

BACKGROUND PAPER 5

CHILD VICTIMS OF TRAFFICKING

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Trafficking in persons is a consequence of the social and economic realities of societies, which have changed considerably because of globalization and the free market economy. Trafficked children are also separated or unaccompanied children, separated from parents and country of origin. Although concrete numbers are not available, due to its clandestine nature, the *International Organization for Migration* has estimated that between 700,000 and 2 million persons are victims of human trafficking. The United States estimates that trafficking in persons generates roughly US\$6billion a year, which it regards as the third largest source of profit for organized crime groups next to guns and narcotics. A study conducted by the Solicitor General of Canada concludes that the impact of immigrant trafficking in Canada is estimated at between \$12million to \$400million per year and accounts for approximately 8,000 to 16,000 people arriving in Canada each year.

The real figures on the numbers of people, especially women and children annually trafficked might be much higher, since trafficking in persons may occur not only across borders, but within borders, in different situations and forms and trafficking routes may be shifting. Different groups, agents or individuals may be involved in different phases of trafficking and in a variety of ways, dependent on the concrete national or international contexts. Yet, the vulnerability of children and their special needs, the negative impact of trafficking on their well-being and development, as well as the social costs these violations imply for the future call for urgent interventions to fight child trafficking. For example, victims are at high risk of contracting HIV/AIDS or other sexually transmitted diseases, enduring physical violence, and suffering lifelong and emotional damage. Those who manage to escape and return home might face shame, social stigma, family rejection, emotional distress and fear of retribution.

International Law

Trafficking in persons is not only a matter of security and crime control, but implies flagrant violations of a wide range of fundamental human and child rights. The protection and promotion of human and child rights are the primary responsibility of each State, and the creation of an environment in which these rights are respected is part of that. In the last few years, there has developed a myriad of international instruments dealing with different wordings of phenomena linked to, but not necessarily identical to, human trafficking and an international focus on eliminating the trafficking in persons, especially of women and children. Canada has signed and/or ratified various international instruments that relate to the trafficking of persons, including children. These instruments include the *United Nations Convention on the Rights of the Child* and its *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, *ILO Convention on the Worst Forms of Child Labour*, *United Nations Convention Against Transnational Organized Crime* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. While the 1924 and 1959 Declarations of the Rights of the Child, which protected children from exploitation was not legally binding, presently though, some children's rights conventions have emerged that do carry the weight of international law. Two of the most prominent are the *United*

Nations Convention on the Rights of the Child and ILO Convention on the Worst Forms of Child Labour.

USA and Canadian Legislation

In the year 2000, the US introduced the Victims of Trafficking and Violence Protection Act, which provides for a series of measures in favour of trafficking victims. As a result, they are eligible for benefits and services regardless of immigration status and federal grants are available to local governments and NGOs to expand victim services. The "T-Visa" is available to up to 5,000 victims of "severe forms of trafficking" annually. Canada's response to this international concern has been a comprehensive new Immigration Bill (Bill C-11) that addresses trafficking in one section. Up until now there has never been a specific offence against trafficking in Canada. However, this Bill is far from the panacea for trafficking, especially child trafficking that the government has suggested.

To deal with the growing phenomenon of human trafficking, Bill C-11 creates a new offence of trafficking. It introduces severe penalties for people smugglers and those caught trafficking in humans of up to life in prison and/or one million dollars. It allows courts to order the forfeiture of money and other property seized from traffickers and smugglers. The Bill lists aggravating factors, such as whether bodily harm or death occurred during the commission of the offence, whether the offence was committed for profit, or whether a person was subjected to humiliating or degrading treatment including sexual exploitation, that a court must take into account in determining the penalty to be imposed on conviction. The Bill also has, for the first time, a comprehensive prohibition against handling fraudulent immigration material and a new rule prohibiting adults from holding passports in children's names.

What is curiously missing from the Bill, however, is the vital protection of victims of trafficking. Very few traffickers and their intermediaries will get the maximum sentences if victims are too frightened to speak out against the perpetrators of the crime. As well, no provision is made for the future of the victims in Canada. Presumably they are to rely on the existing methods of staying in Canada, but these are wholly inadequate, especially when dealing with child victims of trafficking. In terms of protection for the victims, nothing much has changed. Child victims need special protection under the law, a concern that has been ignored by Bill C-11. Canada needs to take a clear stand against child trafficking and take on the responsibility of protecting the most vulnerable members of the global community.

Another concern is that the interdiction methods are more refined and makes it more difficult for migrants to enter Canada. This makes populations in desperate situations even more susceptible to traffickers as the legal avenues for escape are further narrowed. It also makes the price of trafficking much heavier and the actual methods of travelling riskier. This results in more lives being endangered and more profits for successful traffickers.

A final issue that has not been addressed by this Bill is a delineation of Canada's leadership role in changing the current global atmosphere that has led to such a dramatic increase in trafficking in the past decade. As one of the world's most affluent nations, Canada has a responsibility to engage with the underlying issues perpetuating this global crime. Another facet of this issue addresses the problem of child trafficking within Canadian borders, which Bill C-11 also ignores. The US State Department has

stated that Canada lacks “government sponsored programs to help victims of trafficking... Local authorities to some degree lack awareness about the victims of trafficking, which is compounded by the fear many victims have of telling the authorities about the crime committed against them”.

Examples of Child Trafficking in Canada

- In 1998 members of the “West Coast Players” a group of American-Canadian pimps were convicted of 8 counts of transporting Canadian minors across the US-Canada border and state lines for prostitution. Canadian law enforcement officials also believe that American girls are being trafficked from the US to Canada.
- In the summer of 1999, 134 Chinese separated children and adolescents aged 11-17, were apprehended with 465 adults in boats along the British Columbia (BC) coast. They were being illegally smuggled into Canada by traffickers. After initially being taken into the care of BC social services and making refugee claims, most disappeared following negative decisions on their claims. Canadian guidelines on child refugee claimants contain no guidance on the criteria to apply when determining a child’s refugee claim. Currently only 40 of the 134 children have been accounted for as they had contacted their former carer-givers in BC and told them that they were working illegally in New York City, Chicago, Baltimore and Philadelphia and other large cities in the north-eastern USA in restaurants and sweat-shop situations.
- As reported in UNHCR Canada study (2001) Honduran adolescent boys are being used to sell street drugs in Vancouver since if apprehended they are subject to lighter sanctions than adults. In 1998 it was reported that “as many as 100 Honduran children have been smuggled overland into Canada from Honduras, by a professional drug ring trafficking children to Vancouver.” The traffickers pay for their transportation and assist them to find shelter in Vancouver. In return “the children are turned out on the street as indentured drug dealers.”
- In April 2002 a woman illegally brought two Indian girls aged 10 and 16 into Canada via Dorval airport in Montreal for the purposes of prostitution. She admitted to having been paid USD 1200 to travel with the girls whom she presented as her daughters and had tourist visas on the pretext of visiting relatives in Canada.

The Best Practice Statement on Separated Children in Canada clearly identifies what trafficked children require in Canada (see in particular section B2).

The priority areas for action

- Anti-child trafficking legislation
- Victim protection measures eg. access to visas, social services, health, education, witness protection measures etc
- Information sharing and monitoring on child trafficking between different levels of government and with the United States
- Education on the issue and child rights training for immigration and police officials