A Comparative Study of the U.S. – Canadian Role
In Combating Human Trafficking

by

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ABSTRACT

Human trafficking is a modern day form of slavery that exists in most parts of the world today including North America. In response to this problem, Canada needs to become more actively involved in combating this modern day form of indentured servitude. Canadian law reform efforts to date have been insufficient and have inadvertently contributed to the problem by (1) re-victimizing women and children, (2) failing to assist prosecutions and investigations (3) helping traffickers circumvent domestic laws, (4) failing to deal with the root causes of trafficking, (5) failing to protect victims, (6) not creating national programs for support and rehabilitation, and (7) not making public awareness of trafficking a priority for law enforcement officials and the public. To more effectively combat this problem a different kind of law reform agenda is necessary which adopts a multidisciplinary approach that makes victims and victim protection a central priority in the nation’s anti-trafficking strategy.
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My time in Canada is drawing to an end. A part of me is incredibly sad yet another part is so grateful for this life-changing opportunity that words could not begin to express my gratitude. For the experiences, memories, and friendships I have made, I will forever be grateful. For the information I have learned, I will continue to use my life as a voice. Destiny calls...

Shadan
Vancouver, British Columbia,
April 9, 2006

Life is what you make of it. Carpe diem!
Often times our greatest legacy is who we become not what we achieve...choose wisely.
DEDICATION

I would like to dedicate this to the United Nations Graduate Study Programme Summer 2003 in Geneva, Switzerland and the United Nations Information Centre in Washington, D.C. as well as the Center for Global Development. These organizations opened my eyes to a world I never knew existed and paved the way for a purpose in life that extends far beyond myself.

Sometimes a cause finds you and your life is never the same again...

I would also like to dedicate this to the millions of women and children who have been silenced by this modern day form of slavery. May a new day soon come where your voices are heard so loudly that they can never be ignored again...
INTRODUCTION

1.1 Modern day slavery in the twenty-first century

The United Nations estimates that up to four million women and children become victims of human trafficking every year worldwide.\(^1\) This modern day form of slavery not only exists but is flourishing in most parts of the world today.\(^2\) It is estimated that more slaves exist now then ever in the history of mankind with 27 million women, men, and children living in slave-like conditions around the world.\(^3\) The global revenue for this underground activity is approximately thirty billion USD yearly.\(^4\) Human trafficking is predicted to surpass drug trafficking in global revenue within five years.\(^5\)

Due to the millions of women and children brutally victimized by traffickers every year, this modern day form of slavery is a tremendous public policy challenge for the international community and developed countries such as Canada and the United States. Most victims of trafficking into North America are exploited for the purposes of prostitution and/or debt bondage. Trafficking also increasingly takes place in labor exploitation, such as work in domestic servitude, sweatshop factories, or migrant agricultural work.\(^6\) Traffickers use force, fraud, and coercion to compel women,

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\(^6\) *Ibid.*
children, and sometimes men to engage in these inhumane practices. The average victim is re-sold several times to different traffickers.

1.2 Root causes of human trafficking

Human trafficking is not only a domestic and international problem but a legal, development, and social issue as well. Poverty and systematic oppression are root causes of this human rights violation. Patterns of political instability and unrest, poverty, armed conflict, inequality, weak law enforcement, oppression and discrimination against women and children have perpetuated this global problem along with a lack of public awareness both domestically and internationally.

The lack of documented birth registration in certain third world nations have made children increasingly vulnerable to the exploitation of traffickers. In many cases, parents are systematically deceived into believing that their children will have better lives in developed countries with the opportunity for an education. Globally, most of the children never return home and die within five to seven years from daily physical abuse,


10 Ibid.

11 Ibid.

sexual abuse, malnutrition, and torture. By the time family members realize the deception of the traffickers, their loved ones have disappeared and the families are helpless in their search to find them. The illusion of a better life turns into the greatest tragedy.

1.3 Human trafficking versus human smuggling

To fully understand human trafficking it is imperative to first examine its definition and its distinctive characteristics from human smuggling. In 1994 human trafficking was defined without reference to exploitative practices. International migratory movements were considered trafficking if an international border was crossed, entry was illegally procured, movement was voluntary, a trafficker facilitated the entry, and money or payment was involved.

However, a broader definition for human trafficking was developed by the end of the 1990’s that was included in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention Against Transnational Organized Crime. In this document human trafficking was defined as

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14 Ibid.
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 of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.\textsuperscript{17}

This definition also included a separate provision for the trafficking of children. Specifically, in the trafficking of minors under the age of eighteen certain means such as threat, force, fraud, deception, or abduction were not required.\textsuperscript{18} Trafficking of children for purposes of exploitation was considered a crime regardless of the means or mechanisms utilized to facilitate the activity.\textsuperscript{19} The definition developed from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention Against Transnational Organized Crime takes a more comprehensive approach that includes a special provision for children. As a result, it will be used for purposes of this thesis.

Even with the international definition there is often confusion between the differences among human smuggling and human trafficking. They are different types of international, illegal activities that are distinctive due to the intrinsic characteristics listed below.

\textsuperscript{17} Ibid. at Article 3.  
\textsuperscript{18} Ibid.  
\textsuperscript{19} Ibid.
Table 1.1  Human Trafficking versus Human Smuggling

<table>
<thead>
<tr>
<th>Human Trafficking</th>
<th>Migrant Smuggling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victims do not pay traffickers to move them between international borders or within a nation. All the expenses related to this movement are incurred by the traffickers.</td>
<td>Victims pay traffickers to move them between international borders. The expenses related to the movement are incurred by the individual themselves and not the traffickers.</td>
</tr>
<tr>
<td>Most victims are deceived by traffickers into believing that legitimate jobs in hotels or restaurants will be given once in the country of destination.</td>
<td>Most victims know that the role of the smuggler or the facilitator is merely to move them across the desired border without apprehension by border officials. The trafficker’s role is not to assist them in finding employment.</td>
</tr>
<tr>
<td>Once victims enter the country of destination traffickers confiscate their documents and passports.</td>
<td>Once victims enter the country of destination smugglers do not confiscate their documents and instead release them.</td>
</tr>
<tr>
<td>Victims, mostly women and children, are brutally mistreated and forced into the world of indentured servitude and/or prostitution to pay back their “debt” to the traffickers for bringing them into the country of destination.</td>
<td>Victims of migrant smuggling are not brutally mistreated or forced into prostitution or indentured servitude.</td>
</tr>
<tr>
<td>They are kept against their will by physical abuse, rape, and even torture.</td>
<td>They are not kept against their will by physical abuse, rape, or torture.</td>
</tr>
</tbody>
</table>


1.4 Invisible epidemic in North America

Human trafficking is a rising public policy challenge for Canada and the United States in the 21st century. According to the United States Trafficking in Persons Report 2005, “Canada is primarily a destination and transit country for women trafficked for purposes of labour and sexual exploitation.” Asian organized crime organizations have contributed to the proliferation of human trafficking in Canada by recruiting women and

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20 United States Department of State, Trafficking in Person’s Report 2005 page 79.
children through deception and promises of a better life.\textsuperscript{21} Victims are initially offered legitimate jobs in hotels or restaurants.\textsuperscript{22} Yet, this promise turns into an illusion. Instead, they are brought to brothels and massage parlors in Vancouver, Toronto, Calgary, and Winnipeg and forced into prostitution.\textsuperscript{23}

Women and children are also trafficked from Central and South America as well as Eastern Europe.\textsuperscript{24} Some remain in Canada while others are smuggled into the United States and begin a journey to various U.S. cities including Seattle, New York, Los Angeles, Phoenix, New Jersey, Miami, and/or San Francisco.\textsuperscript{25} The porous border between the United States and Canada has provided fertile ground for traffickers to circumvent national and international laws.\textsuperscript{26} Asian women and men have arrived at the Vancouver International Airport and been transported in minivans, motor homes, and even rental trucks to various parts of Canada and the United States.\textsuperscript{27}

Victims have been reported from a variety of other countries as well including China, Thailand, Vietnam, Haiti, the Philippines, Malaysia, Russia, South Africa, and

\begin{footnotes}
\item[22] Ibid.
\item[25] Ibid.
\item[26] Marc Horton, "Trafficking in Women: Global Flesh Trade of Former Soviets Making Presence Felt in Canada," Star Phoenix (Saskatoon, Saskatchewan, 8 May 2004).
\end{footnotes}
South Korea. Organized crime units have exploited Canada's visa waiver for South Korean citizens to bring Korean women and children into Canada for the purposes of transportation into the United States. These legal methods have been exploited to facilitate a much greater international problem.

1.5 Scope of the problem in Canada and the United States

Due to the highly secretive and underground nature of this issue, precise statistics concerning the number of women and children trafficked into Canada and the United States are difficult to obtain. A Central Intelligence Agency (CIA) report leaked to the New York Times in 2000 described a growing form of slavery emerging in the United States. The leaked CIA report titled “International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery,” revealed that as many as 50,000 women and children are brought from Europe, Asia, and Latin America to the United States as victims of trafficking. This was the government’s initial assessment of trafficking into the country.

However, this estimate of victims has been widely contested. The United States Trafficking in Persons Report published by the U.S. State Department has reported the number of trafficking victims to be 14,500 to 17,500 per year. In February 2004, the

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31 Ibid.
32 Ibid.
Royal Canadian Mounted Police estimated that 1,500 – 2,200 persons are trafficked into the United States through Canada per year. These statistics are highly problematic. This is mainly due to the difficulty in substantiating their accuracy. In the midst of the debate, economists have estimated that human trafficking generates close to four hundred million Canadian dollars per year.

While statistics regarding human trafficking are contested, it is widely accepted that trafficking in Canada is not only a cross-border but also a domestic issue. Internal trafficking of Canadian citizens as well as foreigners occurs throughout the country everyday. Canadian minors have been trafficked on “circuit-linking cities” between British Columbia, Alberta, Saskatchewan, and Ontario. Organized crime units have also smuggled women and young children from Russia between Canadian cities and provinces for prostitution and/or forced labour.

The increase of women and children smuggled from Southeast Asia, Russia, and Honduras has brought a surge in operations in North America. By the time that the deception is unraveled, they find themselves in a foreign land with their documentation

37 Ibid.
39 Supra at 17.
confiscated and a series of brutal attacks to “break” them into the system of prostitution.\footnote{Ibid.} These victims are not initially prostitutes but are forced into this lifestyle to pay off their “debt” to the traffickers for bringing them into the country. The deception continues when the traffickers give false illusions that the victims will be free once their debts are paid off.\footnote{Ibid.}

Within the past decade Canadian media outlets have reported on victims who have been smuggled and brutally mistreated while attempting to pay off their “debts” to the traffickers.\footnote{Ibid.} One investigation revealed how traffickers obtained approximately $8,000 per woman or child after selling them for $15,000 to local criminals for prostitution or forced labour.\footnote{Ibid.} Canadian officials also released stories of young women who were forced to work under inhumane conditions and serve four hundred customers to pay off their debts to traffickers.\footnote{Ibid.} They were physically abused, terrorized, and even burned with hot irons.\footnote{Ibid.}

A common misconception exists that traffickers are only foreigners who become wealthy through the manipulation and exploitation of others. Yet, law enforcement officials have arrested Canadian and American citizens involved in these smuggling operations. An infamous case involved a Canadian family who recruited young foreign women.\footnote{Ibid.} Within two years they made more than 1.2 million dollars in profits.\footnote{Ibid.}
These cases compelled the Canadian government to engage in intelligence investigations to understand the scope and severity of the problem. The Royal Canadian Mounted Police discovered and later publicized how a shortage of workers and a lack of preventive measures could make Canada a key destination for the trafficking of human beings within the next decade.49

Yet, even more troubling is the fact that twice as many countries report the trafficking of children than the trafficking of women around the world for sexual exploitation and forced labour.50 Millions of children disappear when trafficked and endure abuse while shut out from schools, healthcare, and other essential services necessary for survival.51 The United Nations Children’s Fund warns that globally up to 1.2 million children become victims of human trafficking every year.52 Currently, Canada and the United States have become favored destinations.53

1.6 Purpose of this thesis

The purpose of this thesis is to examine the approaches adopted by the United States and Canada to combat human trafficking in North America with specific focus on the legal and statutory aspects of these countries counter-trafficking strategies. The purpose of this examination is to discover discrepancies in national approaches and

52 Ibid.
53 United States Department of State, Trafficking in Person’s Report, June 2005.
possible mechanisms for rectifying these gaps that have inadvertently contributed to the problem.

The thesis will first examine human trafficking in Canada and the United States. Then the legal mechanisms to combat this problem in both countries will be explained. Next, the problems with these legal approaches and suggestions for effective legislation, victim protection, and counter trafficking strategies will be provided. Finally, the possibilities for the different approaches in combating human trafficking in Canada and the United States will also be explored.

Currently, Canadian laws to combat human trafficking have exacerbated the problem by (1) re-victimizing women and children, (2) failing to assist prosecutions and investigations, (3) helping traffickers circumvent domestic laws, (4) failing to deal with the root causes of trafficking, (5) failing to protect victims, (6) not creating national programs for support and rehabilitation, and (7) not making public awareness of trafficking a priority for law enforcement officials and the public. This thesis proposes a new form of law reform in Canada that places victim protection and assistance at the center of the nation's counter-trafficking strategy.

The methodology used in this examination includes legal and policy reviews for both countries, examination of comments published by governmental and non-governmental organizations in North America and around the world. The laws and cases (or lack thereof) in both the United States and Canada are also thoroughly examined and reviewed along with scholarly work in this area.
2 CANADA'S RESPONSE TO MODERN DAY SLAVERY

2.1 Legal mechanisms to combat human trafficking in Canada

Until 2002, human trafficking was never explicitly prohibited in any piece of Canadian legislation as a criminal offense. Instead, prostitution-related laws could be used in cases of sexual slavery. The Criminal Code prohibited prostitution-related activities including promoting prostitution and maintaining brothels. Furthermore, the Code expressly prohibited the use of a premise for purposes of selling sexual services. The Code outlawed procuring a person for the purpose of illicit sexual intercourse with another or procuring a person for the purpose of prostitution inside or outside of Canada. Knowingly concealing such a person inside a brothel is also outlawed. Punishment is up to 10 years imprisonment. The same consequences applies to anyone who directs a newly arrived person in Canada to work in a brothel, who aids and compels a person to work in prostitution, and who procures a person to leave Canada for the purpose of prostitution.

The Criminal Code also prohibits living off the earnings of prostitution. Punishment for this crime is imprisonment for up to 10 years. If the criminal lives off of the proceeds from prostitutes under the age of 18 then the punishment is imprisonment.

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55 Ibid.
56 Canadian Criminal Code, Section 210
57 Section 212(1).
58 Ibid.
59 Ibid.
60 Ibid.
61 Section 212(1)(j).
62 Section 212(1).
for up to 14 years. The Code also outlaws communicating with another for the intent of buying sexual services, or buying sexual services of an individual under the age of 18. Punishment for this crime is up to five years imprisonment. Inappropriate touching of a minor is also strictly prohibited in the Criminal Code with a punishment for up to 10 years. The same punishment applies to any individual who counsels a minor under the age of 14 to engage in sexual activity.

However, until June of 2002 the illegal activity of human trafficking was never explicitly condemned in any piece of legislation. The Parliament responded to growing concern by making human trafficking a separate criminal offense in the Immigration and Refugee Protection Act. According to this law, “no person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.” Any individual who is guilty of this offense is liable and a fine of not more than one million dollars or life imprisonment or both. Yet, in three years there has been only one charge of human trafficking under this law in Canada.

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63 Section 212(2).
64 Section 212(4).
65 Section 151.
66 Section 152.
67 Canadian Immigration and Refugee Protection Act, Section 118.
68 Ibid.
69 Ibid. Section 120
70 Look Beneath the Surface - Community Responses to Human Trafficking Workshop, sponsored by the Canadian Red Cross and Canadian Council for Refugees 2005, November 26, 2005, Vancouver, British Columbia, Norm Massie, RCMP Human Trafficking Awareness Coordinator; Protection Project sponsored by John Hopkins University, Canada Section, found at www.protectionproject.com
In November 2005, Bill C-49 was passed to build upon existing provisions outlawing the trafficking of persons.\textsuperscript{71} The Act created an offense of trafficking in persons in the Criminal Code that prohibited the recruitment, transportation, transfer, or concealment of an individual for the purpose of exploitation.\textsuperscript{72} It also outlawed influence over the movements of another for the purpose of exploitation or facilitating exploitation.\textsuperscript{73} In addition, the Act outlawed the withholding, concealment, and destruction of travel documentation for the purposes of furthering human trafficking.\textsuperscript{74}

2.2 Problems with the legal mechanisms to combat human trafficking

Presently, the laws in Canada to combat human trafficking have been one-dimensional and will likely continue to be ineffective. Bill C-49 and Section 118 of the Immigration and Refugee Protection Act have both mainly focused on the criminal aspect of combating human trafficking. Focusing on this aspect of counter-trafficking is an important step but it remains an inadequate strategy in the overall plan to effectively combat a complex problem.

The reason Canada's legislative system has not been effective in addressing this problem is because lawmakers have failed to pass a comprehensive and effective piece of legislation that adequately deals with the different elements needed to combat human trafficking. This narrow focus has inadvertently made the laws ineffective partly because prosecutions have not increased and more victims have not secured justice. This in turn

\textsuperscript{71} Bill C-49, \textit{An Act to Amend the Criminal Code to Include the Offense of Trafficking in Persons}.  
\textsuperscript{72} \textit{Ibid.} at Section 3.  
\textsuperscript{73} \textit{Ibid.}  
\textsuperscript{74} \textit{Ibid.}
has impacted the effectiveness of rescuing victims from indentured servitude and sexual slavery especially when there has only been one charge of human trafficking under these laws. Instead of heightening the war against human trafficking and rebuilding lives, Canada is at a standstill since neither prosecutions nor investigations to help victims have increased. Instead, traffickers have continued to use Canada as a transit and destination point for trafficking and the laws have inadvertently contributed to the problem.

Although aware of the problem of human trafficking, lawmakers in Canada have not passed domestic legislation that will specifically provide protection, assistance, and essential services to victims of trafficking in order to gain their safety and cooperation in beginning to solve the dilemma. Lawmakers have failed to understand that counter-trafficking measures require a multidisciplinary approach to more effectively combat a complex international phenomenon. A statutory scheme that provides only one part of the solution is guaranteed to fail. As Kristof Van Impe explains in *People for Sale*, there is no easy “uni-dimensional solution” to combating human trafficking since it is influenced by an array of factors.⁷⁵ “Action to combat human trafficking cannot be limited to the enlargement of a one-sided repressive legislative arsenal.”⁷⁶ He argues that an effective counter-trafficking strategy must include punitive action along with the protection of basic human rights.⁷⁷

2.3 Canadian laws exacerbation of the human trafficking problem

Canada’s laws for combating human trafficking have inadvertently contributed to

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⁷⁶ Ibid.
⁷⁷ Ibid.
the problem by (1) re-victimizing women and children, (2) failing to help prosecutions and investigations, (3) helping traffickers circumvent domestic laws, (4) failing to deal with the root causes of trafficking, (5) failing to protect victims, (6) not creating national programs for support and rehabilitation, and (7) not making public awareness of trafficking a priority for law enforcement officials and the public.

2.3.1 Re-victimization of women and children

The first part of the growing problem is the re-victimization of women and children who have been trafficked. These individuals have been exploited in the most horrendous manner. Instead of treating them as causalities of abuse and exploitation the legislative scheme views them as immigration violators who have illegally procured entrance into this country and as such deserve detention and deportation. This outdated perspective on human trafficking has no place in the Canada’s legal system and does more of a disservice by denying victims basic human rights and survival mechanisms needed to escape the web of trafficking.

The Canadian policy to detain and deport victims of trafficking punishes them unfairly especially since many are tricked into coming to North America and kept here against their will. Instead of helping them, they are sent back to their country where they are often marginalized and face even greater discrimination and ill treatment. Now they


are no longer just poor but also stigmatized for coming back with nothing and having engaged in prostitution. This is greatly problematic since this approach re-victimizes those who need even greater protection.

The Royal Canadian Mounted Police Human Trafficking Awareness Program in Vancouver has an unofficial policy to provide services to victims after their status has been identified in trafficking cases.\(^8\) This puts law enforcement officials in the role of protector. They may exercise that role arbitrarily since no national mandate exists that guarantees protection and prohibits re-victimizing victims by treating them as criminals. Until a national mandate prohibits the re-victimization of trafficked women and children by statutorily banning the detain and deport policy, then Canada will continue to indirectly perpetuate the oppression of the most vulnerable members of society in the name of upholding the law.

2.3.2 Failure to assist prosecutions and investigations

Human trafficking laws in Canada have also failed to help trafficking prosecutions and investigations by ignoring an important aspect to any successful prosecution or investigation - star witnesses. Prosecuting and investigating trafficking

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cases can be the most difficult.\textsuperscript{81} Therefore, to successfully bring these cases to justice victims can play a substantial role in not only providing information but ultimately combating this crime by testifying against their perpetuator. By not recognizing this essential element in the human trafficking statutory scheme and providing provisions that guarantee heightened protection to victims who testify or assist in the investigation, lawmakers have inadvertently contributed to the problem and made the counter-trafficking laws aimed at increasing prosecutions ineffective.

Victims who have no formal education and speak very little English cannot stay in the country without governmental assistance. The current laws do not provide guaranteed governmental assistance to victims of trafficking. As a result, the law has hindered the ability of trafficking victims to remain in this country, assist with lengthy prosecutions, and break the cycle of oppression for themselves and possible future generations to come. Instead of preserving their basic human rights, the law has stigmatized their presence and prevented greater cooperation in an international problem that requires international collaboration.

2.3.3 Inadvertently assisting traffickers in circumventing domestic laws

By taking a simplistic one-dimensional approach, the human trafficking laws in Canada have helped traffickers circumvent domestic laws. By failing to understand and implement the idea that human trafficking is a multidisciplinary problem that requires a multidisciplinary response that is more than just criminal based, the laws have inadvertently assisted traffickers through their inadequate and ineffective nature at

\textsuperscript{81} Ibid.
dealing with the problem. As a result, the laws intended to stop trafficking have been easy to circumvent, and traffickers have continued to use Canada as a transit and destination point for trafficking.

A more complex approach is needed that deals with the many layers that involve human trafficking including victim protection, immigration policies and discrepancies, and further international cooperation. The reality is that Canada’s current simplistic approach centered around the criminal aspect of trafficking has created no real results to date.\textsuperscript{82} Under this strategy, traffickers have avoided justice and continued to exploit and deceive poverty stricken women and children looking for better lives abroad without real consequences and in most cases even identification by authorities.

2.3.4 Failure to deal with root causes of trafficking

Canada’s current laws for combating human trafficking have inadvertently contributed to the problem by also failing to deal with root causes of trafficking. By focusing on the criminal and prosecutorial aspects of trafficking, the \textit{Immigration and Refugee Protection Act} and Bill C-49 have completely ignored important issues that have allowed this behavior to perpetuate in Canada and around the world. This includes the failure of economic programs for at-risk victims of trafficking and mechanisms used to assist them once in and outside the web of trafficking.

The United States has taken a different approach by spending well over 800 million dollars to fight human trafficking domestically and internationally since 2000.\textsuperscript{83}

\textsuperscript{82} Ib\textit{id}.
The U.S. government has supported 50 nations in more than 110 anti-trafficking programs since 2001.\textsuperscript{84} Assistance has included: funding for legal, medical, psychological support provided by non-governmental organization's and international organizations; economic programs aimed at assisting vulnerable groups; improving anti-trafficking legislation in other countries; the establishment and remodeling of safe houses, crisis shelters; and training for government officials, law enforcement personnel, and medical specialists to care for and help victims of trafficking more effectively.\textsuperscript{85} Canada needs to follow this approach by beginning to provide its own contributions to the fight against human trafficking both domestically and globally.

2.3.5 Failure to protect victims

Canada's efforts to solve this problem have been even more troublesome in the area of victim protection. Even if trafficking victims are allowed to stay on humanitarian grounds, there is no national witness protection program available to safeguard their safety and well being while in Canada.\textsuperscript{86} Without providing guaranteed assistance and protection to victims it is difficult to gain their trust and cooperation in testifying against their traffickers. Victim protection is essential in the fight against human trafficking since victims provide evidence and information needed to convict and identify growing trafficking rings. Their protection and subsequent cooperation provide a missing piece in

\textsuperscript{85} \textit{Ibid.}
\textsuperscript{86} \textit{See Immigration and Refugee Protection Act} and \textit{Bill C-49}.
the strategy to create an effective plan to combat human trafficking in order to prevent a continued cycle of exploitation for themselves and future generations to come.

Furthermore, adopting a national policy of detaining and deporting trafficking victims undermines the effort to combat human trafficking by sending the wrong message. These are women and children who have been severely abused and traumatized. They are fearful of placing their trust in the legal system especially if they have been detained and treated as criminals. By retaining this policy it sends the message that victims do not deserve guaranteed support and services by the government of Canada. A new message needs to be created through new legislation or national policy that human freedom, dignity, and safety will be safeguarded under Canadian law.

Under Canadian law victims are not guaranteed basic survival services nor are they assured access to interpreters, legal advice, or counseling. These are essential services needed to stop the influx of trafficking into Canada as a part of a multidisciplinary approach. Until more resources are expended to help these victims in Canada, then more women and children will continue to fall prey into a life that has no hope for a better future.

2.3.6 Lack of national programs for support and rehabilitation

Canada’s current laws for combating human trafficking have also inadvertently contributed to the problem by failing to create a national program or mandate for victim rehabilitation back into society. Even if they are allowed to stay in Canada there is no

\[87\] Ibid.
program to support their transition and rehabilitation into a normal life. One of the important challenges for lawmakers is to provide more resources not only to prevent this activity in the United States and Canada but also to create an extensive network of support for victims to rehabilitate and reintegrate back into society. Even though Canada is a transit and destination point for human trafficking, there is no formal policy or program to provide adequate services such as psychological counseling, education, and training to assist in the reintegration of victims.

Without a national mandate to provide rehabilitation, there will continue to be no cohesive, coordinated, national response to a growing problem. Until drastic changes occur in Canada through new legislation that provides necessary social services; victims will continue to be shipped into and through Canada and traffickers will continue to exploit the gaps in Canadian law that have helped perpetuate this problem.

2.3.7 Lack of public awareness

The final way in which Canada’s current laws for combating human trafficking have inadvertently contributed to the problem is by the failure of lawmakers to make public awareness and the education of Canada’s trafficking problem a priority for law enforcement officials and the public at large. There is a need for greater training to educate law enforcement officials in Canada on adequate response mechanisms especially towards women and children. Presently, the legal system and law enforcement officials in most areas of Canada and the United States are unstaffed and ill equipped to deal with the victims of human trafficking arriving into North America especially in such

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areas as Texas, Arizona, California, New Jersey, Quebec, British Columbia, and Ontario. There needs to be a greater vigilance and surveillance on shipments from abroad. One case in the United States reported a child being placed in a piñata and illegally smuggled through the U.S. - Mexican border.\textsuperscript{89} Traffickers have become increasingly clever in finding mechanisms to smuggle individuals across borders.

A series of training workshops for law enforcement officials, enhanced border patrols, heightened outreach programs and community-sponsored initiatives are needed in educating those who have an opportunity to help victims directly. Currently, the Royal Canadian Mounted Police has a Human Trafficking Awareness unit established in Vancouver. The legal and law enforcement systems in other local areas in British Columbia, Washington state and Toronto need to have more effective mechanisms for dealing with women and children through training and workshops that increase awareness and do not victimize trafficked individuals further by reinforcing their "criminal" activity.

3 OBSTACLES TO COMBATING HUMAN TRAFFICKING AND POSSIBLE SOLUTIONS

3.1 Canada’s visa policy

In addition to the inadequate statutory scheme of human trafficking laws in Canada, another contributing factor related to this country’s failure to adequately help victims also stems from Canada’s immigration visa guidelines. Currently, citizens of forty-six countries require no visa to visit Canada. Flexible visa requirements to visit Canada may have made it easier for traffickers to bring women into this country and then smuggle them into the United States.

Currently, there are no visa requirements for visitors of certain nations such as Korea. Organized crime units have exploited Canada’s visa waiver rules to bring South Korean women into Canada bound for the United States without inspection. A study by the Canadian federal government warned of “significant gaps” in Canada’s strategy to combat organized criminal units and the related crimes that have emerged due to the discrepancies.

Over half of those smuggled into Canada are young female Koreans who are severely impoverished and taken to the United States for sexual slavery. These young women are recruited by brokers in Seoul responding to a demand in Los Angeles, New York, Seattle, and San Francisco. They are flown to Vancouver and mixed in with

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90 Countries and Territories Whose Citizens Require Visas in Order to Enter Canada as Visitors, Citizenship and Immigration Canada, found at http://www.cic.gc.ca/english/visit/visas.html
92 Ibid.
93 Ibid.
94 Daphne Bramham and Amy O’Brian, “Profiting from Flesh and Blood: Vancouver a
legitimate tour groups or with families.\textsuperscript{95} An analysis of airline passenger information reveals that twenty five percent less Korean tourists return to Korea.\textsuperscript{96}

The United States \textit{Trafficking in Person's Report of 2005} had warned that British Columbia was becoming an "attractive hub" for Asian traffickers while the government's anti-trafficking legislation had produced few results.\textsuperscript{97} The report raised concerns over the lack of visa requirement for South Koreans and other ethnic minorities and the reality that traffickers could be abusing this policy.\textsuperscript{98} The majority of the women and children smuggled into Canada for human trafficking are bound for the United States.\textsuperscript{99} Yet, these victims easily blend in immigrant populations in Vancouver and other Canadian cities until they are illegally transported across the border.

3.2 Protecting the border

Human trafficking across the U.S. - Canadian border is heightened by the fact that safeguarding and protecting the border is an extremely difficult task. It has been reported that Canada does not have the resources to adequately protect the border and ports as compared with the United States.\textsuperscript{100} However, after a two year investigation on February 14, 2006 an international ring attempting to smuggle over 100 immigrants from Korea, China, Albania, and Eastern Europe was dismantled by the United States

\begin{flushright}
Hot Spot for Trafficking in Migrants, Who Are Then Exploited to Pay Debts,"
Vancouver Sun, 7 May 2004.
95 \textit{Ibid.}
97 United States Department of State, \textit{Trafficking in Person's Report}, Section on Canada page 79, June 2005
98 \textit{Ibid.}
99 United States Department of Justice website, found at www.usdoj.gov/trafficking.
100 \textit{Ibid.}
\end{flushright}
Department of Homeland Security Immigration and Customs Enforcement, Royal
Canadian Mounted Police, and the Canada Border Services Agency.¹⁰¹

The majority of these immigrants, over seventy-six, were being smuggled from
Canada into the United States on small boats, trunks of automobiles, rail cars, and in the
back of transport trucks.¹⁰² Over seventeen arrests were made from this collaborative
investigation.¹⁰³ This case showed the importance and increased cooperation needed in
protecting the borders between the United States and Canada. Border patrols and
heightened collaboration between law enforcement agencies in both countries will remain
a key component and a challenge in fighting this international problem.

3.3 Challenges in identifying victims and tracking progress

A contributing factor related to this country’s difficulty in helping victims stems
from the inability of law enforcement officials to adequately identify trafficked women
and children in this complex, underground, and illegal activity. According to the United
States Trafficking in Persons Report this difficulty in detecting victims has undermined
the country’s ability to adequately combat the problem.¹⁰⁴

The means by which traffickers have illegally exploited and smuggled women
into Canada has also added to the difficulty for law enforcement officials to identify
victims. An eighteen-month investigation by the Calgary police in 2003 revealed that
some women arrived into Canada on student or visitor visas from Malaysia, Thailand,

Dismantled by Canada and the United States,” February 14, 2006 found at
http://www.rcmp-grc.gc.ca/on/press/2006/06-12-14_iandp_oboy_e.htm
¹⁰² Ibid.
¹⁰³ Ibid.
¹⁰⁴ Ibid.
and Vietnam.\textsuperscript{105} Traffickers hide them in clandestine immigrant communities by purchasing forged certificates stating that they were certified massage therapists.\textsuperscript{106} The women were circulated from one city to another and disappeared into the Asian communities of Calgary, Toronto, and Vancouver before police uncovered the operation.\textsuperscript{107} This migration of victims between Canadian cities and their status as students or visitors has contributed to this country's difficulty in adequately identifying and helping victims.

Another contributing factor to Canada’s problems in combating human trafficking is the inability to track real progress. Due to its underground nature, there is no real mechanism to understand the actual number of victims or the progress of law enforcement officials in North America and around the world. This inability to fully understand the progress (if any) makes it challenging to create solutions to combat and prevent an almost “invisible” dilemma.

Also, since many trafficking cases remain undiscovered and victims are often unwilling or afraid to discuss their hardships it is challenging to gain first hand information.\textsuperscript{108} As a result, it is almost impossible to gain accurate identification or statistics on the total number of victims in any given country or even an adequate representation of the population.\textsuperscript{109}

The total number of trafficking victims will remain unknown and this uncertainty

\textsuperscript{105} Mike D’Amour, “Girls Enslaved by Pimps on Asian Circuit,” Calgary Sun, 7 November 2003.
\textsuperscript{106} Ibid.
\textsuperscript{107} Ibid.
\textsuperscript{109} Ibid.
will contribute to the problem. Accurate statistics on victims of trafficking in Canada and around the world are an important piece in combating this problem since understanding the severity of the issue can provide vital information on the true effectiveness of current strategies. This information can give clues as to whether serious modifications are needed or even if a complete overhaul is necessary to more effectively combat this problem. As a result, there is a serious need to generate more mechanisms, methodologies, or processes that will provide accurate statistics on the trafficking problem in Canada and the United States.

3.4 Problems with research concerning human trafficking

Current data on human trafficking is flawed on domestic and international levels since it is either based on general estimations created upon unclear methodologies or unreliable administrative information by organizations or authorities.\textsuperscript{110} This data has contributed to the confusion as to whether current methods of counter-trafficking are effective and the true magnitude of the problem in North America.

The gap in scholarly work on the problem of trafficking in North America has also contributed to this country’s failure to effectively combat the problem. There is a need for greater research on human trafficking in North America since so much of the scholarly work focuses on human trafficking in areas such as Asia and Eastern Europe.\textsuperscript{111} Enhanced scholarly work is significant part in the fight against human trafficking since

\textsuperscript{110}Ibid.

\textsuperscript{111}A search of the following databases: Google Scholar, Web of Knowledge, Geobase, LexisNexis Academia, Yahoo, Altavista, Academia Search Premier, and Exalead showed on average there were seven to eight times more articles on human trafficking in Eastern Europe and Asia then North America.
informed and accurate research could facilitate and encourage changes in national policy, effective legislation, and national programs aimed at helping victims.

Until the problem and the discrepancies in combating human trafficking are fully understood and addressed, there is less chance of implementing real change that can adequately fill the legal and immigration gaps that are inadvertently perpetuating the problem. The needs of women and children and the current services in North America must be thoroughly understood and examined. Without such understanding and suggestions for change, this problem will continue to grow in North America as it has around the world. Furthermore, any research needs to be disseminated to the public through the media and other avenues of public discussion to further facilitate necessary changes in the public’s involvement in fighting this crime through victim identification.

3.5 Effective protection necessary for victims of trafficking

In addition to accurate information, another important change necessary to effectively combat the problem is the implementation and understanding of the type of protection necessary for victims of trafficking in Canada. There is a need for more than the traditional form of protection such as the witness protection program and also a strategy on how protection plays a pivotal role in fighting this criminal behavior.

Even with the critical significance of prosecuting trafficking cases, it would be a mistake to categorize the protection of trafficking victims only in the context of testimony at trial. Due to the sensitive nature of their circumstance, trafficking victims need a broader category of protection that provides them with safety against retribution from traffickers and also a different level of protection that gives them the opportunity to
break free from the web of trafficking.

These women and children need protection whether they are being treated in a local hospital, planning to testify, assisting with criminal investigations, or even if hiding in a private residence. When examining victim protection, it needs to be recognized as more than just witness safety but also the right to secure justice and preserve basic human rights. They need protection that will help them rebuild their lives in order to avoid falling back into the cycle of trafficking and poverty.

It is important to explain that increased protection and related services will not create an incentive for women and children to become victims of trafficking for two important reasons. First, the majority of victims of trafficking are deceived into believing that a legitimate job awaits them, therefore, there are not even aware that they will become victims of trafficking. Yet most importantly, these women and children come from extreme poverty and have little to no knowledge about Canada’s statutory scheme or that protection and services may be available if they are fortunate enough to be rescued and saved from indentured servitude. Therefore, given the circumstances of the problem, protection does not give victims an incentive to sell themselves into slavery.

It is important that legislative reform that provides victims with protection help them to escape trafficking and also assist in restoring a sense of empowerment and dignity to lives that have been practically destroyed. By turning victims into survivors and by empowering them they can help combat this horrendous crime and prevent other mothers and daughters from experiencing the same atrocity. The violation of human dignity and basic rights lies at the core of human trafficking, therefore any effort to solve it should help affirm and restore those basic rights. An important step towards this goal
is the need for new legislation in Canada that helps restore victims’ power and rights.

3.6 Potential legislative solutions in Canada

In order to help fulfill these objectives and more effectively combat human trafficking the type of legislation that needs to be passed in Canada should help accomplish the following goals. First, the legislation should allow victims of trafficking to remain in Canada throughout the duration of any criminal investigation or proceeding with free access to essential services such as housing, ongoing medical care, psychological services, and training that will allow them to rebuild their lives and reintegrate back into society. They should be given temporary resident status to further these goals and remain in the country during the investigation and/or prosecution.

Temporary resident status could be fulfilled through the creation of a modified version of the United States T-visa that allows victims the ability to remain in the country and have access to essential services. When creating a modified version of the U.S. T-visa it would be helpful to create guidelines that prevent against the abuse or misuse of such a visa. However these specific standards would need to be balanced against the goal of making the T-visa accessible to victims without creating such rigid guidelines to prevent the misuse that most victims would be denied such a visa due to a high standard of proof that may be difficult to achieve. Policymakers need to continuously balance the need to protect the most vulnerable against the desire to prevent deception. This could be one of the most challenging aspects to creating a modified version of the U.S. T-visa that is more effective and helpful.

It is would also be important that victims of trafficking have the opportunity to
remain in this country even if they are initially unable to assist with law enforcement investigations and/or inquiries. Their dignity and basic human rights transcends their cooperation or assistance in an investigation. There is a great need for counseling in this circumstance that could help victims overcome the tremendous amount of trauma that prevents them from trusting and revealing private details to experts, officials, or caregivers. It is vital not to punish and deport victims outside the country because of the insurmountable trauma and abuse that has left them unable to help law enforcement officials or cope with their circumstance.

Legislation should also allow victims who are fearful of retaliation or stigma upon returning to their country of origin to apply for permanent residence. It is important that the legislation not create any unnecessary difficulties or restrictions in gaining such status. The danger with creating rigid standards that accompany these provision is that victims will not be able to gain residence due to a difficulty or lengthy process that inadvertently make the section ineffective in helping victims that need it to survive.

It is also necessary to give women and children immunity for any immigration violations or crimes related to trafficking such as prostitution. This prevents the re-victimization of women and children and provides protection against future prosecutions. It is noteworthy to have specific provisions that provide heightened protection to children under eighteen by guaranteeing ongoing physical or mental care, training and education to help them break free from the cycle of trafficking. With new legislation that fulfills these broader goals and empowers women, protection would take a broader approach that could become an effective component in the nation’s anti-trafficking strategy.

Therefore, within the next decade one of Canada’s greatest challenges is to
become more actively involved in combating human trafficking in a multidisciplinary approach that includes more than passing legislation aimed only towards prosecution of traffickers. Until Canada makes victims a priority then this country will continue to lose the battle in combating human trafficking. This new approach can begin with the implementation of a national policy and legislation to create safe houses and crisis centers in major metropolitan cities such as Vancouver and Toronto that can adequately care for victims of human trafficking. There is also a strong need for heightened public awareness and coordinated efforts between law enforcement officials and government agencies to identify victims, protect the most vulnerable, as well as increase prosecutions. The government’s ability to identify these victims while adequately providing assistance and protection will be a key element in combating human trafficking within the next decade.
4 THE UNITED STATES RESPONSE TO HUMAN TRAFFICKING

4.1 Legal mechanisms to combat human trafficking in the United States

The United States has taken a drastically different approach to combating human trafficking with the passage of the *Trafficking Victims Protection Acts of 2000* and the *Reauthorization Acts of 2003 and 2005*. Prior to these pieces of legislation, other laws were available in the United States to prohibit indentured servitude and slavery. However, none of these provisions provided assistance and/or protection to victims of human trafficking until the passage of the *Trafficking Victims Protection Act of 2000*. 
<table>
<thead>
<tr>
<th>Table 4.1 United States Legislation Aimed to Prohibit Indentured Servitude and Slavery Prior to the Trafficking Victims Protection Act of 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Thirteenth Amendment to the United States Constitution</td>
</tr>
<tr>
<td>Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.</td>
</tr>
<tr>
<td>♦ 18 United States Code Section 1589</td>
</tr>
<tr>
<td>Whoever knowingly provides or obtains the labor or services of a person: 1) by threats of serious harm to, or physical restraint against, that person or another person; 2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or 3) by means of the abuse or threatened abuse of law or the legal profession,</td>
</tr>
<tr>
<td>Shall be fined under this title or imprisoned not more than 20 years, or both.</td>
</tr>
<tr>
<td>If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.</td>
</tr>
<tr>
<td>♦ 18 United States Code Section 1590</td>
</tr>
<tr>
<td>Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labour or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both.</td>
</tr>
<tr>
<td>If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.</td>
</tr>
<tr>
<td>♦ 18 United States Code Section 1592</td>
</tr>
<tr>
<td>Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.</td>
</tr>
<tr>
<td>With intent to violate Section 1581, 1583, 1584, 1589, 1590, 1591, or 1594; Or</td>
</tr>
<tr>
<td>To prevent or restrict or to attempt to prevent or restrict, with out lawful authority the person’s liberty to move or travel, in order to maintain the labor or services of that person.</td>
</tr>
<tr>
<td>Shall be fined under this title or imprisoned for not more than 5 years, or both.</td>
</tr>
</tbody>
</table>
4.1.1 The Trafficking Victims Protection Act

In 2000, a new law was passed by Congress that made human trafficking a criminal offense under the United States statutory scheme.\textsuperscript{112} This groundbreaking piece of legislation aimed to combat the problem both domestically and internationally. The \textit{United States Trafficking Victims Protection Act of 2000} was the first comprehensive piece of national legislation to increase public awareness nationally and globally, provide funds to help combat the problem around the world while also increasing the punishment and law enforcement capabilities to deal with this issue in the United States.\textsuperscript{113}

Under this law, victims became eligible for a broad range of benefits and services regardless of immigration status.\textsuperscript{114} While under the protection of law enforcement officials, victims have access to shelter, medical assistance, legal aid, and translation services to inform them of their rights.\textsuperscript{115} Victims also became eligible for the Witness Protection Program\textsuperscript{116} in the U.S. while grants were created to fund non-governmental organizations helping victims of trafficking around the world.\textsuperscript{117} An increase in sentencing traffickers from up to ten to twenty years in prison.\textsuperscript{118} This anti-trafficking law also authorized almost $300 million dollars over a two-year period for international and national programs to combat human trafficking in 2000 and 2001 alone.\textsuperscript{119}

The \textit{Trafficking Victims Protection Act of 2000} indicated a significant change in U.S. immigration law and policy since it provided protection and services to

\begin{footnotes}
\item[112] \textit{United States Trafficking Victims Protection Act of 2000}.
\item[113] See \textit{United States Trafficking Victims Protection Act of 2000}.
\item[114] \textit{United States Trafficking Victims Protection Act of 2000, Section 107(a)(1)}
\item[115] \textit{United States Trafficking Victims Protection Act of 2000, Section 107(c)(1)}.
\item[116] \textit{United States Trafficking Victims Protection Act of 2000, Section 112}.
\item[117] \textit{United States Trafficking Victims Protection Act of 2000, Section 107(a)(1)}.
\item[118] \textit{United States Trafficking Victims Protection Act of 2000, Section 112}.
\item[119] \textit{United States Trafficking Victims Protection Act of 2000 Section 6}.
\end{footnotes}
undocumented illegal aliens based upon their status as victims of trafficking.\textsuperscript{120} Prior to this law, they were misidentified as criminals and deported to their country of origin.\textsuperscript{121} The \textit{Trafficking Victims Protection Act} reflected a shift in public policy that attempted to not only end the stigmatization of trafficked victims but also the proliferation through a multidimensional approach that put victims in the center of combating a complex problem.\textsuperscript{122}

4.1.2 Trafficking Victims Protection Reauthorization Act of 2003 and 2005

In 2003, the \textit{Trafficking Victims Protection Reauthorization Act} (TVPRA) was passed. It was amended in December 2003 and called for enhanced prosecution of traffickers, greater assistance for family members of victims, and increased cooperation between foreign governments.\textsuperscript{123} It also allowed victims to sue traffickers in criminal court and for the government to end international contracts with companies or individuals found to be engaged in exploiting employees through practices of human trafficking.\textsuperscript{124}

On December 21, 2005 the United States Congress passed the \textit{Trafficking Victims Protection Reauthorization Act of 2005}. According to the Congressional Budget Office the new bill will provide $361 million to fight human trafficking both domestically and abroad over the next two years.\textsuperscript{125} It directs the United States Agency for International Development, the Department of State, and the Department of Defense to “incorporate

\textsuperscript{121} \textit{Ibid.}
\textsuperscript{122} \textit{Ibid.}
\textsuperscript{123} \textit{United States Trafficking Victims Protection Reauthorization Act 2003} Section 3.
\textsuperscript{124} \textit{Ibid} at Section 4.
\textsuperscript{125} Vital Voices Statement on the Passage of TVPRA 2005, found at \texttt{http://www.vitalvoices.org/desktopdefault.aspx?page_id=300}.
anti-trafficking and protection measures for vulnerable populations, particular women and children, into their post-conflict and humanitarian emergency assistance and program activities.\textsuperscript{126} It also directs the United States Agency for International Development to create a pilot program that establishes residential treatment facilities in foreign countries for victims of trafficking.\textsuperscript{127} The purpose of this pilot program is to provide services and benefits to victims including shelter, counseling, and transitional assistance to independent living.\textsuperscript{128}

4.2 The United States Department of Justice

The United States Department of Justice has also made combating human trafficking "a top civil rights priority."\textsuperscript{129} In 2005 the Civil Rights Division of the United States Department of Justice charged 120 traffickers in over 30 cases.\textsuperscript{130} In 2004 the Criminal Section initiated prosecutions of 60 traffickers.\textsuperscript{131} As of April 2004, the Justice Department had opened 153 trafficking investigations – twice as many as compared with the three previous years.\textsuperscript{132} The Civil Rights Division has also expanded their international efforts to combat human trafficking by working collaboratively with other countries. The Criminal Division’s Office of Prosecutorial Development,

\textsuperscript{126} \textit{Trafficking Victims Protection Reauthorization Act of 2005}, Section 101 (h).
\textsuperscript{127} \textit{Ibid} at Section 102 (2).
\textsuperscript{128} \textit{Ibid} at Section 102 (3).
\textsuperscript{129} United States Department of Justice website, found at \url{www.usdoj.gov/trafficking}
\textsuperscript{131} \textit{Ibid}.
\textsuperscript{132} United States Department of State, \textit{Trafficking in Person’s Report}, June 2004, p. 258.
Assistance and Training (OPDAT) has worked closely with the U.S. State Department and the governments of Bosnia, Bulgaria, and Romania to provide technical assistance in drafting anti-trafficking legislation, assisting with prosecutions, and providing help with the formation of anti-trafficking task forces. In 2002, OPDAT also provided assistance in child trafficking cases to prosecutors, investigators, and child advocates in Sri Lanka, Pakistan, Bangladesh, and Nepal.\(^\text{133}\)

4.3 Strengthening and Weaknesses of the Trafficking Victims Protection Act

Overall, the *Trafficking Victims Protection Act* and the subsequent reauthorizations have significant strengths and weaknesses. One of the strengths of these laws is their innovative approach at combating human trafficking on a multidimensional level. The legislation provides humanitarian aid while fighting the crime of trafficking more aggressively through prosecutions, public outreach, education, and law enforcement capabilities. These laws have demonstrated the United States commitment to counter-trafficking measures both domestically and internationally with the implementation of programs and millions of dollars of support towards such endeavors.

One of the most important and problematic provisions of the *U.S. Trafficking Victims Protection Act of 2000* was the creation of T-visas. Victims of human trafficking into the United States can apply for a T-visa to remain in the country if they can prove that 1) they were brought into the United States by force, coercion, or deception and 2) returning to their country of origin would create a substantial hardship.\(^\text{134}\) Statutorily, there is no requirement to assist in prosecutions and investigations to gain such a visa.

\(^{133}\) United States Department of Justice website, found at [www.usdoj.gov/trafficking](http://www.usdoj.gov/trafficking)

\(^{134}\) *United States Trafficking Victims Protection Act of 2000*, Section 107(c)(3).
However, under the T-visa regulation to be granted such a visa requires evidence that the applicant is a victim of severe form of trafficking.135 Law enforcement endorsement is not required in providing such evidence, however, a standard form is available for law enforcement agencies that documents an individual as a victim of severe trafficking and that he/she has cooperated with reasonable requests for assistance.136 This serves as primary evidence of a victims eligibility for such a visa and is “strongly encouraged.”137

Another problem with the T-visa is that during 2000 - 2003 less than 300 such visas were issued in the United States.138 Critics were disheartened with this number especially since the United States Department of Justice estimates that every year up to 17,500 victims of human trafficking are brought into the U.S.139 It has raised concerns that the difficulty in obtaining a T-visa could undermine the very reason for its existence and weaken it as a tool for helping victims and combating the problem.140

When creating new legislation, Canada could learn from the mistakes of the United States Trafficking Victims Protection Act and create a modified version of the T-visa that would allow victims of trafficking to remain in this country without creating such internal barriers that makes the provision problematic. The closest Canadian equivalent to a U.S. T-visa is in the Humanitarian and Compassionate Provision of the Canadian Immigration and Refugee Protection Act. This allows the Minister to grant a

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136 Ibid.
137 Ibid.
140 Ibid.
foreign national resident status "if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations."\textsuperscript{141} From January – September 2005, almost three thousand humanitarian and compassionate applications were approved in Canada while almost two thousand were refused acceptance.\textsuperscript{142} The number of these applications for victims of trafficking are presently unknown. Currently, their needs to be better statistics available on how many victims of trafficking apply for this status (if any) and if their applications are successful. Without such data, it is difficult to determine if this provision is assisting in the fight against human trafficking or if victims are being denied this opportunity.

\textsuperscript{141} Immigration and Refugee Protection Act, SC 2001 c. 27, Section 25.
\textsuperscript{142} Statistics provided by CIC Selection Branch to CCR and Canadian Bar Association, November 2005.
5 DIFFERENCES BETWEEN THE UNITED STATES AND CANADA’S APPROACH TO HUMAN TRAFFICKING

5.1 Overall differences in national anti-trafficking strategies

Some of the different methods between the two countries in combating this problem can be summarized in Table 5.1.
Table 5.1 Approaches to Combating Human Trafficking in the United States and Canada

<table>
<thead>
<tr>
<th>National Approach</th>
<th>United States</th>
<th>Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim Identification</td>
<td>In February 2000, the “Trafficking in Persons and Worker Exploitation Task Force Complaint Line,&quot; was established to assist in victim identification around the country. The number is 1-888-428-7581.</td>
<td>No national program available.</td>
</tr>
<tr>
<td>Mechanism for Victims to Access Services</td>
<td>The United States Department of Health and Human Services (HHS) provides certification and eligibility letters for victims that allow them to access most benefits and services comparable to the assistance provided to refugees.</td>
<td>No national program available or mandated by law.</td>
</tr>
<tr>
<td>Victim Protection</td>
<td>The Office for Victims of Crime (OVC) offers victim support and protection services. The witness protection program also offers national protection to victims of trafficking.</td>
<td>No national program available or mandated by law.</td>
</tr>
<tr>
<td>Legal Services</td>
<td>Since the passage of the Trafficking Victims Protection Act, the Legal Services Corporation must make available legal assistance to trafficking victims.</td>
<td>No national program available.</td>
</tr>
<tr>
<td>Specialized Unit to Combat Trafficking</td>
<td>FBI Anti-Trafficking Force working with the Department of Justice Civil Rights Division Anti-Trafficking Unit – currently over a 150 trafficking cases are open.</td>
<td>Royal Mounted Canadian Police Human Trafficking Awareness Program</td>
</tr>
<tr>
<td>International Activity</td>
<td>In 2003, the U.S. Government supported approximately 190 anti-trafficking programs totaling $72.2 million, and benefiting over 92 countries, up from 118 programs in 55 countries in 2001. The U.S. has invested $147.5 million on anti-trafficking efforts over the last two years from small projects to million-dollar programs to comprehensive regional and national strategies to combat the worst forms of child labor.</td>
<td>No information available.</td>
</tr>
</tbody>
</table>

5.2 A comparison of the legal responses

Extensive research has uncovered no piece of literature or report that has attempted to understand the reasons behind the United States and Canada's varied approaches to combating human trafficking. Since the investigation into this inquiry has been nonexistent among scholars and media officials any explanations are merely speculative at this point.

While attempting to explain the differences between the United States and Canada's approach to combat human trafficking it is important to begin with the laws. With the *Trafficking Persons Protection Act of 2000* and the *Reauthorizations of 2003 and 2005*, the United States has taken a more multidisciplinary approach to combating human trafficking than Canada which deals with the problem from a variety of different dimensions and requires by law victim protection, services, and assistance.\textsuperscript{143} The *Act* and preceding amendments aim to assist victims, educate law enforcement officials and attorneys, heighten penalties and punishments against traffickers, and provide funds for agencies and organizations combating this problem in the United States and around the world.\textsuperscript{144}

Furthermore, the *Trafficking Victims Protection Act of 2000* mandates the creation of the *Trafficking in Persons Report* released by the U.S. State Department every year.\textsuperscript{145} This has also played an important role. In addition to raising public awareness about

\textsuperscript{143} United States Trafficking Victims Protection Act of 2000, Section 107(c)(1) and 112.
\textsuperscript{144} Ibid. at Sections 107, 112, and 134.
\textsuperscript{145} Ibid. at Section 110.
trafficking around the world and the United States the report divides countries into three tiers based on their compliance with the minimum standards for the elimination of human trafficking.\textsuperscript{146} If a country is placed on the lowest tier (tier three) then Section 110 of the \textit{Trafficking Victims Protection Act} calls for the imposition of sanctions upon that country which prohibits the flow of any non-humanitarian, non-trade related foreign aid to that nation's government.\textsuperscript{147} The report “calls for taking action, that is to say imposing sanctions, against governments that do not recognize the magnitude of the problem, are not serious about initiating programs to protect victims of trafficking, and lack the political will to punish the traffickers.”\textsuperscript{148} In this sense, the report helps to hold government's accountable based upon their efforts (or lack thereof) to combat human trafficking.

While the \textit{Trafficking Victims Protection Act} and the subsequent amendments have been multidisciplinary in nature Canada's laws to combat human trafficking, \textit{Bill C-49} and the \textit{Immigration and Refugee Protection Act}, have been one-dimensional by focusing only on the criminal aspect of trafficking and the goal of increasing prosecutions (without success) without attention to victim protection, assistance, and/or identification. Why have these laws been created in such drastically different ways?

5.3 The role of advocacy work and non-governmental organizations

One possible explanation to why the counter-trafficking laws in the United States and Canada have been so drastically different can be found in the advocacy groups in the

\textsuperscript{147} United States \textit{Trafficking Victims Protection Act of 2000}, Section 110.
\textsuperscript{148} Protection Project sponsored by John Hopkins University, Commentary Section, found at \url{www.protectionproject.org/commentary/matter9-14.htm}. 

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U.S., such as Vital Voices in Washington, D.C., that played a significant role in drafting the *Trafficking Victims Protection Act* and the subsequent amendments in 2003 and 2005.\(^{149}\)

Vital Voices has worked around the world to educate public officials and leaders in the United States and in such countries as Japan, Philippines, Ukraine, Russia, and Taiwan on the issue of human trafficking and the need to combat it on a various levels both legislatively and through the work of non-governmental organizations.\(^{150}\) This organizations and forty-five other organizations and campaigns in the United States have been devoted to and involved in anti-trafficking education, victim protection, legal services, public outreach, and/or increasing domestic and international awareness of the problem.\(^{151}\) Clearly, not all of these organizations were involved in drafting the

\(^{149}\) *Trafficking Victims Protection Act* Signed Into Law, Vital Voices Role in Helping Passage of the Law and Drafting, found at www.vitalvoices.org.


Trafficking Victims Protection Act however their presence and involvement in this cause could be a contributing factor to the multidisciplinary strategy that the United States has adopted concerning this issue.

In Canada there are few organizations devoted to and working towards anti-trafficking. In Vancouver, some of these organizations have been hesitant to come forward and advertise their role or involvement in counter-trafficking measures. This has been attributed to the fact that some of these organizations are filled with individuals who work on a part-time volunteer basis and do not have the resources to take on greater responsibility or inquiry from the public. Their hesitation to even advertise their role puts into question their involvement in the fight against human trafficking and the ability for victims to find these organizations if their work and even phone numbers are discouraged from publication to outside sources.


Observer to meeting between government officials and representatives from counter-trafficking non-governmental organizations in Vancouver on November 26, 2005, this statement was confirmed by Norrie de Valencier, Trafficking Network Canadian Council for Refugees Coordinator.

Ibid.
However, currently there are six large scale organizations with paid staff in Canada that have been actively and publicly involved in combating human trafficking.\footnote{Canadian Council for Refugees, http://www.web.net/~ccr/; Canadian Red Cross, www.redcross.ca/; Royal Canadian Mounted Police Human Trafficking Awareness Program, Amnesty International in Canada, www.amnesty.ca; Beyond Borders, www.beyondborders.org} The Canadian Council for Refugees, Canadian Red Cross, Royal Canadian Mounted Police Human Trafficking Awareness Program, Amnesty International in Canada, Beyond Borders, and the Future Group have all publicized their efforts and been involved in a range of activities from raising public awareness to directly helping victims of trafficking. To date, the Royal Canadian Mounted Police Human Trafficking Awareness Program has attempted to develop agreements between government ministries, law enforcement, and certain non-governmental organizations to create a cohesive network of support.\footnote{Observer to meeting between government officials and representatives from counter-trafficking non-governmental organizations in Vancouver on November 26, 2005.} However, no official program or agreement has been created.\footnote{Ibid.} Instead, several non-governmental organization representatives voiced their concern over establishing such a program due to failed previous attempts or problems.\footnote{Ibid.}

The difference in the approaches of both Canada and the United States could be partly attributed to the involvement of non-governmental organizations in the fight against human trafficking. As discussed above, in the United States organizations have been more vocal and involved in this issue to the extent of providing input and even assistance in the drafting the multidimensional legislation and further advocacy work to ensure its passage through Congress. There are presently almost ten times more counter-
trafficking organizations in the United States that have actively publicized not only the problem of trafficking but their involvement to help victims and raise public awareness. Advocacy work on behalf of victims that do not have the resources or the ability to speak for themselves could be a possible reason for the two countries different approaches at combating this problem.

In Canada, to encourage new legislation and a modification of the nation’s counter-trafficking strategy, non-governmental organizations need to become more publicly and privately involved in the national effort to eradicate modern day slavery. The resources for these victims need to be known among government and police officials as well as the public. It’s important for these organizations to work together to heighten their collective role in the nation’s new or modified approach to counter-trafficking.

It is also significant for these organizations to work together effectively to increase public awareness. One of the important challenges in the fight against human trafficking in North America and internationally is to lift the veil of silence that has allowed this oppressive behavior to flourish both domestically and internationally. In Canada there is a need to raise public awareness about this issue on all levels. This puts greater pressure on politicians and law enforcement officials to make human trafficking a priority. Furthermore, an increase in public awareness could also create a more vigilant public that can become one of the most effective components in combating human trafficking by assisting in the identification of victims. The Royal Canadian Mounted Police Human Trafficking Awareness Program has recognized this dimension in the fight
against human trafficking and as such has initiated public awareness campaigns in their effort to identify more victims.\footnote{Look Beneath the Surface - Community Responses to Human Trafficking Workshop, sponsored by the Canadian Red Cross and Canadian Council for Refugees 2005, November 26, 2005, Vancouver, British Columbia, Norm Massie, RCMP Human Trafficking Awareness Coordinator}

In addition to more active advocacy work on behalf of trafficking victims, there is a continuous need for heightened funds and resources for legal advocacy, aid, and research for victims of human trafficking in both countries. Currently, there is no legal advocacy program devoted to human trafficking in Canada. Unlike the United States, Canada does not have an organization or foundation devoted to providing free legal services to victims of trafficking. The United States has taken a different approach to this problem. Since the passage of the \textit{Trafficking Victims Protection Act of 2000}, the Legal Services Corporation must make available legal assistance and services to victims of trafficking in the United States.\footnote{\textit{United States Trafficking in Persons Report}, 2005 page 242.} Canada should follow this approach to further understand and assist victims of trafficking and heighten this country's involvement in the struggle to eradicate this problem.
6.1 The United Nations Protocol to combat trafficking in persons

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplements the United Nations Convention against Transnational Organized Crime (also referred to as the Protocol).\(^{160}\) It was adopted by the United Nations on November 15, 2000, and came into force on December 25, 2003.\(^{161}\) With 117 signatories, it has broad international support.\(^{162}\) Under Article 2 of the instrument, the purpose of the Protocol is to prevent and combat human trafficking, protect and assist victims of trafficking with respect to their human rights, and promote cooperation among nations to further meet those goals.\(^{163}\) The Protocol calls upon each State Party to adopt legislation and other necessary means to establish human trafficking as a criminal offence under that State Party’s domestic law.\(^{164}\)

Article 6 of the Protocol also calls upon signatories to protect victims of trafficking and provide assistance.\(^{165}\) However, this area of the Protocol is weak and


\(^{161}\) Ibid.


\(^{164}\) Ibid. at Article 5(1)

\(^{165}\) Ibid. at Article 6
problematic due to the language and specific wording that asks State Parties to “consider” implementing measures that are truly necessary for victim protection.

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) appropriate housing; (b) counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) medical, psychological and material assistance; and (d) employment, educational and training opportunities. ¹⁶⁶

By asking State Parties to “consider implementing” those protective measures such as housing, counselling, medical, and psychological assistance it does not create any real responsibility or accountability upon the State Parties. It is understandable that if the Protocol contained much stronger language that required State Parties to provide such benefits then less countries would have become signatories, however, does it justify a weak response to a much greater global problem? The answer is clearly and emphatically no.

However, in Article 6 the Protocol states that “each State Party shall endeavour to provide for the physical safety of victims” while within their territory.¹⁶⁷ It also calls upon each State Party to create a mechanism for victims to obtain compensation through the legal system of each nation to obtain compensation for any damages endured while in the midst of trafficking.¹⁶⁸ These provisions are stronger and call upon greater responsibility for both the international community to protect victims and individual State Parties who become signatories.

In Article 7, the Protocol asks State Parties to consider adopting legislation or other appropriate mechanisms that would allow victims of trafficking to remain within the country of destination either permanently or temporarily.\(^{169}\) To prevent trafficking, it calls upon State Parties to undertake mass media campaigns, research, and social and economic initiatives to combat and prevent the trafficking of persons along with policies or programs to build cooperation with non-governmental organizations or other organizations in society to help fight this problem within nations.\(^{170}\) Finally, in Article 10 it calls upon law enforcement agencies, when appropriate, to cooperate with one another through the exchange of data to more effectively combat this problem.\(^{171}\)


*Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims* was published by the Future Group, a Canadian based non-governmental organization devoted to combating human trafficking.\(^{172}\) This study evaluated the response of five developed countries in protecting and assisting victims of trafficking.\(^{173}\) The study concluded that the United States, Italy, Germany, Norway, Australia, and Sweden are complying with international obligations created under the


\(^{170}\) *Ibid.* at Article 9

\(^{171}\) *Ibid.* at Article 10


\(^{173}\) *Ibid.* at page 4
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.\textsuperscript{174}

However, the study found that Canada has “systematically failed to comply with its international obligations under the Protocol related to the protection of victims of trafficking.” The study called Canada’s response to dealing with trafficking victims as an “international embarrassment and contrary to best practices.”\textsuperscript{175} The authors gave the United States the highest marks for complying with the Protocol with a B+ ranking while Canada received the lowest with an F.\textsuperscript{176}

All of the eight developed countries in the study (Australia, Canada, Germany, Italy, Norway, Sweden, United States, and the United Kingdom) had signed and ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children yet received drastically different marks on their implementation of the United Nations instrument.\textsuperscript{177} Canada was giving an F marking by the study for several important reasons. First, the study explained that a lack of temporary residence permits or reflection period designed specifically for trafficking victims was very problematic especially since the refugee process has been inadequately suited for the needs of victims.\textsuperscript{178} Secondly, no government funding to support victims was also a large problem in Canada especially since law enforcement officials were “forced to seek out private charities or ad hoc hospital support for basic medical care.”\textsuperscript{179} Finally, another primary reason for Canada’s failure to meet its international obligations was because witness

\textsuperscript{174} Ibid.
\textsuperscript{175} Ibid.
\textsuperscript{176} Ibid.
\textsuperscript{177} Ibid. at page 8.
\textsuperscript{178} Ibid. at page 35.
\textsuperscript{179} Ibid.
protection had not been adjusted for the protection and needs of trafficking victims in the country.\textsuperscript{180}

Yet, even though the United States was given the highest mark in the study the authors still mentioned problems with that country's approach as well. The study discussed the government's excessive emphasis on trafficking victims cooperation with investigations as problematic especially since it is often tied to obtaining assistance.\textsuperscript{181} Non-governmental organizations have also mentioned the government's inability to provide long-term residency status. Some victims have turned to asylum procedures to remain longer within the country which is a timely process that may be unsuccessful.\textsuperscript{182} The study was very comprehensive in its description of the discrepancies in both countries anti-trafficking strategies and Canada's failure to live up to its international obligations under the \textit{Protocol}. 

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\textsuperscript{180} \textit{Ibid.} \\
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CONCLUSIONS AND OVERALL SUGGESTIONS TO FOSTER IMPROVEMENT

The fact is that neither country has been completely effective at combating human trafficking. The sad reality is that no country ever will. The United States has passed more legislation to provide protection, shelter, and services to victims while also working towards fighting the problem on an international level through international grants and technical assistance to foreign governments. Yet, there is still a tremendous gap in the number of victims rescued and the estimations of the number of victims that exist. As stated previously, it has been reported by the Department of State that up to 17,500 women and children are trafficked into the United States every year. However, every year less than 300 victims are identified in the United States. It is difficult to estimate whether the gap is larger in the United States than Canada since Canada does not publish statistics on how many victims of trafficking are identified and released from indentured servitude.

However, it is acknowledged that the majority of victims of trafficking disappear. This shows a serious lack in the ability to effectively combat this problem and identify victims and traffickers who have repeatedly used the United States and Canada as routes to slavery. Instead of assisting to eradicate the problem, Canadian laws to combat human trafficking have exacerbated the problem by (1) re-victimizing women and children, (2) failing to assist prosecutions and investigations, (3) helping traffickers

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184 Assessment of U.S. Government Activities to Combat Trafficking in Persons, found at the United States Department of Justice website, found at http://www.usdoj.gov/whatwedo/whatwedo_ctip.html
185 Ibid.
circumvent domestic laws, (4) failing to deal with the root causes of trafficking, (5) failing to protect victims, (6) not creating national programs for support and rehabilitation, and (7) not making public awareness of trafficking a priority for law enforcement officials and the public. There is an urgent need for a new type of law reform agenda that adequately addresses and rectifies these problems through comprehensive legislation that provides victim assistance, protection, and services.

Another problem is the barrier to social justice. Since these victims are primarily uneducated and speak little English, there needs to be specially trained legal assistance and advocacy in Canada that works directly on behalf of victims to ensure equity within the legal system. Areas that would benefit most from this service include British Columbia, Ontario, Quebec, Alberta, and Saskatchewan. Victims of human trafficking have very little education and are unaware of their rights. As such it is important to have local safeguards to prevent victims from falling prey to a judicial system they overwhelmingly fear and have little understanding of.

Human trafficking in North America is a complex issue that requires the collaborative efforts of the legal system, social services, and the public to truly fight this problem. It also requires a multidisciplinary approach that adequately responds to the unique challenges created by this modern day form of slavery. Unless changes are implemented especially in Canada these women and children will remain voiceless and oppressed in a land that prides itself on democracy and freedom.

Another important issue is the increased need for cooperation between the United States and Canada to fight this epidemic together on their shared borders. One of the most important policy challenges within the next decade will be to strengthen cooperation
between law enforcement officials in both countries to apprehend and prosecute more traffickers as called upon by State Parties in the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. On February 16, 2006, a human smuggling ring was dismantled by Canadian and American authorities which highlighted the improvements in cooperation. In order to decrease the number of victims into North America and more effectively combat this problem, these investigations and coordinated efforts need to be enhanced across the border.

However, in Canada (and certain cases in the United States) traffickers have been deported back to their home country after apprehension with facing real consequences.\(^{186}\) This approach is dangerous since instead of deterring the activity this method can perpetuate the problem by sending traffickers back to the countries *that provide them with even more victims*. This discrepancy needs to be outlawed in both statutory schemes.

Furthermore, as the study by the Future Group explains Canada’s approach to protecting victims of human trafficking has been problematic at best.\(^ {187}\) The Canadian government needs to take responsibility for its international obligations that were voluntarily agreed upon when becoming a signatory to the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* in December 2000. The fact that Canada has no government funding or program for the

support, protection, and assistance of victims is a tremendous problem that needs to be rectified through new laws.

The reality is that human trafficking crosses jurisdictions, provinces, regions, and increasingly international borders. As such, the mechanisms to combat it must also reach higher levels of cooperation, protection, and assistance catered to the needs of victims. Without such understanding and the implementation of new programs and legislation that adequately assists victims then traffickers will continue to exploit not only the laws of both countries but also the lives of the women and children whom they destroy.
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