires the respondent (for example, the trafficker or the child exploiter from whom the victim is in need of protection) to stay away from the victim(s) in question, adult or child; and 2) allows a victim of human trafficking to sue the trafficker in tort law (for compensation).¹⁸⁸ This latter step created the tort of human trafficking wherein the court can award any of the following to victims: damages, injunction or distributive justice.¹⁸⁹
- An application must be made in order to secure a protection order under this Act. Applicants must provide evidence (under oath) about the human trafficking or child sexual exploitation in question.
- Anyone of the following individuals may apply for a protection order under this Act:
 - o An adult victim of human trafficking

¹⁸³ British Columbia, Ministry of Justice, “Human Trafficking in BC,” (1 May 2015), online: <http://www.pssg.gov.bc.ca/octip/> [BC Ministry of Justice: Human Trafficking].

¹⁸⁴ *Ibid.*

¹⁸⁵ The United States, *2008 US Trafficking in Persons Report* (2008).

¹⁸⁶ BC Ministry of Justice: *Human Trafficking*, *supra* note 182.

¹⁸⁷ *The Child Trafficking and Exploitation Act*, CCSM c C94.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

- A parent or guardian of a child victim of human trafficking or sexual exploitation
- A Child and Family Services Agency (CFS), the appropriate CFS authority or the director of the CFS wherein the child is living

Manitoba Human Trafficking Awareness Day Act¹⁹⁰

- This Act came into force on September 13, 2013 and has affirmed that “in each year, the Thursday of the second full week in March is to be known as Manitoba Human Trafficking Awareness Day.”¹⁹¹

Sentencing

In Canada, the maximum prison term for the violation of human trafficking provisions in the *Criminal Code* is 14 years.¹⁹² In practice however, most convictions range from 18 months to seven years,¹⁹³ with the exception of cases with aggravating factors such as extreme physical violence, kidnapping, committing an aggravated assault or aggravated sexual assault, or have caused death to the victim which can result in longer sentences.¹⁹⁴ The average sentence for human trafficking convictions in Canada is three years or less.¹⁹⁵

Canada as a Signatory to International Conventions

Canada is a signatory to the following international obligations regarding the elimination of human trafficking:

- ***The Palermo Protocol*** (discussed above)
- ***The Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution, and Child Pornography (the Optional Protocol)***
 - The *Optional Protocol* was adopted May 25, 2000 and was ratified by Canada on September 14, 2005.¹⁹⁶
 - The *Optional Protocol* sets out measures intended to reduce international trafficking in children. Specifically, it provides that States parties nationally criminalize trafficking offences against children, such as transferring a child’s organs for profit, or engaging children in forced labour.
- ***ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour***
 - The *ILO Convention 182* entered into force on November 19, 2000 and was ratified by Canada on June 6, 2000.¹⁹⁷ This convention explicitly prohibits the worst forms of child labour.
- ***The Rome Statute of the International Criminal Court (ICC)***

¹⁹⁰ *The Manitoba Human Trafficking Awareness Day Act*, CCSM c H182.

¹⁹¹ *Ibid.*

¹⁹² *Criminal Code of Canada*, supra note 131 at ss 279.01 (1b).

¹⁹³ *Hastie and Yule*, supra note 155 at 85.

¹⁹⁴ *Roots*, supra note 98 at 39; *Criminal Code of Canada*, supra note 131 at (1a).

¹⁹⁵ *Hastie and Yule*, supra note 155 at 85-86; *Roots*, supra note 98 at 39.

¹⁹⁶ *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002).

¹⁹⁷ The International Labour Organization, “Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182),” Normalex, online: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327.

- The *Rome Statute* was signed on July 17, 1998 and established the creation of the ICC.¹⁹⁸ Canada ratified the *Rome Statute* on July 7, 2000.¹⁹⁹
- The *Rome Statute* addresses trafficking in Article 7(2)(c) and states that “‘enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”²⁰⁰ However, “the case for extending the reach of the *Rome Statute* to the crime of human trafficking has not yet been made in detail.”²⁰¹

- *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

- *CEDAW* was adopted by the UNGA in 1979 and was ratified by Canada in December 1981.²⁰²
- *CEDAW* is often described as a international bill of rights for women, as it defines what constitutes as discrimination against women, and established a national action plan to end discrimination which it defines as: “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²⁰³
- Ratification of *CEDAW* requires that States: (1) incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate laws prohibiting discrimination against women; (2) establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and (3) ensure the elimination of all acts of discrimination against women by persons, organizations or enterprises.²⁰⁴

Canadian Case Law: Sexual Exploitation and Forced Labour

On account of its complex nature, it is difficult to determine the extent of human trafficking in Canada. However, researchers Bethany Hastie and Alison Yule have noted that “international human trafficking for both sexual and labour exploitation has been found to exist within Canadian borders in addition to the domestic trafficking of Canadian women and girls for sexual exploitation.”²⁰⁵

¹⁹⁸ *Rome Statute*, *supra* note 22.

¹⁹⁹ Canada, Foreign Affairs, Trade and Development, “Canada and the International Criminal Court,” (17 August 2015), online: <http://www.international.gc.ca/court-cour/index.aspx?lang=eng>.

²⁰⁰ *Rome Statute*, *supra* note 22 at art 7(2)(c).

²⁰¹ Clare Frances Moran. “Human Trafficking And The Rome Statute Of The International Criminal Court,” *The Age of Human Rights Journal*, (3 December 2014) at 33, online: https://repository.abertay.ac.uk/jspui/bitstream/10373/1952/2/Moran_HumanTraffickingAndTheRomeStatute_Published_2014.pdf

²⁰² Canada, Foreign Affairs, Trade and Development, “Canada’s commitment to gender equality and the advancement of women’s rights internationally,” (25 March 2015), online: <http://www.international.gc.ca/rights-droits/women-femmes/equality-egalite.aspx?lang=eng>

²⁰³ Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979 Treaty Series, 1249 UNTS 20378 (entered into force 3 September 1981), online:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> [UN Women, *CEDAW*].

²⁰⁴ UN Women, “Overview of the Convention,” online: <http://www.un.org/womenwatch/daw/cedaw/>.

²⁰⁵ *Hastie and Yule*, *supra* note 155 at 84.

On account of this, and various other pressures discussed in this report, Canada has developed a number of comprehensive policies and laws that have led to an increase in convictions of traffickers. According to the *2015 US Report on Trafficking*, police charged 121 Canadians in 77 trafficking cases under trafficking statutes in 2014 – four of these cases involved instances of forced labour.²⁰⁶ However, of these charges, only 22 sex traffickers were convicted and zero convictions were made of forced labour traffickers.²⁰⁷

The first person convicted of human trafficking in Canada was Imani Nakpangi. Nakpangi received a sentence of three years for the charge of human trafficking in a case involving the sexual exploitation of two Canadian minors.²⁰⁸ Other convictions on the charge of human trafficking have included Vytautas Vilutis, who received a conviction of two years for human trafficking, receiving a material benefit, and assault,²⁰⁹ and Laura Emerson in a case involving significant aggravating factors, namely the use of violence, who received a seven-year sentence.²¹⁰

Sexual Exploitation

***R v Nakpangi*, [2008] OJ No 6022**

Significance

This case represents the first conviction under Canada's human trafficking laws.

Facts

The defendant was responsible for: soliciting clients with erotic advertisements and pictures of the victims published on internet websites; transporting victims to hotels to engage in forced sexual activity; and, taking control of all his victims' earnings (amounting to an estimated \$400,000 over a two year period from one victim and approximately two months of earnings from the other victim). Under the false pretense of a romantic relationship, the defendant used threats, intimidation and violence to manipulate two victims into forced sexual prostitution.

When one of the victims sought to leave the relationship and sexual services, the defendant imposed a fee of \$100,000.

Conclusion

The defendant received a three-year sentence for human trafficking under Section 279.01, a two-year sentence for living off the avails of juvenile prostitution to be served consecutively under Section 212(2), and a six-month sentence for a counterfeit mark to be served concurrently, for a total of five years and six months in prison.

²⁰⁶ The United States, *2015 US Trafficking Report* at 114-115, online: <http://www.state.gov/documents/organization/245365.pdf> [*2015 US Trafficking Report*].

²⁰⁷ *Ibid.*

²⁰⁸ Bob Mitchell, "Man gets 5 years for selling teens for sex," *The Star* (25 June 2008), online: http://www.thestar.com/news/gta/2008/06/25/man_gets_5_years_for_selling_teens_for_sex.html.

²⁰⁹ UNODC, "Canadian Case Law: Vilutis," (2015), online: <https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/can/2009/vilutis.html?tmpl=old>.

²¹⁰ *Boro c. Emerson*, 2010 QCCQ 5249.

***R v St. Vil*, 2008 CarswellOnt 9335**

Significance

Leonard-St. Vil became the first person in Canada to be charged with the offence of human trafficking under the *Criminal Code*. He was the second person to be convicted.²¹¹

Facts

Posing as a music producer, Jacques Leonard-St. Vil lured a 20 year-old woman into prostitution after establishing a romantic relationship with her. The victim became a dancer for the defendant, and provided sexual services for clients in exotic dance clubs. The victim was forced to give the defendant all of her earnings, totaling approximately \$60,000 over a three-month period. The victim was falsely led to believe that the money was going toward a joint business endeavor. When the victim sought to end her time with the club, the defendant threatened and assaulted her. Shortly after, the victim escaped and sought the help of police.²¹²

Leonard-St. Vil was charged with human trafficking, assault with a weapon, procuring a person to become a prostitute, exercise control of a prostitute, and living off the avails of prostitution.

Conclusion

The defendant was found guilty of trafficking in persons (s.279.01) and living off the avails of prostitution (s.212(1)(j)). He was sentenced to three years in prison.

***R v Ng*, 2007 BCPC 204**

Significance

The defendant was acquitted of human trafficking charges; however, was convicted under the *IRPA*.²¹³

Facts

The defendant operated a massage parlour in Vancouver, British Columbia that was in practice, a front for a brothel. The Crown alleged that the defendant procured two women to enter Canada to engage in prostitution at his massage parlour and compelled them to engage in prostitution upon arrival.²¹⁴

The defendant had travelled to China where he began an intimate relationship with one of the victims, whom he enticed to come to Canada under the false pretense of finding her employment in a restaurant. Upon arrival in Canada from China, the victim misrepresented her identity and used false documents.²¹⁵

²¹¹ UNODC, "Canadian Case Law: Leonard St. Vil," (2015) online: https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/can/2008/leonard-st_vil.html?tmpl=old.

²¹² *R v St Vil*, 2008 CarswellOnt 9335.

²¹³ *R v Ng*, 2007 BCPC 204, ss 1-6.

²¹⁴ *Ibid* at ss. 7-41.

²¹⁵ *Ibid*.

Conclusion

The defendant was found guilty under Section 117 (1) of the *IRPA* which covers the organization, inducement, aiding or abetting the coming into Canada of a person who is not in possession of a valid visa, passport or other document required by the *IRPA*. The defendant was also found guilty under the charge of “procuring, attempting to procure or solicit a female person, to have illicit sexual intercourse with another person and for counseling, inducing, aiding or abetting or attempting to counsel, induce, aid or abet, to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the *IRPA*.”²¹⁶

After an appeal, the defendant was acquitted on human trafficking charges under the *IRPA*. However, his sentence for prostitution-related convictions under the *Criminal Code* was deemed inadequate and was increased to two years and three months in prison.

Forced Labour

R v Domotor, 2011 ONSC 626 (bail review hearing); *R v Domotor* [2011] OJ No 6357 (QL)

Significance

R v. Domotor is the largest known human trafficking operation in Canada, and is the first successfully prosecuted case of international human trafficking in Canada.²¹⁷

While there were 12 traffickers charged in this case, this case analysis will focus on Frenc Domotor, the primary accused (the kingpin of the criminal organization). Frenc Domotor was charged with: human trafficking (Section 279.01), withholding travel, identity or immigration status documents (Section 279.03), receiving a material benefit primarily in the form of unpaid labour (Section 279.02), and defrauding the City of Hamilton concerning payments under the *Ontario Works Act* (Section 308(1)(b)).²¹⁸

Facts

The Domotor family-run criminal organization recruited a total of 19 men from Hungary to work in Canada. All members of the Domotor trafficking ring were related by birth or through marriage, and all trafficked men were Hungarian nationals recruited by friends of the defendants.²¹⁹ The trafficked men were brought to Canada under the false pretense of a better life, specifically high wages which could be sent back to Hungary to support their families.²²⁰

Upon arrival to Canada, however, the men’s travel documents were taken and held by the Domotors²²¹ and they were forced to make false claims for refugee status (as Romas, even though many of them were not).²²² The men were also forced to apply for social services welfare and open false bank accounts where the cheques would be deposited. The Domotor family confiscated this

²¹⁶ *Ibid.*

²¹⁷ *Hastie and Yule, supra* note 155 at 83.

²¹⁸ *R v Domotor* 2011 ONSC 626, para 1.

²¹⁹ *Ibid* at para 5.

²²⁰ *Ibid* at para 6.

²²¹ *Ibid* at para 8.

²²² *Ibid.*

information, and retained all of the money involved.²²³ Many of the trafficked men were also forced to steal from Canada Post mailboxes, and instructed to deposit stolen cheques totaling an estimated \$1,000,000.²²⁴ Ultimately, the Domotor's profited from unpaid forced labour, the fraudulent welfare scheme, and stolen cheques.²²⁵

The trafficked men, who did not speak English, were housed in small quarters with limited sanitation in the basement of several houses.²²⁶ They were fed poorly or not at all, and were forced to work in manual labour for 13 to 14 hours a day, and were either not paid or paid very little for their labour.²²⁷ They were frequently threatened with physical violence or harm to their families remaining in Hungary. All 19 complainants "related essentially the same story."²²⁸

On April 2, 2009, four of the trafficked men sought out the help of Hamilton police.

Conclusion

Frenc Domotor was sentenced to nine years in prison.²²⁹ Prior to Domotor, the longest sentence was seven years.²³⁰

R v Orr, 2013 BCSC 1883; R v Orr, 2015 BCCA 88

Significance

Mr. Orr is the first person to be convicted of human trafficking under the *IRPA*.

Facts

The complainant was born and grew up in the Philippines, but left the country to work abroad as a caregiver in 2000. She was employed in Saudi Arabia, Lebanon and Hong Kong. In 2007 she was hired to work as a nanny for the Orr family in Hong Kong. In late 2007 or early 2008, the appellant told the complainant that the family was moving to Canada and she was invited to join them.²³¹

The complainant's evidence suggests that she was inclined to move to Canada based on representations concerning the condition of work in Canada. This move was also premised in the assurance that once she had been in Canada for two years the appellant would assist her in becoming a permanent resident of Canada. As per the terms of the Hong Kong contract, the complainant was paid the equivalent of CAD \$500 per month plus room and board. When she commenced her employment, she shared a room with another domestic helper. The complainant took care of the children while the other helper did the domestic chores.

It was not necessary for the complainant to obtain a work permit to work for the appellant as a domestic caregiver during the term of her Temporary Resident Visa. Regulation 186 of the *Immigration and Refugee Protection Regulations*,

²²³ *Ibid* at para 9.

²²⁴ *Ibid* at para 12.

²²⁵ *Ibid* at para 13.

²²⁶ *Ibid* at paras 10-11.

²²⁷ *Ibid* at paras 9-10.

²²⁸ *Ibid* at para 39.

²²⁹ *Ibid* at para 53.

²³⁰ *Boro c Emerson*, 2010 QCCQ 5249.

²³¹ *R v Orr*, 2015 BCCA 88 at para 8.

SOR/2002-227, provides:

186. A foreign national may work in Canada without a work permit (a) as a business visitor to Canada within the meaning of Section 187.²³²

On June 13, 2010, there was a dispute that resulted in the police coming to the Orr home at which time the complainant reported that she had been the victim of exploitation and that she had been working in the Orr household under humiliating and degrading conditions. The complainant stated that she had been forced to work 16 hours per day, seven days per week and that she was not allowed to attend church or to communicate with persons outside the Orr family. Additionally, she claimed that her passport had been withheld from her, that she had not been permitted to venture out of the house on her own, and that her contact with her family in the Philippines had been limited.²³³

Ratio

The *Immigration and Refugee Protection Regulations* maintain a provision that exempts foreign national caregivers from requiring a work permit. This exemption allows a caregiver to work in Canada for a maximum of six months while accompanying their employer under issue of a Temporary Resident Visa. However, Section 124(1)(c) indicates that it is an offence for a person to employ a foreign national in a capacity in which the foreign national is not authorized to be employed under the *IRPA*.²³⁴

Conclusion

On June 26, 2013, a jury found Mr. Orr guilty of the following offences under the *IRPA*:

Count 1: Knowingly organizing the coming into Canada of [the complainant], by means of abduction, fraud, deception or use of the threat of force or coercion, contrary to Section 118(1) of the *IRPA*,²³⁵

Count 2: Employing a foreign national, [the complainant], in a capacity to which she was not authorized to be employed, contrary to Subsection 124(1)(c) of the *IRPA*; and²³⁶

Count 3: Misrepresenting or withholding material facts relating to a relevant matter that induced or could induce an error in the administration of the *IRPA* by providing false information to the Consulate General of Canada in support of the application for temporary resident visa for entry to Canada for [the complainant], contrary to Section 127(a) of the *IRPA*.²³⁷

Sentence

Mr. Orr's wife, Ms. Huen was acquitted by the jury, while Mr. Orr was convicted on all three charges against him.²³⁸ On appeal, Mr. Orr was granted a new trial at a date to be determined.²³⁹

²³² *Ibid* at paras 9-10.

²³³ *Ibid* at para 12.

²³⁴ *Ibid* at para 43.

²³⁵ *Ibid* at para 1.

²³⁶ *Ibid*.

²³⁷ *Ibid*.

²³⁸ *Ibid* at paras 44-45.

²³⁹ *Ibid* at para 99.

Araya v Nevsun Resources Ltd., 2015 BCSC 1209

Significance

This case is the first of its kind regarding forced labour.²⁴⁰ The plaintiffs allege that the commercial relationship between Nevsun and the government of Eritrea has made Nevsun an accomplice to the use of forced labour, crimes against humanity and other human rights abuses.²⁴¹ The civil claim states that "...the Mine was built using forced labour, a form of slavery, obtained from the plaintiffs and others coercively and under threat of torture by the Eritrean government and the contracting arms of the ruling party and the military."²⁴²

Issue

This case concerns the terms of a confidentiality order relating to certain documents produced by the defendant, Nevsun Resources Ltd.²⁴³ The documents at issue are the Shareholders' Agreement, the Mining Licenses, and the CESMP, as they are central to determining whether the defendant was involved in facilitating forced labour with the Eritrean government.²⁴⁴

Facts

Three Eritrean refugees - Gize Yebeyo Araya, Kesete Tekle Fshazion and Mihretab Yemane Tekle -sued Vancouver based Canadian mining company, Nevsun Resources ("Nevsun") over accusations concerning forced labour - specifically the use of conscripted workers.

The plaintiffs, who currently live in an Eritrean refugee camp, worked for Segen Construction Company which is a subcontractor of the Bisha Mining Share Company, a company owned by the government of Eritrea, and Nevsun. Araya, Eshazion and Tekle have accused Nevsun of conspiring with the Eritrean government to conscript workers (under the pretense of mandatory army service), and force them to work long hours in poor conditions against their wills²⁴⁵ with little pay (US\$30 per month).²⁴⁶ The plaintiffs state that they were forced to work on the construction of the mine and were subjected to long working hours, grueling heat and threats of torture.²⁴⁷

The Eritrean government owns 40% shares in Bisha Mining Share Company (BMSC), and uses the company in its national service program, which requires all Eritreans over the age of 18 to enlist in either military work or state run companies.²⁴⁸ Nevsun owns the remaining 60% shares in the company.²⁴⁹

²⁴⁰ The case of *Choc v Hudbay Minerals Inc*, 2013 ONSC 1414, was the first case dealing with human rights abuses by a Canadian firm working abroad. The case could set a precedent with regards to holding Canadian mining companies responsible and accountable for human rights abuses committed at their mines overseas. This case determines whether a judgment obtained in a foreign country against a foreign corporate entity is legally enforceable in Canada against a Canadian affiliate of that foreign entity (even in circumstances when the Canadian affiliate was not party to the foreign proceedings).

²⁴¹ *Araya v Nevsun Resources Ltd.*, 2015 BCSC 1209 at para 27.

²⁴² *Ibid* at para 10.

²⁴³ *Ibid* at para 2.

²⁴⁴ *Ibid*.

²⁴⁵ Mark Anderson, "Eritreans sue Canadian mining firm Nevsun over human rights abuses", *The Guardian* (9 December 2014), online: <http://www.theguardian.com/global-development/2014/dec/09/eritrea-canadian-mining-nevsun-human-rights-abuses>.

²⁴⁶ Jeff Gray, "Nevsun Resources faces lawsuit over 'forced labour' in Eritrea", *The Global and Mail* (20 November 2014), online: <http://www.theglobeandmail.com/report-on-business/qatar-backed-qkr-close-to-1-billion-bid-for-nevsun/article21670095/>.

²⁴⁷ *Ibid*.

²⁴⁸ *Ibid*.

²⁴⁹ *Ibid*.

Conclusion

The court determined that the documents in question be turned over to the plaintiffs, with the exception of specific paragraphs to which Nevsun objected (paragraphs 4(c), 4(d), 8, and 9) – this was deemed a fair response, which balances the right “between the disclosure necessary for the conduct of an action and a party’s *bona fide* right to protection of confidential and sensitive information.”²⁵⁰

At the present time, the balance is in favour of Nevsun, but the court acknowledged that this could shift in favour of the plaintiffs once the documents have been reviewed by counsel.²⁵¹ The documents can be accessed by the plaintiffs and the Canadian Centre for International Justice, and can later be translated to Eritrean. Upon receipt of the documents, the plaintiffs have the right to reapply to have the excluded paragraphs of the Order included.²⁵²

Monitoring the Global Fight Against Human Trafficking

The global fight against human trafficking is monitored in accordance with UN principles, but conducted informally by the United States.²⁵³ In this role, the US monitors the efforts of individual countries in their policies and laws in combating human trafficking. This is tracked using the annual *US Trafficking in Persons Report*. Conducted by the US State Department’s Office to Monitor and Combat Trafficking in Persons, the report is premised in a three-tiered evaluation system. This is rooted in the *US Trafficking Victims Protection Act* (TVPA) definition of severe forms of trafficking in persons:

“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 the recruitment, harboring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. A victim need not be physically transported from one location to another in order for the crime to fall within these definitions.”²⁵⁴

Within this system, countries are assigned a tier based upon their efforts to combat human trafficking:

- **Tier One** is awarded to countries who have aligned their domestic policies and laws with US recommended anti trafficking measures (to a minimum standard)
- **Tier Two** is assigned to countries that have made significant, demonstrated efforts to bring themselves in compliance with the minimum standards of the recommended measures
- **Tier Three** is given to countries who do not fully comply with the minimum standards and are not making a demonstrated effort to develop anti-trafficking policies²⁵⁵

²⁵⁰ *Supra* note 238 at para 37.

²⁵¹ *Ibid* at para 38.

²⁵² *Ibid* at para 43.

²⁵³ *Roots, supra* note 98 at 26.

²⁵⁴ The United States, *2014 Trafficking in Persons Report* at 9.

²⁵⁵ *Ibid* at 41-43.

There is also a **Tier Two watchlist** that identifies countries whose governments do not comply with the TVPA minimum standards, but who are making significant efforts to bring themselves into compliance with those standards. To qualify under this tier, a country must demonstrate one of the following criteria:

- the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing
- there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year
- the country is making significant efforts to reach compliance with minimum standards, based on commitments by the country to take additional future steps over the next year²⁵⁶

Criticisms of Canada's Human Trafficking Legislation

While human trafficking is widely conceived of as being an issue that only plagues countries in the developing world, in the past Canada has been heavily criticized for its failure to establish concrete anti-human trafficking legislation.²⁵⁷ As recently as 2014, Toronto was deemed a hub for trafficking.²⁵⁸

With the exception of the 2003 *US Trafficking in Persons Reports* when Canada's ranking dropped to Tier Two status, Canada has been ranked a Tier One country in all other *US Trafficking in Persons Reports*,²⁵⁹ including the most recent *2015 US Trafficking in Persons Report*.²⁶⁰ However, it was the pressure associated with the poor ranking in 2003 that prompted Canada to pay increased attention to human trafficking, and develop more comprehensive policies many of which came into effect in 2005.

The development of such policies will be discussed below; however, it should be noted that despite these formal developments, there is continued criticism of Canada's approach to trafficking. This criticism concerns the newest legislative efforts created to combat trafficking, and their inability to secure results in punishing traffickers under the law.²⁶¹ Since 2005, there have been only 35 human trafficking convictions under the new laws. Of these cases, nine of the victims were children (under the age of 18) and two involved trafficking for forced labour. Between 2005 and 2012, 125 people were charged in incidents wherein trafficking persons was the most serious offence - the majority of which were in Ontario and Saskatchewan.²⁶² Of these numbers, "more than 90 per cent of the convictions in Canada involve domestic human trafficking; the remaining cases involved people being brought into Canada from another country."²⁶³

These numbers are revealing of the under-reporting associated with this covert industry and a failure of legislative efficacy. Joy Smith, Member of Parliament, is

²⁵⁶ *Ibid.*

²⁵⁷ Douglas Quan, "Canada needs to do more to help victims of human trafficking: U.S. report," *The National Post* (21 June 2014), online: <http://news.nationalpost.com/news/canada/canada-needs-to-do-more-to-help-victims-of-human-trafficking-u-s-report>.

²⁵⁸ "Toronto a 'hub' for human trafficking, report says," *CBC News* (14 June 2014), online:

<http://www.cbc.ca/news/canada/toronto/toronto-a-hub-for-human-trafficking-report-says-1.2675941>.

²⁵⁹ "Canada must do more to curb human trafficking," *CTV News* (17 June 2009), online: <http://www.ctvnews.ca/canada-must-do-more-to-curb-human-trafficking-report-1.408765>.

²⁶⁰ The United States, *2015 Trafficking Report 2015*, online: <http://www.state.gov/documents/organization/245365.pdf>.

²⁶¹ *Moore and Levasseur, supra* note 152.

²⁶² *Ibid.*

²⁶³ *Ibid.*

recognized as one of Canada's leading anti-trafficking activists. Smith has led the national discussion on human trafficking and has advanced tangible Bills, which seek to foster further legislative progress in this area.²⁶⁴ As a champion of the legislative and programmatic changes which have occurred related to anti-trafficking measures, Smith has expressed dissatisfaction with the current state of the laws,²⁶⁵ and continues to advance campaigns to further develop Canada's national legislation in this arena.

Emerging Trends: Extraterritorial Legislation

Extraterritorial jurisdiction is the power of a state to enact its laws beyond the parameters of regular state boundaries allowing countries to prosecute non-law abiding citizens for illegal acts they have committed while abroad, beyond state borders.²⁶⁶ Extraterritorial laws to enforce extraterritorial jurisdiction are legal under international law, limited only by each state's responsibility to ensure that they do not violate another state's sovereignty.²⁶⁷ Therefore, utilizing extraterritorial jurisdiction as an accountability mechanism, a state can prosecute its own national for a crime that is considered an offence in their domestic legal system. This prosecution is pursued as though the citizen committed the offense in their home state.²⁶⁸

This legislative tool is central to prosecuting Canadians engaged in child sexual exploitation abroad.²⁶⁹ In 1997, Canada amended the *Criminal Code* to include Section 7(4.1) which prohibits all forms of sexual exploitation, including child sex tourism.²⁷⁰ Under Section 7(4.1), Canadian citizens and permanent residents can be prosecuted in Canada, for sexual offences committed against a child overseas.²⁷¹ Citizens and permanent residents can be persecuted for sexual interference, invitation to sexual touching, sexual exploitation, child pornography and obtaining the sexual services of a child under 18 years old. Section 7(4.1) reads of the *Criminal Code* as follows:

Notwithstanding anything in this Act or any other Act, everyone who, outside Canada, commits an act or omission that if committed in Canada would be an offence against Section 151, 152, 153, 155 or 159, subsection 160(2) or (3), Section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of Subsection 2(1) of the *Immigration and Refugee Protection Act*.²⁷²

To date, Canada has prosecuted eight child sex offenders for offences committed abroad, two of which have contributed to the development of Section 7(4.1) and more generally to actualizing Canada's commitment to preventing child sex tourism - these cases include *R v. Bakker*²⁷³ and *R v. Klassen*.

²⁶⁴ "Human Trafficking - Joy's Human Trafficking Work," *Joy Smith MP Kildonan- St. Paul*, online: http://www.joysmith.ca/main.asp?fxoid=FXMenu,5&cat_ID=27&sub_ID=94.

²⁶⁵ *Ibid.*

²⁶⁶ Catherine Beaulieu, "Extraterritorial Laws: Why they are not really working and how they can be strengthened," *ECPAT International* (September 2008), online: http://resources.ecpat.net/worldcongressIII/PDF/Journals/EXTRATERRITORIAL_LAWS.pdf.

²⁶⁷ Benjamin Perrin, "Taking a Vacation from the Law" (2009) 13: 2 *Can Crim L Rev* 185 at 180.

²⁶⁸ Melissa Ferens, "An Evaluation of Canada's Child Sex Tourism Legislation under International Law," University of Manitoba, 2004.

²⁶⁹ This principle was established in the case *R v Hape*, [2007] 2 SCR 292, 2007 SCC 26 at para 57.

²⁷⁰ *Criminal Code of Canada*, supra note 131 at s 7(4.1).

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ *R v Bakker*, 2005 BCPC 289.

Canada is one of 44 countries to adopt extraterritorial legislation that specifically address child sex tourism abroad.²⁷⁴ Presently, this Act provides for the most comprehensive law aimed at combatting sex crimes against children in Canadian history.²⁷⁵

Conclusion

On account of the covert and borderless nature of trafficking, prosecution of offenders remains a challenge. Despite the presence of international and domestic laws, the absence of data on this topic results in continued instances of sexual exploitation and forced labour.

It is our hope that this report has been useful in illuminating contemporary international and Canadian law designed to combat human trafficking. Thinking critically about these important issues is central to ensuring continued progress in the development of legal parameters which counter the prevailing issues related to sexual exploitation and forced labour.

MP Joy Smith once said that “modern day slavery cannot be defeated by one organization, government, or agency.... Rather, it will take [the] coordinated effort of many organizations and individuals.”²⁷⁶ This communal effort will include a nexus between the law, economics and policies. Human trafficking is market driven, and as such, we must look at both its supply and demand. In advancing further research on the motivations of those who facilitate the demand for paid sexual services and forced labour, the economic prism of human trafficking will become clearer. Such economic trends will then be reflected in the creation of laws and policies, which can better protect victims and potential victims from the reach of traffickers.

With such thoughtful consideration, we can advance preventative strategies that seek justice for all those affected.

²⁷⁴ *R v Klassen*, 2008 BCSC 1762 at para 93.

²⁷⁵ *Ibid.*

²⁷⁶ Joy Smith, MP, “Be a ‘Dot’- Protest Human Slavery,” *The Huffington Post* (20 November 2010), online: http://www.huffingtonpost.ca/joy-smith-mp/human-slavery_b_1014723.html.

Appendix

Appendix A: The Importance of Language

Trafficking and Smuggling

The distinction between trafficking and smuggling is both evolving and complex. While trafficking and smuggling are distinct criminal activities, and thus not interchangeable linguistically,²⁷⁷ it is not always clear how to best distinguish between the two (e.g. to determine when smuggling transitions to become trafficking).²⁷⁸

Much like in situations of human trafficking, the smuggling of migrants takes place in dangerous and/or degrading conditions involving human rights abuses, and both trafficking and smuggling are reliant upon networks of vulnerable people. However, despite similarities, the two practices are differentiated by important traits. The UNODC identifies three features that distinguish smuggling from trafficking, they are: a) consent, b) exploitation, and c) transnationality.²⁷⁹

a) Consent

A central difference between trafficking and smuggling lies in the notion of consent. In the context of trafficking, the victim does not consent to the actions of the traffickers and are forced or tricked into the circumstances in which they find themselves.²⁸⁰ If consent was provided, the law considers it meaningless on account of the “coercive, deceptive or abusive actions [utilized by] the traffickers” when acquiring the consent.²⁸¹ By contrast, in the context of smuggling, the migrants have consented to be smuggled,²⁸² and for the most part are willingly engaged in the act.²⁸³ In order to accomplish their mutual goal of getting the migrant across the border, there is cooperation between the parties²⁸⁴ – “it is a contract with consent.”²⁸⁵ Accordingly, in order to be defined as smuggling, the act requires “the explicit consent of a migrant to be smuggled illegally across the borders,”²⁸⁶ while to be defined as trafficking, the act must be devoid of consent.

The sole exception to this differentiation is in the context of children. Under international law, the means by which an adult is trafficked is an important indicator of the legal qualification as a trafficked person. However, the law addresses trafficking in children differently, dictating that a child cannot consent to being moved across or within a border, even if the “means” (force, coercion and/or fraud) are not involved.²⁸⁷ The *Palermo Protocol* establishes that for a child to qualify as being trafficked under international law,

²⁷⁷ US Department of Homeland Security - Immigration and Customs Enforcement, “Human Trafficking and Smuggling,” (16 January 2013), online: <http://www.ice.gov/factsheets/human-trafficking>.

²⁷⁸ US Department of State, “Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking 2006,” online: <http://www.state.gov/m/ds/hstcenter/90434.htm> [US State Department: Human Smuggling and Human Trafficking Fact Sheet].

²⁷⁹ UNODC, Liaison and Partnership Office in Brazil, “Trafficking in Persons and Migrant Smuggling,” 2015, <https://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>. [UNODC Liaison and Partnership Office in Brazil].

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

²⁸³ Jacqueline Bhabha, “Trafficking, Smuggling, and Human Rights,” *Migration Policy Institute*, (1 March 2005), online: <http://www.migrationpolicy.org/article/trafficking-smuggling-and-human-rights>.

²⁸⁴ US State Department: Human Smuggling and Human Trafficking Fact Sheet, *supra* note 276.

²⁸⁵ Gary Craig, Aline Gaus, Mick Wilkinson, Klara Skrivankova and Aidan McQuad, “Contemporary slavery in the UK,” (2007) *Joseph Rowntree Foundation* at 19, <http://www.jrf.org.uk/sites/files/jrf/2016-contemporary-slavery-uk.pdf> [Craig, Gaus et al.].

²⁸⁶ *Ibid.*

²⁸⁷ ECPAT- UK, “The definition of trafficking,” (2014), online: <http://www.ecpat.org.uk/content/definition-trafficking> [ECPAT- UK].

there must be proof of movement and exploitation.²⁸⁸ The rationale is that “a child cannot give consent to being exploited, even if they are aware/agreeable to being moved” and as such, the means by which they are trafficked are irrelevant.²⁸⁹

b) Exploitation

The trafficking process is defined by ongoing, protracted exploitation of the victim by the trafficker for the purpose of generating financial gain.²⁹⁰ As such, in the context of trafficking, exploitation is the central purpose of the act. Generally, the purpose of smuggling is to bring the migrant from one country to another. As such, the relationship between the smuggler and the migrant is complete once the migrants arrive in the destination country agreed upon,²⁹¹ or when a smuggler abandons a migrant on route to the destination. This relationship is defined by an exchange between the smuggler and the migrant – money for passage.

While exploitation is central to differentiating between trafficking and smuggling, it should be noted that there is evidence of smuggling transitioning to trafficking in situations when migrants continue to be exploited by smugglers once they have arrived in the destination country.²⁹² This spectrum from smuggling to trafficking requires further research.

c) Transnationality

The character of movement of peoples, either within a national boundary or across it (transnational),²⁹³ is an important differentiating factor between trafficking and smuggling. While trafficking is not necessarily transnational – it can occur both within and across borders –²⁹⁴ smuggling is premised in its transnational character, and as such by definition requires movement across borders.²⁹⁵

Victims and Survivors

The language used to describe trafficked peoples is integral to the recovery process for those who have been subjected to trafficking. With this in mind, it is important to be cognizant of how we refer to people who have been trafficked – as victims or as survivors.

There is an ongoing dialogue regarding the use of the term victim versus use of the term survivor when referring to people who have been trafficked. This dialogue specifically concerns the appropriate marker when a shift in terms should take place. Different NGOs and international organizations have varying definitions of the transition point. Therefore, while there is no unanimity as to the exact point at which a trafficked person moves from a victim to a survivor, there is agreement that a transition does in fact occur.

For example, *ECPAT International*, an NGO that combats the commercial sexual exploitation of children, advances the perspective that “without access to justice

²⁸⁸ *Palermo Protocol*, *supra* note 9 at art 3(c).

²⁸⁹ *ECPAT- UK*, *supra* note 285.

²⁹⁰ *Craig, Gaus et al*, *supra* note 283.

²⁹¹ *UNODC Liaison and Partnership Office in Brazil*, *supra* note 277.

²⁹² Interpol, “Trafficking in Human Beings – People Smuggling,” online: <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/People-smuggling> [*Interpol: Trafficking in Human Beings*].

²⁹³ The term ‘transnational’ is defined as “extending or operating across national boundaries”: <http://www.oxforddictionaries.com/definition/english/transnational>

²⁹⁴ *Interpol: Trafficking in Human Beings*, *supra* note 290.

²⁹⁵ *UNODC Liaison and Partnership Office in Brazil*, *supra* note 277.

or effective remedy, a victim of sexual exploitation is denied the chance to become a survivor.”²⁹⁶ Accordingly, from this lens, it is the capacity to seek legal redress that transforms a victim into a survivor.

There continues to be ongoing discussion in the human trafficking community regarding the use of language and its impact on victims.

Human Trafficking and Modern Day Slavery

The terms modern day slavery or contemporary slavery are used frequently in literature and popular media; however, they do not have a corresponding legal definition in international law.

In fact, the term slavery was first condemned in the *1815 Declaration Relative to the Universal Abolition of the Slave Trade* (the *1815 Declaration*).²⁹⁷ Slavery was not addressed again until the *1926 Convention to Suppress the Slave Trade and Slavery* (*The Slavery Convention*, herein), developed by the League of Nations. This was the first legal document intended to provide protection from slavery, and is defined Article 1(a) of the slavery convention defined slavery as:

“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” and defines the slave trade as “includ[ing] all acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery; acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and in general, every act of trade or transport in slaves.”²⁹⁸

In 1956, the *Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery* extended the definition of slavery “debt bondage, serfdom, forced marriage and the delivery of a child for the exploitation of that child are all slavery like practices and require criminalisation and abolishment.”²⁹⁹

Other international legal instruments which supplement the regulation of slavery include:

- The *1948 Universal Declaration of Human Rights* prohibits slavery requiring that “no one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms.”³⁰⁰
- The *International Covenant on Civil and Political Rights (ICCPR)* (governed by the Human Rights Committee) is responsible for monitoring the state of global slavery. Article 8 of the *ICCPR* states: “No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform force or compulsory labour.”³⁰¹

²⁹⁶ ECPAT International, “Access to Justice Project,” online: reliefweb.int/job/1104991/legal-intern-access-justice.

²⁹⁷ David Weissbrodt and Anti-Slavery International, Office of the United Nations High Commissioner for Human Rights, “Abolishing Slavery and its Contemporary Forms,” (2003) at 3, online: <http://www.ohchr.org/Documents/Publications/slaveryen.pdf> [Weissbrodt].

²⁹⁸ *Allain*, *supra* note 22 at 144.

²⁹⁹ *Weissbrodt*, *supra* note 295.

³⁰⁰ *The Universal Declaration of Human Rights*, 10 December 1948, Doc A/810, (entered into force 16 December 1949).

³⁰¹ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) [ICCPR].

The Legal Definition of the Slave Trade

The international legal definitions of human trafficking and the slave trade do maintain some overlap; however, they are not synonymous.

Articulated in Article 1(2) of the *Slavery Convention*, the slave trade is defined as: “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view of being sold or exchanged, and in general, every act of trade or transport in slaves.”³⁰²

According to the UNHCR, it is safe to presume that slavery “necessarily involves the use or threat of force or coercion against its victims,” and as such, one can infer that human trafficking includes the practices of the slave trade within the scope of its definition.³⁰³ However, given the number of situations included within the umbrella of human trafficking move beyond the legal definition of slavery, the spectrum referred to by trafficking is much broader than that provided by the legal definition of the slave trade.³⁰⁴

³⁰² UNHCR, Protection Policy and Legal Advice Section (PPLAS) Division of International Protection Services (DIPS), “Refugee Protection and Human Trafficking Selected Legal Reference Materials First Edition – December 2008” at 14-15, online: <http://www.unhcr.org/4986fd6b2.html> [*UNHCR Legal Reference Materials*].

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

Appendix B: Special Topics and Points of Discussion

LGBTQ and Human Trafficking

Sexual exploitation, specifically trafficking, of members of the LGBTQ community is under reported and under researched.³⁰⁵

According to the US Department of State *Office to Monitor and Combat Trafficking in Persons Report 2014*, “the cumulative effects of homophobia and discrimination make LGBTQ persons particularly vulnerable to traffickers who prey on the desperation of those who wish to escape social alienation and maltreatment.”³⁰⁶ This is especially true of LGBTQ youth who are disproportionately represented in commercial sexual exploitation.³⁰⁷ Reasons for this may include the high levels of homelessness amongst LGBTQ youth – 46 per cent of which report running away from home on account of being rejected for their sexual orientation.³⁰⁸ Research suggests that within 48 hours of running away from home, there is a risk that one in every three youth will be recruited by a trafficker.³⁰⁹

Survival sex, the exchange of sexual favours for basic necessities such as food and shelter,³¹⁰ is also common amongst LGBTQ youth. This risky behaviour has been documented as leading to violence, rape and commercial sexual exploitation.³¹¹ According to a study conducted in Canada, LGBTQ identifying youth are three times more likely than their heterosexual peers to engage in survival sex.³¹² For example, the Center for American Progress has reported that young men who have sex with men (identifying as gay or bisexual youth) are more likely to be forced into prostitution than any other youth population.³¹³

A clear example of human trafficking of LGBTQ peoples arose in 2013 when an NGO working in the field in Argentina discovered that traffickers were promising transgender women job opportunities in Europe but instead took the women’s passports and forced them into prostitution.³¹⁴

Discussion Questions

- 1) Could strengthening Canadian social services help protect LGBTQ from becoming victims of human trafficking?
- 2) How can the law be developed to better protect members of this vulnerable group? Do you think existing international law is equipped to address LGBTQ vulnerability to traffickers?

Indigenous Communities and Human Trafficking

³⁰⁵ Omar Martinez, “Sex Trafficking of LGBT Individuals- A Call for Service Provision, Research, and Action,” (2013) 42:4 *International Law News*, online: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4204396/>.

³⁰⁶ US Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014*, “The Vulnerability of LGBT Individuals to Human Trafficking,” online: <http://www.state.gov/j/tip/rls/tiprpt/2014/226646.htm>

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ Mike Mariani, “Exchanging Sex for Survival,” *The Huffington Post*, (25 June 2014), online: <http://www.theatlantic.com/health/archive/2014/06/exchanging-sex-for-survival/371822/>

³¹¹ *UNHCR Legal Reference Materials*, *supra* note 300.

³¹² Michelle Lillie, “Sex Trafficking of LGBT Youth,” *Human Trafficking Research* (11 November 2013), online: <http://humantraffickingsearch.net/wp/sex-trafficking-of-lgbt-youth/>.

³¹³ *Ibid.*

³¹⁴ US Department Of State, Office To Monitor And Combat Trafficking In Persons, “Civilian Security, Democracy, And Human Rights: The Vulnerability Of LGBTQ Individuals To Human Trafficking”, (June 2014), online: <http://www.state.gov/documents/organization/233940.pdf> [*Vulnerability Of LGBTQ Individuals To Human Trafficking*].

Indigenous populations around the world face a heightened threat of becoming victims to traffickers on account of the inherent vulnerability they face within society.³¹⁵ While there is no internationally accepted legal definition of indigenous, the UN has estimated that there are more than 370 million Indigenous people worldwide according to several key factors, which are agreed upon traits possessed by members of such communities.³¹⁶ These include but are not limited to: self-identification as Indigenous at an individual and community level; historical continuity with pre-colonial and/or pre-settler societies; a strong link to territories and surrounding natural resources; distinct social, economic or political systems; and distinct language culture and beliefs.³¹⁷

Globally, Indigenous populations share the plight of being marginalized politically and economically which results in an increased vulnerability to sexual exploitation and forced labour. As a result, Indigenous peoples in “Thailand, the Congo, India, Canada, the United States, Australia and nearly every country in the world” are more likely to become victims of human trafficking than their non-Indigenous peers.³¹⁸ For example, Indigenous children – from the hill tribes in northern Thailand to Canadian and American natives – are more likely to get caught up in commercial sexual exploitation. In Latin America, Indigenous community members are often more vulnerable to both sex and labour trafficking.³¹⁹

According to the *US Report on the Vulnerability Of LGBTQ Individuals To Human Trafficking*, “combating the trafficking of indigenous persons requires prosecution, protection, and prevention efforts that are culturally sensitive and collaborative – efforts that also empower indigenous groups to identify and respond to forced labour and sexual exploitation within their communities.”³²⁰ In order to demonstrate a positive step towards engaging indigenous populations in decreasing their vulnerability to trafficking, the United States cited British Columbia and various provincial NGOs, which have partnered with Aboriginal communities “to strengthen their collective capacity to effectively work with trafficking victims by incorporating community traditions and rituals into victim protection efforts, such as use of the medicine wheel – a diverse indigenous tradition with spiritual and healing purposes.”³²¹

Indigenous peoples within Canada

According to Canada’s *National Action Plan to Combat Human Trafficking*, Indigenous women are at higher risk of becoming victims of human trafficking, than their fellow non-Indigenous Canadian women.³²² In 2004, Amnesty International reported that over 500 Indigenous girls and women have gone missing or murdered in Canada since 1974.³²³ However more recent reports

³¹⁵ US Department Of State, Office To Monitor And Combat Trafficking In Persons, “Civilian Security, Democracy, And Human Rights: The Vulnerability Of Indigenous Persons To Human Trafficking,” (June 2014), online: <http://www.state.gov/documents/organization/233942.pdf> [*Vulnerability Of Indigenous Persons To Human Trafficking*].

³¹⁶ The Native Women’s Association of Canada, “Sexual Exploitation and Trafficking of Aboriginal Women and Girls,” (March 2014), online: http://canadianwomen.org/sites/canadianwomen.org/files/NWAC%20Sex%20Trafficking%20Literature%20Review_2.pdf

³¹⁷ *Vulnerability Of Indigenous Persons To Human Trafficking*, supra note 313.

³¹⁸ Rudolph C Ryser, “Sex Trafficking and Indigenous People,” *Centre for World Indigenous Studies* (14 April 2011), online: <http://cwis.org/FWE/2011/04/14/sex-trafficking-and-indigenous-people/>.

³¹⁹ *Vulnerability Of Indigenous Persons To Human Trafficking*, supra note 313.

³²⁰ *Vulnerability Of LGBTQ Individuals To Human Trafficking*, supra note 312.

³²¹ *Ibid.*

³²² Craig and Marc Keilburger, “Human Trafficking Is Part of the Story of Missing and Murdered Aboriginal Women,” *The Huffington Post* (21 April 2015), online: http://www.huffingtonpost.ca/craig-and-marc-kielburger/human-trafficking-aboriginal-women_b_6713818.html.

³²³ Amnesty International, “Canada: Stolen Sisters - A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada,” (2004) at 14-15. <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>.

reveal much larger figures. In 2014, the RCMP released a report titled *Missing and Murdered Aboriginal Women: A National Operational Overview* where it was revealed that “police-recorded incidents of Aboriginal female homicides and unresolved missing Aboriginal females in this review total 1,181 - 164 missing and 1,017 homicide victims.”³²⁴ The report thus concluded that “the total number of murdered and missing Aboriginal females exceeds previous public estimates.”³²⁵

In the Canadian context, the root causes of increased vulnerability to human trafficking amongst indigenous peoples is consistently related back to the same factors, which include: rural/remote living conditions, “colonialism, the legacies of the residential schools and their inter-generational effects, family violence, childhood abuse, poverty, homelessness, lack of basic survival necessities, race and gender-based discrimination, lack of education, migration, and substance addictions.”³²⁶ Other root causes were identified in Anupriya Sethi’s 2007 research study on the topic of domestic sex trafficking of Aboriginal girls in Canada - it was the first of its kind.³²⁷

The Canadian Women’s Foundation (CWF) report suggests that Indigenous women and girls are at a higher risk to trafficking, specifically sexual trafficking. In Canada, the CWF reported that “about 50 per cent of all trafficked persons are Aboriginal.”³²⁸ This is premised in certain characteristics which are common to most trafficked peoples: young, female, poor, socially and/or cultural excluded, undereducated, come from dysfunctional families and/or institutions, and desire a better life but face limited economic opportunities.³²⁹ According to Statistics Canada’s 2013-2014 annual report, the high rate of Aboriginal female victims of trafficking can be traced to “a history of colonial exploitation and racism has placed them in danger of marginalization.”³³⁰ While this exploitation most often occurs when Indigenous women and girls move to the city, where they find it difficult to secure legal employment,³³¹ trafficking remains rampant in rural environments as well.

Discussion Questions

- 1) How can Canada better use existing international legal structures to protect Indigenous communities from becoming victims of trafficking?
- 2) What has prevented Canada from taking greater initiative when addressing the threat of trafficking to Indigenous women and girls?

Refugees and Human Trafficking

According to UNHCR’s most recent report, in 2014 there were almost 60 million refugees and internally displaced people worldwide.³³² International refugee law is the international legal framework committed to the protection of individuals seeking asylum from persecution and those recognized as refugees and is governed by: the *1951 Convention Relating to the Status of Refugees* (herein, *the*

³²⁴ RCMP, “Missing and Murdered Aboriginal Women: A National Operational Overview” (2014) at 3, online: <http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>.

³²⁵ *Ibid.*

³²⁶ The Native Women’s Association of Canada, “Sexual Exploitation and Trafficking of Aboriginal Women and Girls,” (March 2014) at 11, online:

http://canadianwomen.org/sites/canadianwomen.org/files/NWAC%20Sex%20Trafficking%20Literature%20Review_2.pdf [Native Women’s Association of Canada].

³²⁷ *Ibid* at 12.

³²⁸ Moore and Levasseur, *supra* note 152.

³²⁹ Native Women’s Association of Canada, *supra* note 324 at 13.

³³⁰ Oxman- Martinez, Lacroix, Hanley, *supra* note 45 at 11.

³³¹ *Ibid* at 12.

³³² UN 2014 report <http://unhcr.org/556725e69.html>

1951 Convention), the 1967 Protocol Relating to the Status of Refugees,³³³ and customary international law.³³⁴ These legal frameworks provide both refugees and asylum seekers with a specific set of guaranteed rights.

According to Article 1(A) 2 of the 1951 Convention, a refugee is defined as “any person who... owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” To be recognized as a refugee, and allocated all legal protections provided under the 1951 Convention and/or the 1967 Protocol, all elements of the refugee definition have to be satisfied.³³⁵

The traits that define a refugee, including statelessness and unregistered status, make them especially vulnerable traffickers who seek victims in situations of vulnerability. This is particularly true of refugees living in refugee camps, which are characterized by overpopulation and overcrowding, density, security concerns (both internal and external), resource shortages³³⁶ and a lack of hope for the future.³³⁷

Evidentiary research reveals a clear relationship between refugee status and the risk of becoming a trafficked person. For example, Burmese refugees that reside in refugee camps in Thailand were lured into forced labour under the false pretense of employment.³³⁸ However, despite examples of pervasive abuse by traffickers towards refugees, there is limited existing empirical field research on the nexus between refugee camps and human trafficking.³³⁹

Protection for trafficked peoples under international refugee law

The inclusion of trafficked peoples within the protections provided to refugees is possible within the scope of the law. Some victims or potential victims of trafficking may fall within the scope of refugee, as defined in the 1951 Convention, and as such, may be entitled to international refugee protection. This is limited to a select set of circumstances wherein the individual has a “well-founded fear of persecution” that is linked to one or more of the required traits of a legal refugees (under the 1951 Convention). These circumstances include instances when: a victim has been trafficked abroad, escaped their traffickers and requires the protection of the State where they are now located; the victim has been trafficked within national territory, escaped from their traffickers and fled abroad in search of international protection; and the individual may not have been trafficked but sustains a legitimate fear of becoming a victim of trafficking, and consequently may have fled abroad in search of international protection.³⁴⁰

This is further implied in Article 14 of the *Palermo Protocol*, which states:

³³³ *Convention Relating to the Status of Refugees*, 28 July 1952, 1989 UNTS 137 (entered into force 22 April 1964), online: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [*Convention Relating to the Status of Refugees*].

³³⁴ Customary international law is defined as “law [which] applies to all states irrespective of whether they are a party to relevant treaties or not” (“International Refugee Law,” *Rule of Law and Armed Conflicts Project*, online: http://www.geneva-academy.ch/RULAC/international_refugee_law.php)

³³⁵ UNHCR, “Guidelines On International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked,” (7 August 2014) at 6-7, online: <http://www.unhcr.org/443b626b2.pdf> [UNHCR: *Guidelines on International Refugee Protection*].

³³⁶ Silvia Tamminem, “High Risk of Human Trafficking in Refugee Camps,” *Human Trafficking Centre*, online: <http://humantraffickingcenter.org/posts-by-htc-associates/refugee-camps-high-risks-human-trafficking/>.

³³⁷ *Ibid.*

³³⁸ *Ibid.*

³³⁹ *Ibid.*

³⁴⁰ UNHCR: *Guidelines on International Refugee Protection*, *supra* note 333 at 6-7.

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the *1951 Convention* and the *1967 Protocol relating to the Status of Refugees* and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of nondiscrimination.

Examples of victims of trafficking that fall within the scope of international refugees law, and thus protection under the parameters of international refugee law and the provision of the UNHCR mandate, are available. For example, unregistered Rohingya refugee trafficking victims fleeing Myanmar (Burma) are at risk of indefinite detention on account of their lack of documentation, and therefore, despite being victims of trafficking, also qualify for the protection of international refugee law.³⁴¹

Discussion Questions

- 1) What actions can Canada take in leading the international community in the protection of refugees from the hands of traffickers?
- 2) What would a legislative scheme aimed at protecting refugees from traffickers look like?

The Environment and Human Trafficking

In 2014, the US Department of State produced a fact sheet regarding the nexus between environmental degradation and human trafficking. This is particularly pertinent when discussing forced labour, given its use in the commercial supply chain. The exploitation of people and resources is more likely when the product in question is obtained in an illegal, unregulated or environmentally unsustainable manner, or in an area where the rule of law is weak.³⁴²

The fact sheet provides insight into four different sectors within which environmental degradation and exploitation of workers go hand in hand: agriculture, fishing and aquaculture, logging, and mining.³⁴³ For example, in the agricultural sector workers excluded from coverage by national labour laws, as well as an absence of internal monitoring and government oversight and incentive to reduce costs, agricultural workers are especially vulnerable to human trafficking. Examples of this are provided in the report, and include the forced labour of adults and children to harvest tomatoes in Mexico, collect fruits and grains in Argentina, as well as the forced labour of children in Namibia.³⁴⁴ In the fishing sector, illegal practices heighten the use of forced labour; for example, the use of foreign flagged ships is common method of avoiding detection and pursuing the use of forced labour. In the logging industry, there is a direct link between deforestation and worker abuse, where there is “a dearth of documented information on working conditions of loggers and the way the

³⁴¹ 2015 US Trafficking Report, *supra* note 205 at 85.

³⁴² The US Department of State. “The Intersection Between Environmental Degradation and Human Trafficking - Fact Sheet, Office to Monitor and Combat Trafficking in Persons,” (20 June 2014), online: <http://www.state.gov/j/tip/rls/fs/2014/227667.htm>.

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*

logging industry increases the risk of human trafficking in nearby communities.”³⁴⁵ Finally, in the mining industry there is rampant use of forced labour, where there is little government oversight and therefore little incentive to pursue environmentally responsible or ethical practices.³⁴⁶

In 2012, the *Not For Sale Campaign* published a piece that recognized the link between the degradation of the environment and human trafficking. To do so, the campaign acknowledged the harm of working in silos which relegated human trafficking a human rights abuse issue of inequality and politics, and the environment as a issue associated with infrastructure, and advocated a more holistic approach to the issues at hand.³⁴⁷ This includes recognition that poor regulation of both forms of exploitation are related to the same policy and law based failings.

Interestingly, and important to the Canadian context, the forms of environmental exploitation referred to, disproportionately affects Indigenous peoples.³⁴⁸ For example, in remote areas of the Democratic Republic of the Congo, members of Batwa (pygmy groups) are pushed into forced labour in agriculture, mining, mechanics and domestic service.³⁴⁹

This intersection of exploitation is under researched, and as such, could benefit from committed academic research and legal analysis.

Discussion Questions

- 1) How does environmental degradation within Canada affect the plight of migrant workers?
- 2) How do you feel the link between environmental degradation and human trafficking could be better addressed by the law?
- 3) What is the most pressing contemporary environmental concern, and how does it affect potential victims of trafficking?

³⁴⁵ *Ibid.*

³⁴⁶ *Ibid.*

³⁴⁷ “From Free2Work: Linking Human Trafficking and the Environment,” *The Not for Sale Campaign* (26 April 2012), online: <http://notforsalecampaign.org/stories/2012/04/26/from-free2work-linking-human-trafficking-and-the-environment/>.

³⁴⁸ *Vulnerability Of Indigenous Persons To Human Trafficking, supra* note 313.

³⁴⁹ *Ibid.*

Appendix C: Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
GAATW	Global Alliance Against Traffic in Women
HTNCC	Human Trafficking National Coordination Centre
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
IRPA	The Immigration and Refugee Protection Act
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
NAPCH	National Action Plan to Combat Human Trafficking
NGO	Non- Governmental Organization
OCTP	Office to Combat Trafficking in Persons
RCMP	Royal Canadian Mounted Police
TFWP	Temporary Foreign Workers Program
UNHCR	United Nations High Commission for Refugees
UNGIFT	United Nations Global Initiative to Fight Human Trafficking
UNODC	United Nations Office on Crimes and Drugs



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