

**Canada and the Palermo Protocol of 2000 on Human Trafficking:
A Qualitative Case Study.**

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Abstract:

Canada and the Palermo Protocol of 2000 on Human Trafficking: A Qualitative Case Study.

This study consists of a qualitative analysis on the subject of human trafficking in Canada. It is intended to explore the steps that have been taken to address the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementary Legislation to the Convention Against Transnational Organized Crime* (2000c), also known as the *Palermo Protocol*, and examine Canada's commitment to changing the international and domestic context in which human trafficking takes place. Through exploration of Canadian legislation, literature and prosecutions presented in Canadian courts between January 2005 and December 2011, this research aims to establish whether Canada has shown a commitment to ending and preventing the problem of human trafficking that is consistent with the Recommended Guidelines published by the office of the United Nations High Commissioner on Human Rights (2002). A nominal coding scheme was used to show in basic terms the level of commitment Canada is showing toward combating the issue of human trafficking, both internationally and domestically. Results indicate that while Canada has met minimum standards by implementing anti-trafficking legislation in 2005 which is consistent with the *Palermo Protocol*, the country is falling short of commitments to combat human trafficking due to inadequate victim protection measures, lack of standardized data collection procedures and insufficient efforts to combat and prevent the root causes of trafficking.

Table of Contents

Abstract	p. iii
List of Acronyms.....	p. vii
Introduction: Terminology and Definitions.....	p. 1
Chapter 1: Review of Human Rights and Human Trafficking	p. 5
1.1 Defining Human Rights	p. 5
1.2 The United Nations and it's Organs	p. 7
1.3 The UN and Human Rights	p. 9
1.4 A Human Rights-Based Approach to Human Trafficking	p. 10
1.5 Citizenship and Human Rights.....	p. 11
1.6 Refugees, Human Rights and Human Trafficking.....	p. 12
1.7 Children and Human Rights	p. 13
1.8 Slavery, Human Rights and Human Trafficking	p. 15
1.8.1 'Old' and 'new' slavery.....	p. 16
1.9 Poverty, Human Rights and Human Trafficking	p. 17
1.9.1 The Feminization of Poverty	p. 19
1.10 Human Rights and Human Trafficking in the Context of Globalization	p. 22
1.11 Organized Crime and Human Trafficking	p. 24
Chapter 2: Canada and Human Trafficking	p. 29
2.1 Evolution of the Canadian Response to Human Trafficking	p. 29
2.2 Statistics	p. 31
2.3 Legislation	p. 32
2.4 Immigration and Human Trafficking	p. 34
2.5 The Interdepartmental Working Group on Trafficking in Persons	p. 36
2.6 Victims in Canada	p. 37
Chapter 3: Methodology.....	p. 40
3.1 Research Questions.....	p. 40
3.2 Research Method	p. 48

3.3 Sample Selection and Characteristics.....	p. 49
3.4 Analytical Framework and Coding	p. 52
3.5 Methodological Limitations.....	p. 53

Chapter 4: Analysis, Discussion and Implications p. 55

4.1 Is the promotion and protection of human rights a priority in Canada’s response to trafficking in persons?	p. 55
4.1.1 Effect of Canadian legislation on the rights and dignity of all persons.....	p. 57
4.1.2 Effect of legislation on the right to seek asylum from persecution	p. 59
4.2 Is there an adequate legislative framework in place related to trafficking in persons, and has it been used to effectively identify victims and perpetrators?	p. 60
4.2.1 Canadian anti-trafficking legislation	p. 61
4.2.2 Canadian legislation related to international trafficking	p. 62
4.2.3 Gaps in the law.....	p. 63
4.3 Is there an adequate response to human trafficking among Canadian law enforcement agencies?	p. 65
4.3.1 Labour trafficking investigations by law enforcement	p. 67
4.3.2 Law enforcement and sex trafficking	p. 68
4.3.3 Challenges to improving law enforcement response	p. 70
4.4 Does Canada have adequate protection and support for trafficked persons?	p. 71
4.5 Does Canada have special measures to ensure the protection and support of child victims?	p. 78
4.6 Is Canada committed to research, analysis, evaluation and dissemination of information on trafficking in persons?	p. 79
4.7 Is Canada committed to the prevention of trafficking in persons, both domestically and internationally?.....	p. 82
4.7.1 International prevention efforts	p. 83
4.7.2 Domestic prevention efforts	p. 85
4.8 Does Canada engage in formal cooperation and coordination with other states and regions regarding trafficking in persons?	p. 87
4.8.1 Information-sharing among provinces and jurisdictions	p. 88
4.8.2 Partnership with NGOs	p. 92

Conclusion..... p. 94

References p. 100

Appendix A: Coding Scheme p. 110
Appendix B: Bibliographic Information for Sample Articles..... p. 122

List of Acronyms

- ACT** • Action Coalition on Human Trafficking (Province of Alberta, Canada)
- CBSA** • Canada Border Services Agency
- CCC** • Criminal Code of Canada
- CIC** • Citizenship and Immigration Canada
- CCJS** • Centre for Canadian Justice Statistics (Statistics Canada)
- CIDA** • Canadian International Development Agency
- CISC** • Criminal Intelligence Service Canada
- DFAIT** • Department of Foreign Affairs and International Trade (Canada)
- DND** • Department of National Defense (Canada)
- FAO** • Food and Agriculture Organization (United Nations)
- HRSDC** • Human Resources and Skills Development Canada
- HTNCC** • Human Trafficking National Coordination Centre (division of the RCMP Passport Branch)
- HTRT** • Human Trafficking Response Team (Province of Manitoba, Canada)
- ICCLR-CJP** • International Centre for Criminal Law Reform and Criminal Justice Policy
- ICCPR** • International Covenant on Civil and Political Rights (United Nations)
- ICESCR** • International Covenant on Economic, Social and Cultural Rights (United Nations)
- ILO** • International Labour Organization (United Nations)
- IMA** • International Marriage Agency
- IOM** • International Organization for Migration
- IRPA** • Immigration and Refugee Protection Act (Canada)
- IWGTIP** • Interdepartmental Working Group on Trafficking in Persons (Canada)

MCI • Minister of Citizenship and Immigration (Canada)

NGO • Non Governmental Organization

OCTIP • Office to Combat Trafficking in Persons (Province of British Columbia, Canada)

PRRA • Pre-Removal Risk Assessment (Citizenship and Immigration Canada)

RCMP • Royal Canadian Mounted Police

TRP • Temporary Residency Permit (Citizenship and Immigration Canada)

UDHR • Universal Declaration of Human Rights

UN • United Nations

UNDP • United Nations Development Program

UNESCO • United Nations Educational, Scientific and Cultural Organization

UNHCR • United Nations High Commission for Refugees

UNHCHR • United Nations High Commissioner for Human Rights

UNICEF • United Nations Children’s Fund (formerly United Nations International Children’s
Emergency Fund)

UNODC • United Nations Office on Drugs and Crime

UNPF • United Nations Population Fund

WHO • World Health Organization

INTRODUCTION: Terminology and Definitions

Human trafficking is a complex phenomenon that has been recognized internationally as an escalating problem. Fueled by an increasingly globalized commercial marketplace, the United Nations believes it to be among the most profitable transnational crimes, following the trade of illegal arms and drugs, and estimates anywhere from 400,000 to 700,000 people are trafficked annually, generating billions of dollars in revenue (UNODC, 2009: 8; Barnett, 2008: 3; U.S. Department of State, 2008; U.S. Department of State, 2009). Trafficking can occur through a variety of means, from organized criminal groups operating large-scale transnational networks with political and economic contacts in source, transit and destination countries, to small scale operations that traffic only one or two people at a time. Victims become involved with traffickers in a variety of ways, including debt bondage, deceptive employment contracts, exploitative mail-order marriages or even outright abduction (Snarr & Snarr, 2005: 67; Barnett, 2008: 2). A country can function as a source, transit or destination for trafficking, or be all three simultaneously (Perrin, 2010b: 1). Canada is a transit point for individuals attempting to enter other countries, most particularly the United States; a country of destination for international trafficking victims; and a source country when traffickers or victims are Canadian citizens (Barnett, 2008: 2; Perrin, 2010b: 14; Perrin, 2010a: 29, 47, 111).

Across the globe, exploitation is driven and sustained by political, social and economic factors, such as poverty, uneven development, official corruption, gender discrimination, harmful traditional and cultural practices, civil unrest, natural disasters, and lack of political will to end it (UN, 2000a; UNHCHR, 2002; Snarr & Snarr, 2005: 62). Countries with a high unemployment rate are the most common sources of trafficked victims. According to the RCMP (2010: 4), “the

uneven advancement of the global economy has led to wide disparity between social and/or economic groups and the disruption of traditional livelihoods, pushing more workers abroad than ever before”. To date, the strongest attempt to deal with human trafficking has been the *United Nations Convention Against Transnational Organized Crime* (2000a), also known as the *Palermo Protocol*, and its supplementary legislation which includes *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000c)¹. Ratified by Canada in May 2002, these documents were signed by 121 nation-states (Oxman-Martinez & Hanley, 2004b: 6). The signature and ratification of the Protocol was a formalization of Canada’s commitment to end and prevent human trafficking and smuggling (Oxman-Martinez & Hanley, 2004b: 6). This research will focus on the actions taken by Canada to align its policies and practices with the Guidelines and Recommendations set out by the United Nations High Commissioner for Human Rights (UNHCHR).

The *Palermo Protocol* established a formal definition for ‘trafficking in persons’, which consists of three main elements: (1) actions which involve the “transportation, transfer, harbouring or receipt of persons”; (2) This is accomplished through “means or mechanisms” such as force, coercion, deception, and/or kidnapping; (3) These activities occur solely for the “purpose of exploitation” (debt bondage, forced labour, prostitution) (UN, 2000c; UNHCHR, 2002). The second element does not have to be present if exploitation involves minors, just that they have been held, transported or received for the purpose of exploitation. In the case *R. v.*

¹ The *UN Convention Against Transnational Organized Crime* (2000a) has three pieces of supplementary legislation: *The Protocol Against the Smuggling of Migrants by Land, Sea and Air* (2000b); *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000c); and *The Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition* (2000d). In the context of this paper, “*Palermo Protocol*” will be used to refer to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000c).

Perreault, the Quebec Court of Appeal unanimously interpreted “...control, direction or influence over the movements of a person...” as follows:

Control refers to intrusive behaviour, to holding sway over someone, leaving little choice to the person controlled and therefore includes acts of direction or influence. Exercise of direction over the movements of a person exists when rules or behaviours are imposed. The exercise of direction does not exclude the person having some latitude or margin of initiative. The exercise of influence includes less constricting actions. Any action done with a view to aiding, abetting or compelling that person to engage in prostitution would be considered influence (113 CCC (3d), 573; cited in *R. v. Urizar*, 2010: 25).

This definition was applied in the case *R. v. Urizar*, and sets a precedent for how “...control, direction or influence over the movements of a person...” will be interpreted in future cases involving human trafficking.

“Exploitation” can occur in any socio-economic sector in which labour or services might be extracted. Regardless of different activities (e.g. recruitment, transfer, harbouring) and means (methods of force or deceit) that can be used in the process of trafficking, or the economic branches it may be focused on (e.g. forced labour, prostitution), ‘exploitation’ is the essential element in trafficking (Rijken, 2009: 3) that separates it from migrant smuggling. The Canadian Criminal Code defines “exploitation” under section 279.04 as:

A person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

‘International trafficking’ occurs whenever victims cross a border, whereas ‘intranational/domestic trafficking’ describes situations where all exploitation took place within a single nation. Trafficked persons are typically categorized as being victims of either ‘labour’ or ‘sex trafficking’, depending on whether they experienced sexual exploitation (House of Commons Standing Committee for Status of Women, 2007). Since all forms of trafficking

negatively affect the ability of victims to access their human rights, this project approaches the issue of trafficking in Canada through a human rights framework.

CHAPTER 1: Human Rights and Human Trafficking

1.1 Defining human rights

‘Human rights’ is a term that frequently comes up in discussion of many social and political topics, but often it is ‘*citizenship rights*’ or ‘*civil liberties*’ that are really being discussed (O’Byrne, 2003: 27). To avoid confusion, ‘*civil liberties*’ are those rights which are not legitimated according to some universal feature of humanity, they are rights only in so far as they are allowed by the state (they are ‘granted from above’). ‘*Citizenship*’ is often defined as “a reciprocal relationship between an individual (the citizen) and the machinery of political administration (the state), with the terms and conditions of the relationship (the rights and duties) enshrined in positive law” (O’Byrne, 2003: 26, 27). Accordingly, both civil liberties and citizenship can differ across time and space. ‘*Human rights*’, by contrast, ‘come from below’, from a “universal set of ethical principles which seek to ensure the equal worth of each individual life, and which are applicable to all peoples, at all times and in all places”; in principle, they are not subject to change with the political views of the ruling party (O’Byrne, 2003: 26; Snarr & Snarr, 2005: 60).

The *Universal Declaration of Human Rights* (UDHR, 1948) can be divided into three different “generations” which represent human rights differently and arose separately. The “first generation” are civil and political (Articles 2 through 21), they focus on the rights of the individual and emphasize the responsibility of governments to avoid unjustly interfering in the lives of citizens. These are supported by the *International Covenant on Civil and Political Rights* (ICCPR). “Second generation” human rights (Articles 22 through 26) are social, economic, religious, and cultural, (i.e. the right to work, receive an education, have a family, etc). These

focus on social equality and the responsibility of government to act on behalf of its citizens to establish an acceptable minimum standard of living (Snarr & Snarr, 2005: 55). The second generation of rights is supported by the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The “third generation” are referred to as “solidarity rights”, since their realization require global cooperation, and focus on global redistribution of opportunity and well-being (Snarr & Snarr, 2005: 55). The *United Nations Development Programme* (UNDP) merged the second and third generation rights in its annual *Human Development Report* (2000), and argued that human rights and human development cannot be realized separately (Snarr & Snarr, 2005: 60). While the first generation of human rights was designed as a struggle of civil society against the state, considered to be the sole violator of human rights, the second and third generations resort to the state as the sole guarantor of human rights (Sousa, de S., 2002: 40).

The UN Charter states that all people possess human rights, but it also guarantees state sovereignty and nonintervention. These principles often seem contradictory, especially with the role of 'enforcement' left to each individual state (Snarr & Snarr, 2005: 60). The UN is not an independent body or a world government, has no more power or funding than its members give, and is largely subject to their whims (ibid: 60). According to Boaventura de Sousa Santos (2002: 44), when human rights are described as 'universal', particularly by the West, it is a form of *localized globalism*, which he describes as "globalization from above". As long as human rights continue to be described as universal, he says they will be an instrument of the West, and "their global competency will be obtained at the cost of their local legitimacy" (ibid: 44). Despite its limitations, the United Nations is considered the most important institutional body in the discussion of human rights following WWII, and the most important agency involved in the protection of human rights worldwide (O'Byrne, 2003: 27, 85; Snarr & Snarr, 2005: 61).

1.2 The United Nations and its organs

Shortly after the Second World War, fifty-one nation-states came together to found the United Nations as a replacement for the defunct League of Nations. The initial charter included a commitment to tackle poverty, war and unemployment worldwide, as well as social development and world economic policy. As the organization evolved, these responsibilities have been passed down to specialized agencies (i.e. UNICEF, UNPF, UNESCO). The structure of the UN is made up of six main organs. These are: (1) *The General Assembly*, which comprises representatives from each member state, each with one vote. (2) *The Security Council*, which is probably the most powerful of the UN's organs, responsible for peacekeeping, interventions, and sanctions against warring or rogue states. (3) *The Economic and Social Council*, which oversees the work of specialized agencies dealing with economic, social and humanitarian issues. (4) *The International Court of Justice*, not to be confused with the more recent International Criminal Court, seeks to resolve world conflicts between states by law rather than by force. (5) *The Secretariat*, which acts as an administrative centre for the UN, headed by the Secretary General; and (6) *The Trusteeship Council*, which stopped being an active body in 1994 (O'Byrne, 2003: 83; Moore & Pubantz, 2006: 120-121).

The structure of the UN is far from ideal, and has received criticism for being reliant upon the most powerful nation-states, which contribute the majority of funding (Snarr & Snarr, 2005: 65). Financial issues aside, the power held by the Security Council's fifteen members has been a subject of concern, since many of the most important decisions are made by this body, such as the power to decide whether the UN should intervene in a particular situation. If the Security Council recommends intervention, it can adopt any one of five paths. First, negotiation, in which third party negotiators are sent to help resolve conflict. Second, observation, in which

unarmed UN representatives are sent in after a ceasefire. Third, sanctions can be placed on one or both warring parties and member states advised to cease trading with them. Peacekeeping, in which member states are asked to provide troops to monitor a ceasefire (wearing UN colours), is the fourth path, and finally, peace enforcement, where troops can be sent to take a more active and direct role in bringing an end to conflict. (Moore & Pubantz, 2006: 127; O’Byrne, 2003: 83). If none of these five paths can be used to negotiate a peaceful conclusion, the Security Council can sanction the use of military intervention. Article 27 of the UN Charter requires that Security Council decisions on all substantive issues receive the affirmative vote of nine members from the total fifteen members. A negative vote, or veto by one of the five permanent member-states (UK, USA, France, Russia, China) prevents the adoption of a proposal, even if it received nine affirmative votes. If members of the Security Council vote in agreement to approve military force, the actions are considered ‘sanctioned’ (Moore & Pubantz, 2006: 128-130). Likewise, when military intervention is used despite a veto being given by one of the five permanent members, the action is ‘unsanctioned’, and the aggressor(s) could be subject to penalties under the International Criminal Court, such as war crimes².

Since the end of the Cold War, the Security Council has played a more active role in promoting human rights standards, though other bodies of the UN are more directly committed to upholding human rights, such as the UN High Commissioner on Human Rights, among others (O’Byrne, 2003: 83). Most UN work is carried out by specialized agencies which answer to one of the main organs. Some report directly to the General Assembly, such as the UN High Commissioner for Refugees (UNHCR), the UN Children’s Fund (UNICEF), the UN Conference

² For instance, when the U.S. and U.K. decided to proceed with military action in Iraq after the proposition was vetoed by other permanent members of the Security Council, they were engaging in ‘unsanctioned’ military intervention.

on Trade and Development. Other specialized agencies report to the Economic and Social Council, such as the World Health Organization (WHO), The International Labour Organization (ILO), the UN Educational, Scientific and Cultural Organization (UNESCO), the Food and Agricultural Organization (FAO), and the High Commissioner on Human Rights (UNHCHR). (Moore & Pubantz, 2006: 120-121; O'Byrne, 2003: 84).

1.3 The UN and human rights

The *Universal Declaration of Human Rights* (UDHR) was adopted by the General Assembly on December 10, 1948. Although not legally binding, it lays down certain claims regarding the rights of all people in the world, and formalized them within the framework of international law. The writing and subsequent adoption of the UDHR and its two supplemental Covenants (*The International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights*) were the first major achievements of the UN. Taken together, the UDHR and its two Covenants comprise the *International Bill of Rights*, which is still the definitive source of international human rights law (O'Byrne, 2003: 89). No court exists which has the power to enforce the Covenants and punish violators, despite the establishment of the *Human Rights Committee* and the *Committee on Economic, Social and Cultural Rights*, which are responsible to monitor the Covenants. Thus, international human rights law still relies upon nation-states to promote and uphold it. The UN seems willing to uphold human rights but lacks the power to translate its ideas into practice, and individual nation-states only appear willing to uphold human rights law when it suits their own interests to do so (O'Byrne, 2003: 101; Snarr & Snarr, 2005: 62). This can be problematic because of the disproportionate power held by the wealthiest nations in the UN. The system leaves open the

possibility for nation-states with considerable power and influence in the Security Council to practice social exclusion and discrimination, using ‘intervention decisions’ on human rights issues as a medium.

1.4 A human rights based approach to human trafficking

The *Universal Declaration of Human Rights* recognizes human rights as the foundation of freedom, justice and peace (UN, 2003: 2). The UN *Programme for Reform* was launched in 1997, and the Secretary-General called on all subsidiaries of the UN system to mainstream ‘human rights’ into the framework of their respective mandates (UN, 2003: 2). To accomplish this, a common understanding of ‘human rights approach’ was established, as well as the implications for development programming that such an approach would require. The following summarizes the core principles guiding any UN ‘human rights-based approach’ (UDHR, 1948; Rijkman, 2009: 215). First, ‘*Universality and inalienability*’, means that that all people in the world are entitled to these rights without any exception or discrimination³. Rights are ‘*Indivisible*’, they exist as a package and none can be fully realized without all being fully realized. Whether related to civil, cultural, economic, health, social or political issues, human rights are inherently equal, and cannot be placed in hierarchical order (UDHR, 1948). The denial of one right necessarily interferes with the enjoyment of other rights. ‘*Interdependent and inter-related*’, each right contributes to the realization of a person’s human dignity through the “satisfaction of their developmental, physical, psychological and spiritual needs”. The fulfillment

³ ‘Universality’ as a concept is contested by some academics as being an inherently Western ideal which presupposes the existence of a “universal human nature that can be known by rational means”. Research by Boaventura de Sousa Santos (2002: 44) argues that as long as human rights are thought of as ‘universal’ they operate as a *globalized localism*, a form of ‘globalization from above’. To operate as a cosmopolitan, counterhegemonic form of globalization, human rights must be reconceptualized as ‘multicultural’.

of one right often depends (in whole or in part), upon the fulfillment of other needs. '*Non-discrimination and equality*' of rights, means that no person should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards. '*Participation and inclusion*', means that all people have the right to participate and access information relating to the decision-making processes which affect their lives and well-being. Finally, '*accountability and the rule of law*', refers to the responsibility of states and other duty-bearers to be accountable for the observance of human rights. They must comply with the legal norms and standards enshrined in international human rights instruments (UDHR, 1948; Rijkjin, 2009: 215). If states fail to meet these obligations, rights-holders are entitled to institute proceedings for appropriate redress (UN, 2003: 1; Rijkjin, 2009: 215). Essentially, citizenship within a state that upholds and enforces human rights is necessary for individuals to be considered 'rights-holders', and individual human rights (i.e. civil and political) are meaningless unless they can be exercised within favourable social and economic circumstances (Rijkjin, 2009: 215; Snarr & Snarr, 2005: 54).

1.5 Citizenship and human rights

There are many factors that could contribute to the disruption of citizenship, leaving individuals stateless. War within a state or between states, and the processes of genocide, ethnic cleansing and territorial division often associated with it, are intimately connected to the destabilization of national identities (O'Byrne, 2003: 362; Snarr & Snarr, 2005: 113). One of the most significant contemporary social philosophers to discuss the theory and practice of human rights in light of the atrocities of modern warfare was Hannah Arendt (1906-1975) (O'Byrne,

2003: 362). In her view, the ‘rights of man’ meant little or nothing to refugees, stateless persons, and other outsiders within the boundaries of an alien state (Arendt, 1949: 43; O’Byrne, 2003: 35). She does not think that humans are born equal, but that “we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights” (Arendt, 1949: 43). She sees only one fundamental right (citizenship), which exists within the political community itself (the *right to have the right* to life, liberty, happiness, etc.) (O’Byrne, 2003: 36). Arendt’s work highlights that, despite noble intentions, human rights rely upon the existence of strong political communities capable of enforcing them. This is visible when looking at groups that have been denied citizenship, historically or currently, such as refugees and displaced persons, slaves and trafficking victims, children, and women.

1.6 Refugees, human rights and human trafficking

According to Arendt’s view, refugees and displaced persons “are not being denied their incontrovertible rights, they are denied the right to exist within a community at all”; they necessarily fall outside the human rights framework, since they are not recognized as citizens belonging to any nation-state (Arendt, 1949: 43; O’Byrne, 2003: 36). Not all stateless persons are refugees, but like refugees, they lack recourse to the protection provided by citizenship⁴ (O’Byrne, 2003: 353). Human trafficking survivors also live as stateless persons, unable to access their ‘right to have rights’ until they are formally recognized as ‘victims’. Upon identification by authorities, individuals have access to health, social, financial and legal

⁴ The author recognizes that citizenship is a controversial concept. Some perceive citizenship as the submission of people to the governing practices of a particular state, which gives them rights in exchange for obligations (to conform to state rule). Esposito (2009) pointed out that community (belonging) does not mean homogeneity but heterogeneity, in which ‘difference’ forms the basis of equality and belonging. For that to happen, individuals must be able to relate to ‘difference’ in each other by placing themselves in the situation or condition of the other, and practicing ‘hospitality’ and ‘friendship’ (Esposito, 2009; Barder, 2011: 2; Derrida, 1994; Bennington, 1997).

services, as well as the option to seek asylum (guaranteed in UN Convention Relating to the Status of Refugees, 1951), and apply for citizenship (UN, 1958: 137).

Human trafficking and immigration issues are interconnected, as they are both driven by the same systemic problems, such as the instability resulting from poverty, war, oppressive governments, environmental disasters, etc. As Oxman-Martinez, Martinez & Hanley (2001a: 1) noted, “victims of trafficking are often individuals who might be considered refugees, but are unable to get into the country along conventional paths”. Smuggling may be the only option to migrate for individuals unable to secure official identity documents, or for those who might have difficulty qualifying for refugee status. Unfortunately, migration through smuggling places individuals at an increased risk of becoming trafficked. The United Nations High Commissioner for Refugees (UNHCR, 2002) supports the idea of a case-by-case refugee determination process for trafficking victims, and considered that trafficking survivors were entitled to refugee status when their country of origin is unable or unwilling to provide the protection needed. One group that is vulnerable to difficulty in accessing human rights is children.

1.7 Children and human rights

Children are human beings, and therefore subject to human rights standards, although in some areas they cannot exercise what would be their basic civil and political ‘liberty rights’, such as the right to vote, own property, etc. A significant problem with the idea of ‘children’s rights’ lies in the definition of ‘childhood’, which differs across time and space (O’Byrne, 2003: 381). As Arendt pointed out, until an individual is defined as a ‘citizen’, they are without the ‘right to access rights’, leaving children without a voice (excluded) until they are recognized as adult persons and equal members of their political community. Children are inherently more

vulnerable to exploitation than adults since they do not have the same degree of agency or control over the conditions of their lives (UN, 1989). Much like refugees, children are excluded from the discourse of human rights, and frequently targeted for human rights violations because they are seen as subject to dependence (O'Byrne, 2003: 381). The lack of documented birth registration in some Third World countries exacerbates their vulnerability to trafficking (Mohajerin, 2005: 127). The *UN Convention on the Rights of the Child* (1989) is the most important document referencing children's rights because it implements the standards outlined in the earlier Declarations (Geneva Declaration on the Rights of the Child 1924, through the UN Declaration of the Rights of the Child 1959), but it is legally binding. Many of the Convention's 54 Articles uphold the general rights and freedoms applicable to all humans according to the UDHR, though it contains additional clauses specific to children.

In global terms, three areas pertaining to childhood and human rights have attracted considerable attention from activists and academics - child labour, child soldiers, and street children - though only child labour will be discussed here. Child labour is frequently employed because it is inexpensive (many are bonded labourers, born or sold into slavery to pay off a family debt), and children are more easily manipulated, controlled and exploited than adults (O'Byrne, 2003: 376). Children may have limited, or zero knowledge of their rights and options, and may not be able to recognize their own exploitation or seek help. Article 32 of the *Convention on the Rights of the Child* (UN, 1989) specifies that children are to be "protected from economic exploitation, and from performing work that is likely to interfere or be hazardous to their education, or be harmful to their health or physical, mental, spiritual, moral or social development".

Though child labour and child trafficking are linked, child trafficking does not always lead to labour. For example, there have been accusations in Spain of large-scale trafficking rings being embedded within corrupt hospitals, resulting in children being stolen at birth from their mothers, usually told their children were stillborn, and sold to adoptive parents (Addler & Grandison, BBC, 2001). It is thought that this went on for almost 50 years and potentially involved up to 300,000 babies, and though some of these children may have been sold into exploitative circumstances, it is known that some were raised in non-abusive environments by their adoptive parents (Addler & Grandison, BBC, 2011). The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, specifies that particular attention must be paid to the protection of vulnerable groups in all legislation, policies and programs related to trafficking (UN, 2000c). However, as previously mentioned, it is the responsibility of states (political community) to adopt legislation consistent with UN Conventions, and it is the responsibility of social communities to incorporate and practice the ethics underlying children's rights (i.e. treat them with humanity) (O'Byrne, 2003: 376). Children have access to the fewest human rights, and are the only population it is acceptable to 'own' and control the movements of, leaving them most vulnerable to exploitation and slavery.

1.8 Slavery, human rights and human trafficking

Slavery can take many different forms, and has existed in many historical and geographical societies. The League of Nations, in its 1926 Slavery Convention, defined slavery as "the status or condition of a person over whom any or all powers attaching to the right of ownership are exercised". The UDHR (1948) condemned the practice of slavery in Article 4,

stating “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. The definition was expanded in the Supplementary Convention of 1956, to include ‘servile status’ (debt bondage, serfdom, unfree marriages, exploitation of young people for their labour). The Rome Act (UN,1998) defined slavery as “the exercise of any or all of the power attaching to the right of ownership over a person, and includes the exercise of such power in the course of trafficking in persons, in particular women and children”. According to Bales and Robbins (2000), the slave must be controlled by another person or persons who appropriate their labour power and control their activities by threat or use of violence. Most institutions commonly considered to be forms of slavery satisfy these criteria, such as forced prostitution, forced labour, debt bondage, etc. (O’Byrne, 2003: 264; Snarr & Snarr, 2005: 67).

1.8.1 ‘Old slavery’ and ‘new slavery’

There is no longer legal entitlement to ownership of another human being, which has changed the experience of slavery, according to Kevin Bales (Bales, 1999: 3; O’Byrne, 2003: 271). In ‘old’ slavery of the past, buying a slave represented a considerable investment. Due to the relative shortage of slaves and high initial purchase cost, slave owners may be inclined to treat their ‘property’ in a manner most likely to produce maximum longevity (ibid: 273). In the ‘new slavery’, emphasis is placed on low cost, minimal investment and high profit (Bales, 1999: 3). Both ‘old’ and ‘new’ slavery are defined by the use of violence and primarily used for economic exploitation. With slavery no longer being defined (and justified) according to racial or ethnic characteristics, there is a surplus of potential slaves that become “wholly disposable” (Bales, 1999: 5; O’Byrne, 2003: 273). Bales cites three main reasons behind the rise of ‘new slavery’, first, the huge population increase in the post-1945 era which created a previously

unknown surplus of people, especially in the developing world. Secondly, the globalization of capital has redirected economic practices away from the nation-state. Economic transformations brought about by modernization and globalization have forced many people, especially in the developing world, into the major cities and thereby into conditions of increased poverty. The third ingredient he lists is corruption among government, police and military (Bales, 1999: 5; O’Byrne, 2003: 273). A few of the most common forms of modern slavery include: (a) *Chattel slavery*, in which a person is born or sold into servitude and the ownership of another, just like in ‘old’ slavery. (b) *Debt bondage*, a form of exploitation in which a person is not “owned”, but controlled and made to work as repayment of some kind of debt; the length and nature of the bondage is undefined, and the debt can be passed down to children (Bales, 1999: 5; O’Byrne, 2003: 273; Perrin, 2010a: 10); and (c) *Contract slavery* describes a situation in which a victim is enticed through promise of a contract and legal employment, but instead is paid nothing and threatened with violence while a contract makes it appear legitimate. Bales indicates that this is the fastest-growing form of modern slavery throughout the world (Bales, 1999: 5; O’Byrne, 2003: 273; Mohajerin, 2005: 125). Whether ‘old’ or ‘new’, all forms of slavery are interconnected with poverty and globalization.

1.9 Poverty, human rights and human trafficking

Human rights are based on equality of access to the ways and means of civil society, while poverty is “based on the uneven distribution of life chances and necessarily produces inequalities in access to principles of justice and self-development” (O’Byrne, 2003: 386). Poverty violates Article 25 of the UDHR (1948), which stipulates the right to a “standard of living adequate for the health and well-being” of persons, including food, clothing, housing,

medical care, necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood. As Ugarte Ochoa articulated (2001: 60; O’Byrne, 2003: 387), poverty “denegrates, excludes, mutilates and kills (and) has become the single greatest violator of human rights in the world today”. Poverty is the “negation of rights” because it violates the fundamental right to security of the person, without which it is difficult (if not impossible) to exercise other rights or perform civic duties (Ochoa, 2001: 61; O’Byrne, 2003: 386). Poverty is detrimental to human dignity, and thereby dehumanizing (Massa-Arzabe, 2001: 31; O’Byrne, 2003: 386). Human rights are “historically and spatially conditioned” and must be understood in the context of social structure, resulting from “social struggles between interests and groups” (Massa-Arzabe, 2001: 31). Human dignity is central to the idea of human rights, but this dignity must be “concrete, grounded in material conditions and realities” (ibid). When human dignity is viewed through this lens, the principles of human rights are linked with the problem of global poverty.

Like slavery, poverty is a form of social exclusion which can be targeted at certain groups, and “achieved through the (political) state’s manipulation of the economic sphere, via the uneven distribution of life chances” (O’Byrne, 2003: 386). While the state may not be directly involved in the validation and execution of poverty in the manner that it is with torture or the death penalty, the state is responsible for their perpetuation within the social structure (ibid: 386). Human trafficking is a violation of individual human rights as well as a symptom of the worldwide struggle against poverty. Women are disproportionately affected by poverty throughout the world, particularly in developing countries (Moghadem, 2005: 1; Bernat & Zhilina, 2010: 3). The causes of human trafficking are “rooted in a global economy in which lives are commodities to be traded, used and abused” (Bernat & Zhilina, 2010: 3). The global

economic crisis has contributed to an increase in the demand side of human trafficking (Jones, 2011: 30). The UN Office on Drugs and Crime (2009) linked the escalation of trafficking to a growing demand for cheap goods and services, with more businesses going underground to avoid taxes and unions, and said this included trafficking for the purposes of exploitation and marriage. The vast majority of trafficking victims, around eighty percent, are women and girls between the ages of eighteen and twenty-four; of these, around seventy percent are believed to be trafficked for the purposes of sexual exploitation (Jones, 2011: 25).

1.9.1 The feminization of poverty

The term ‘feminization of poverty’ describes the growing visibility of women’s poverty around the world. According to Valentine Moghadam (UNESCO), three contributing factors in the phenomenon are: (1) demographic trends, such as the growth of female-headed households; (2) cultural patterns, such as intra-household inequalities and bias against women and girls; and (3) political economy, such as neoliberal economic policies like the privatization of state-owned enterprises and deregulation of markets (2005: 1). “The vast majority of women migrate because of poverty...There is no other real choice, there are no effective remedies” (Jones, 2011: 29; Oxman-Martinez & Hanley, 2004a: 5). The UN *Special Rapporteur on Violence Against Women* notes, “The root causes of migration and trafficking greatly overlap, by failure to protect and promote women’s civil, political, economic and social rights, governments create situations in which trafficking flourishes” (Jones, 2011: 30). In many developing nations, ‘push factors’ such as abject poverty, human deprivation gender inequality, persistent unemployment, lack of education, etc., may help to foster discontent, pushing individuals away from their country of origin to seek employment or education elsewhere (Bernat & Zhilina, 2010: 3; Oxman-Martinez

& Hanley, 2004a: 5; Snarr & Snarr, 2005: 68). Conversely, media-presented images of prosperous industrialized nations appear to offer the possibility of a better life, pulling individuals toward these countries (Hodge & Lietz, 2007: 165). If legal routes for migration to these destination countries are not possible, individuals may resort to illegal smuggling, thereby increasing their vulnerability to trafficking (Oxman-Martinez, et al., 2001a: 1).

The feminization of poverty, especially in source countries, can result in women being sold or encouraged by their families to seek a better life in more developed countries (Gajic-Veljanoski & Stewart, 2007: 341; Oxman-Martinez, et al., 2001a: 16). They often come from patriarchal societies and “may not initially recognize emotional abuse, exploitation or coercion by their intermediaries”, such as ‘friends’ or ‘aunts’ who transport them to destinations (Gajic-Veljanoski & Stewart, 2007: 342; Oxman-Martinez & Hanley, 2004a: 17). Once trafficked, women are usually physically isolated, frequently relocated, psychologically abused, intimidated, dependent on drugs, emotionally manipulated and marginalized (Gajic-Veljanoski & Stewart, 2007: 344; Hodge & Lietz, 2007: 167). Studies have suggested that many trafficked women had experienced violent or difficult childhoods, such as abuse, rape, homelessness, neglect, poverty and food deprivation, predisposing their vulnerability to exploitation (Gajic-Veljanoski & Stewart, 2007: 344; Hodge & Lietz, 2007: 167; Perrin, 2010a; Jones, 2011; Sikka, 2011). Additionally, if they come from a society where corruption among authority figures is common, they may have the belief that criminals are protected, and will not face a penalty - this belief aids traffickers in the coercion and intimidation of victims (Gajic-Veljanoski, 2007: 344; Oxman-Martinez & Hanley, 2004a: 17). These external barriers, combined with internal barriers (e.g. hopelessness, apathy, shame, low self-worth, etc.), lack of knowledge of language and culture,

and proper identification documents impede many women from escaping sex trafficking (Gajic-Veljanoski & Stewart, 2007: 344).

Jones (2011: 24) points out that women will continue to take risks to escape poor economic circumstances, such as signing up with international internet marriage agencies (IMAs), which recruit brides as well as arrange and facilitate marriages. An agency may pay upfront for a woman to buy nice clothes and have her hair styled, post online photos, learn a new language, etc., so that she can be sold to a customer she is thought to be ‘compatible’ with, according to the customer’s criteria for a wife. Many marriage websites specifically advertise submissive women that can be returned with a money-back guarantee if the customer is dissatisfied, with a higher price listed for virgins and women who are without passports (Jones: 24). These agencies offer many women an opportunity to migrate legally, which could make internet marriage an attractive option despite the risk of becoming trafficked or otherwise mistreated in the process (Oxman-Martinez, et al., 2001a: 1; Oxman-Martinez, et al., 2004a: 16). Additionally, there is a high risk of debt bondage should a woman be deemed ‘unsatisfactory’ by her husband/buyer and ‘returned’ to the agency (Jones, 2011: 25). Unequal bargaining power and the desire to escape poverty pushes many women to accept mail-order marriage, putting them in an extremely marginalized position upon their arrival in the buyer’s country (Oxman-Martinez, et al., 2004a: 17).

Jones (2011: 82) notes “the supply of young girls/women in poor economic circumstances is endless, the demand for submissive women is too”. While it cannot be proven that the majority of impoverished people in the world are female, the disadvantaged economic position of women is clear. The UNHCHR (2002) acknowledges this, and specifies that legislation, policies and programs which address trafficking in persons should pay particular

attention to poverty, gender inequality and women's human rights. It is also recommended that nation-states work toward prevention by taking steps to invest in the improvement of social and economic conditions in source countries. Where this is not possible, such as in countries destabilized by war, states are to ensure legislation pertaining to immigration and refugee issues is as individualized and inclusive as possible (UNHCHR, 2002).

1.10 Human rights and human trafficking in the context of globalization

'Globalization' is a process noun that can be used to describe capitalist expansion across borders in the "development of an increasingly integrated global economy", but can also describe an enabling or disabling influence (force, condition, etc.) (O'Byrne, 2003: 361). Human trafficking is "increasingly transnational and fluid in nature" in the age of globalization (Hodge & Lietz, 2007: 65). Undoubtedly, globalization reinforces and perpetuates embedded inequalities in economic and political power, most visibly between first and third world nations (Habermas, 1994: 122; O'Byrne, 2003: 362). Since trafficking is a supply and demand-driven labour market and a source of wealth, the commodification of human beings is linked with capitalist economic expansion⁵. Human trafficking is facilitated on one side, by 'push' factors related to source countries, like poverty, unemployment, economic and/or political instability, government corruption, etc., and endorsed on the other side by 'pull' factors related to destination countries,

⁵ The 'commodification of human beings' is a notion derived from a Marxist view of social relations in which people, and relationships, can be turned into objects of value and trade (*reification*). Marxism derives from the historical studies and political and economic theories of Karl Marx, nineteenth-century philosopher. While Marx's view does not form the theoretical basis for this project, it is worth noting that some scholars have refined Marx's notions and posited an approach to international relations that differs from traditional attitudes. International organizations like the UN can be viewed from a Marxist perspective as "settings in which an economic struggle takes place" between the fortunate class and those either beneath it (such as the less fortunate Third World), or those representing an immediate challenge (such as the Soviet region during the Cold War). In this view, during an era of globalization, the worldwide capitalist class could use international organizations, financial institutions, and competitive markets to maintain dominance (Moore & Pubantz, 2006: 4).

like increasing demand for commercial sex and cheap labour, restrictive immigration policies, corruption of civil servants, organized crime, etc. (Habermas, 1994: 122; O’Byrne, 2003: 386). Destination countries are typically wealthy, industrialized nations, with women predominantly being sent to places in which “large sex industries exist, or where prostitution is legalized or broadly tolerated” (Hodge & Lietz, 2007: 65). Transit countries are used by traffickers because they provide an advantage in routing victims to their destination country. Geography, or proximity to destination countries by land, sea and/or air, insufficient legislation and liberal immigration policies are the main reasons a country is targeted as a transit point (Perrin, 2010b: 12). The lack of a visa requirement to enter a transit country is considered to be a ‘pull factor’ (Wieschhoff, 2001: 42; Perrin, 2010b: 14). For example, the United States identifies Canada as a transit country for women from South Korea wanting to enter the USA (Perrin, 2010b: 13; U.S. Department of State, 2008; RCMP, 2010). Canada does not require a visa for South Koreans to enter the country, where they can be smuggled across the expansive border shared with the USA (U.S. Department of State, 2008; Perrin, 2010b: 13). The international community recognized, through adoption of the *Palermo Protocol*, the importance of cooperation in matters related to trafficking in persons, and strengthening relationships with other states by sharing information and procedures. Additionally, the development of stronger bilateral and multilateral agreements would provide a more solid foundation for legal cooperation on investigations and prosecutions of trafficking crimes (Oxman-Martinez, et al., 2004b: 9; Dandurand, 2007: 226).

O’Byrne (2003: 362) points out that while “the spread of capitalism without an equivalent expanse in political accountability may be disabling, the broadening reach of human rights ideology is enabling” since globalization can disrupt state power by “challenging the presumed legitimacy of borders”. In this manner, globalization can divorce the idea of ‘society’

from the ‘state’, allowing it to be revitalized. To eradicate human trafficking, it must be addressed alongside its relationship with other human rights concerns, including political oppression, civil war, poverty and environmental concerns (Habermas, 1994: 122; O’Byrne, 2003: 362). Universal laws are increasingly relevant in an age of globalization, but they are meaningless without individual nation-states taking action to enforce them. As O’Byrne notes, the state alone is capable of protecting human rights because it is “the manifestation of the political will of its citizens, and the machinery of law and social control” (2003: 362). Since trafficking in persons is a crime that is global in nature, the weak capacity of and one state to effectively address some of these new threats translates into an overall weakness in criminal justice capacity (Dandurand, 2007: 226; Rijkin, 2009: 215).

1.11 Organized Crime and Human Trafficking

The UN made a concentrated effort to target transnational “organized crime” with the adoption of the Palermo Protocol (2000c), but over a decade later there is still no consensus among international scholars about the exact definition, or the role played by “organized crime syndicates” in the trafficking of human beings. The *UN Convention on Transnational Organized Crime* (2000a: 5) defines an ‘organized criminal group’ as a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”⁶. The Canadian Criminal

⁶ Within the Convention, “**serious crime**” shall mean “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty”; “**structured group**” shall mean “a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of membership or a developed structure”; “**property**” shall mean “assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments, evidencing title to, or interest in, such assets” (2000a).

Code, section 467.9 (1), definition of “criminal organization” was amended in 2001, it is now composed of “three or more persons, in and outside of Canada, that has as its main purpose or activities the facilitation or commission of one or more indictable offences” that, if completed, would likely result in the “direct or indirect material benefit of one or more members of the group” (Valiquet, 2009: 2; Linden, 2004: 447).

Some literature cites human trafficking as being a highly profitable enterprise for organized crime groups (U.S. Department of State, 2008; U.S. Department of State, 2009; UNODC, 2009), while others claim that the trafficking of persons and/or organs is largely undertaken by ad hoc groups concentrating exclusively on such activities (Geis & Brown, 2008: 21; Jones, 2011: 26). As Zhang (2009: 183-184) points out, many articles cited one another in the claim that human trafficking was considered the third-largest criminal enterprise in the world, generating an estimated \$9.5 billion annually. However, no methodologies were provided within the articles to inform readers about how the numbers were reached. In particular, the majority of literature on human trafficking cites the U.S. Trafficking In Persons (TIP) Report and/or the UNODC Annual Report for estimates on the number of persons trafficked each year and the profit generated by organized criminal groups; however, each of these publications sourced one another for their estimates.

In Canada, “the association between trafficking and organized crime is neither self-evident nor always very substantial” according to Bruckert & Parent (2002: 19). Organized crime may not be directly involved in the ongoing exploitation of victims, but crime groups may be in complete or partial control of one step of the trafficking activity, such as the production of false identification documents, and/or at the time of recruitment, transport or work in the host country (ibid: 19). The Criminal Intelligence Service Canada’s (CISC) *Report on Organized*

Crime’ claims the majority of human smuggling activity takes place at border crossings, predominantly in B.C. and Quebec, and is orchestrated by a small number of “criminal organizations” which facilitate international human trafficking (2008: 32; Perrin, 2010a: 49), this is echoed by the RCMP’s ‘Threat Assessment’ (2010). In the name of national security, no additional information could be found indicating how their conclusions were reached.

International marriage agencies (IMAs) heavily organize the international recruitment and export of mail-order brides, though they are not considered to be organized crime networks. IMAs are involved in all stages of activity related to the girls/women they facilitate the sale of, from recruitment, to grooming, advertisement, sale and movement/transportation, while collecting a profit for doing so, done under the protection of ‘consent’ (Jones, 2011: 24). This scenario is fertile ground for mistreatment, abuse and trafficking, but rather than outlawing the practices of IMAs, the United States passed the *International Marriage Broker Regulation Act* in 2005, which focused on the domestic violence endured by brides upon arrival in destination countries (Jones, 2011: 26). Sanghera (2005: 4; Zhang, 2009: 179) noted that the current discourse surrounding human trafficking is not driven by empirical research, but grounded in the construction of a particular mythology. This myth involves international “organized crime syndicates” preying on vulnerable third world women who are in need of ‘rescue’ from their own misguided cultures (Jeffrey, 2005: 34; Zhang, 2009: 179; Weitzer, 2007).

Bruckert & Parent found “little data on the involvement of organized crime in the trafficking of human beings in Canada”, though an “assumption has developed” that the two are linked (2002: 21). According to Woodiwiss (2000: 1), the concept of “crime syndicates” has become “virtually synonymous with gangsters in general and the “Mafia” or mafia-type hierarchies, in particular”. These common associations perpetuate the aforementioned myth that

organized criminal groups operate largely outside North America, and are homogenous in their structure and operation; Woodiwiss refers to this as “current orthodox thinking on the problem” (2000: 2). According to Sikka’s (2011: 15) research, the most evident connection between organized criminal groups and the trafficking of Canadian Aboriginal women and girls exists in relation to illegal drug use. Participants in her research said that women are no longer moved around on ‘circuits’ to various cities (facilitated by organized crime), since “much street-based prostitution is addiction-related” and women are not in a position to move away from familiar territory. It is not unheard of for women to be ‘traded’ between gangs in payment of drugs or other debt and subsequently prostituted by the new gang, however Sikka (2011: 16) notes that most ‘recruitment’ ties were more complex, often “intertwined with familial ties and ‘boyfriend’ relationships. When victims are recruited through family connections or believe the person exploiting them is their ‘boyfriend’ and that they are in love, it can be difficult for officials to prosecute. Victims could fear retaliation if they cooperate with prosecutors in convicting their exploiters; or if the ‘recruitment tie’ is a close or extended relative, fear that reporting their abuse would hurt the family or cause them to be shunned (Nelkin, 2010: 483; Perrin, 2010a: 95).

The power that a drug provider can have over someone with a severe addiction is “tantamount to a physical power” (Sikka, 2011: 19; Perrin, 2010a: 97). The means of control and direction a drug supplier has over an addict’s movements is more complex than is generally indicated in analyses of drug trafficking (Sikka, 2011:19). Drug suppliers are protected by the general stigma surrounding addiction and the common view that drug use is a ‘choice’, and their consenting customers are not ‘victims’ (Perrin, 2010a: 96; Sikka, 2011: 19; Jeffrey, 2005). Purposefully facilitating the addiction of another person could manufacture a debt bondage situation based on that vulnerability; Perrin (2010a: 10) notes that the risk of becoming trafficked

is higher where debt bondage is present. Since the criminal law is framed in a manner which focuses on the direct actions of individuals, it is difficult to have the Canadian criminal justice system recognize non-physical forms of coercion as ‘exploitation’ (Sikka, 2011: 20). These are a few of many factors which make it difficult to directly link criminal groups with the exploitation of trafficking victims. Until the rights of victims are uniformly enshrined in international law, with non-physical forms of exploitation acknowledged as being abusive (criminal), victims will likely be hesitant to come forward since their situation lacks social recognition⁷. This approach is motivated by the idea that the “ethical force of human rights is made more powerful in practice through giving it social recognition and an acknowledged status, even without enforcement” (Sen, 2004: 343).

⁷ Despite criminalization of exploitative activities of traffickers, the Palermo Protocol has been criticized for its lack of uniform provisions protecting the rights of victims (Brusca, 2011: 15).

CHAPTER 2: Canada and Human Trafficking

2.1 Evolution of the Canadian response to human trafficking

The concept of sexual slavery first entered the Canadian consciousness in the early 1900s when a moral panic broke out surrounding “white women being held in sexual slavery by immigrant men” (Sharma, 2005: 98). During a period of virulent anti-Chinese sentiment in Canada near the end of the 1800s, Chinese men were portrayed as sexual predators seeking to deceive and exploit the white female population (ibid: 98). Campaigns against the ‘White Slave Trade’ had tremendous influence on Canadian attitudes regarding immigration, and increased regulations were demanded (ibid: 98). Two international instruments were signed by the British and French governments, one in 1904 and the other in 1910, both called *The International Agreement for the Suppression of White Slave Traffic*. These Agreements were followed by two contributions by the League of Nations, *The International Convention to Combat the Traffic in Women and Children* (1921), and the *The International Convention for the Suppression of the Traffic in Women of Full Age* (1933). In 1949, the UN enacted the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* to supersede all previous international agreements (Kempadoo, 1998; Sharma, 2005: 98).

According to a report by the Library of Parliament, Canada began to deal directly with the problem of smuggling and trafficking in persons after 152 Sri Lankan migrants were rescued off the East coast in 1986 and Canada was identified by the United States as a source, destination and transit country for victims of human trafficking (Barnett, 2008: 3). Research by Sharma (2005: 98) notes that anti-trafficking campaigns were fairly dormant in the years between World War II and the 1980s, but resurfaced during a time when anti-immigrant discourses and practices

were growing in Canada. She discusses the supposedly non-discriminatory ‘points system’ for immigration selection being attacked as ‘too liberal’ in the 1980s, and criticized for allowing “too many” non-Whites into the country. She states that anti-trafficking campaigns reemerged “during a period of unparalleled proliferation of neoliberal policies of globalization, such as privatization, deregulation, trade liberalization, and the displacement of massive numbers of people” (2005: 98). She further states that the contemporary context for anti-trafficking legislation has been “shaped by those increased restrictions on legal, permanent migration, and the growing displacement of people in the global South” (Sharma, 2005: 99; Oxman-Martinez, et al, 2001a; Habermas, 1994). The United Nations responded to the problem of trafficking with the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000c), which Canada signed. To meet the minimum standards set by the international community, Canada enacted legislation in 2005 specifically criminalizing ‘trafficking in persons’ as a punishable offence in section 279 of the Criminal Code.

Sharma asserts that Canadian anti-trafficking legislation legitimizes the increasing criminalization of migrants from developing nations, and those who help them across borders. She notes that individuals who consensually take part in illegal smuggling are often the victims of ideologies of racism, sexism and nationalism, and that strict border controls "render unspectacular their experiences of oppression and exploitation" (2005: 91). The more restrictive Canada's immigration and border control policies get, the greater the likelihood that migrants will take dangerous and expensive risks to bypass them. Strict border policies can increase the vulnerability of migrants to become trafficked, while doing nothing to address the root causes of illegal migration. (Oxman-Martinez, et al., 2001a: 16; Sharma, 2005: 92).

2.2 Statistics

There is a lack of Canadian empirical data on human trafficking, with most literature citing the clandestine nature of trafficking activities as the most significant reason for under-reporting. Current Canadian statistics do not include or track the number of charges laid for human trafficking, or convictions issued. Convictions are difficult to comprehensively research, in part because the ‘trafficking’ charge can be dropped if prosecutors believe the odds of conviction are greater for an associated charge (Ogrodnik, 2010: 23). This could occur for a number of reasons, including the difficulty inherent in ‘measuring exploitation’, and ‘proving fear’, or due to an overlap with other criminal offences such as kidnapping or assault, which may have more severe penalties or be less challenging to prove in court (Gervais, 2010: 15). In most cases, additional charges are laid in relation to fraud, pertaining to money laundering and tax evasion, or prostitution, like assault, living off the avails of prostitution, procuring someone to become a prostitute. The RCMP (2010: 22) reports that 22 cases involving human trafficking were active in November 2009, though the number of closed cases, as well as the number of victims, is unknown. Perrin’s (2010a: 49) research reports a similar number, saying approximately thirty individuals had been charged with human trafficking between April 2007 and April 2009.

The U.S. State Department estimates around two thousand people are trafficked through Canada in transit to the USA each year (Perrin, 2010a: 49; Barnett, 2008: 3; U.S. Department of State, 2008; U.S. Department of State, 2009; U.S. Department of State, 2011). The Canadian Security Intelligence Service (2008: 30) reports that illegal border crossing occurs in both directions across the Canada-U.S. border, and that the number of persons being illegally trafficked north into Canada had “significantly increased”, though no statistics or supporting data

were provided. Due to the problems inherent in generating accurate estimates on the number of people trafficked in and through Canada each year, the RCMP chose not to list such statistics in their 2010 publication. Despite the lack of data on human trafficking in Canada, law enforcement agencies believe that the problem is likely more widespread than the number of documented cases indicates (RCMP, 2010; Dandurand, 2007; Perrin, 2010a; Ogrodnik, 2010). Should standardized data be recorded and analyzed in Canada, it could be found that incidents of trafficking are more numerous than currently thought, or that the problem is much smaller and more limited than previously imagined.

2.3 Legislation

Despite signing the *Palermo Protocol* in 2000, the Canadian Criminal Code (CCC) did not include ‘human trafficking’ as a specific, punishable offence until 2005. Prior to these amendments the CCC had a handful of provisions that could be used to combat trafficking, such as laws targeting specific forms of exploitation and abuse typically found in cases of trafficking, for instance fraudulent documentation, prostitution-related offences, physical harm, abduction and confinement, intimidation, conspiracy, and organized crime (Barnett, 2008: 9). Additionally, there was legislation in place under the Immigration and Refugee Protection Act (IRPA) applicable to cross-border migrant smuggling. Bill C-49⁸ came into force on November 25, 2005, adding sections 279.01 to 279.04 to the Criminal Code, and brought Canada’s legislation into compliance with the minimum standards set forward in the *Palermo Protocol*.

Bill C-49 made three important contributions to the CCC related to human trafficking. First, a consistent definition of trafficking was established, to be used nationally by law

⁸ Bill C-49, (2005), “An Act to amend the Criminal Code (Trafficking in Persons”).

enforcement personnel, members of the judiciary, and non-governmental organizations (NGOs). The second contribution is the criminalization of trafficking and associated activities, which carries a maximum penalty of 10 years' imprisonment (no minimum). The third contribution is the five-year maximum penalty for activities such as withholding or destroying identity, immigration, or travel documents to facilitate trafficking in persons (Barnett, 2008: 9). The first successful prosecution under this legislation occurred in June 2008, in the case of *R. v. Nakpangi* (O.J., 2008-06-24). In September 2009, a private member's bill (C-268) was adopted that requires convicted child traffickers to face a mandatory minimum sentence of five years imprisonment (up to fourteen years); a six-year minimum applies if the victim was killed, kidnapped or subject to aggravated sexual assault.

The amendments in Bill C-49 also expanded the capacity for restitution available to victims subjected to bodily or psychological harm, and provides for enhanced witness protection (Keevil Harrold & Lussier, 2010; Barnett, 2008: 9). Judges now have expanded abilities to exclude the public from the courtroom where a witness is under 18 in proceedings where the accused is charged with any trafficking offence, and to allow a witness who is under 18 to testify outside the courtroom or behind a screen so that they do not have to see the accused. Bill C-49 also ensured that trafficking could form the basis for a warrant to intercept private communications, take bodily samples for DNA analysis, and permit inclusion of the offender in the sex offender registry (Barnett, 2008: 9). Furthermore, the *Truth in Sentencing Act* was introduced in October 2009, and impacts trafficking cases through the establishment of a general 'one-for-one' guideline regarding credit for pre-sentence custody when an accused is found guilty. This limits the incentive for defendants, including human traffickers, to lengthen the

period of time spent in pretrial custody, aiming to obtain two-for-one or three-for-one credit for time served (Perrin, 2010a: 129).

While sections 279.01-279.04 of the CCC apply to all cases of trafficking in Canada, the Immigration and Refugee Protection Act (IRPA) specifically targets cross-border trafficking in persons. Section 118 defines the offence of trafficking, which carries a maximum sentence of life imprisonment. The first charges laid under section 118 were in April 2005, but prosecution was unsuccessful (Barnett, 2008: 10; R. v. Ng, 2008-12-22). The IRPA also lays out distinctions between smuggling and trafficking in section 117, with a maximum sentence of 14 years' imprisonment for smuggling fewer than 10 people. Proceedings under section 117 may only be initiated with the consent of the Attorney General of Canada, which is seen as a protection for humanitarian organizations that "smuggle" refugee claimants into the country (Gervais, 2010). Finally, sections 122 and 123 outline additional offence for buying, selling and using travel documents to contravene the IRPA, with a maximum sentence of 14 years' imprisonment. Currently, there is no consensus in case law on whether being a trafficked person is (alone) grounds for a refugee status claim, the Department of Citizenship and Immigration claims to "handle each case individually" (Senate of Canada, 2009: i; Barnett, 2008: 10; Perrin, 2010a). The decision-making process utilized at CIC appears to be quite subjective and prone to bias, despite being individualized, since a single Pre-Risk Removal Assessment (PRRA) officer is responsible for the decision to label each claimant as a 'victim' of trafficking.

2.4 Immigration and Human Trafficking

Canada has traditionally approached human trafficking by placing emphasis on prevention and prosecution, which resulted in many trafficked persons being treated as illegal

immigrants that faced criminal charges often resulting in deportation. Canadian policy-makers “agreed that a crime and security lens was helpful in getting human trafficking onto the public agenda in the post-September 11 political context, when sympathy for migrants was low” (Oxman-Martinez, et al, 2005: 10; Barnett, 2008: 12). Until 2006 there was no systemic process in place to deal with the immigration status of internationally trafficked persons, only the same generic categories available to all potential migrants, such as applications based on humanitarian and compassionate grounds, or refugee and immigration claims (Barnett, 2008: 13). This changed in May 2006, when Department of Citizenship and Immigration (CIC) announced a new policy to provide temporary residency permits (TRPs) specifically targeted toward trafficked persons (ibid: 13). Immigration officers may now issue temporary resident permits to trafficked persons, which are valid for a short term (up to 180 days) or long term (three years) (Senate of Canada, 2009: i). Individuals who receive these permits are exempt from the processing fee usually charged, and are eligible for medical and social counselling assistance and other health service benefits under the Interim Federal Health Program. Additionally, they may apply for a fee-exempt work permit (ibid, 2009: i). “Victim protections are not in conflict with tough law enforcement”, and the implementation of proactive victim identification, properly funded victim services and alternatives to detention and deportation would better respect the rights of trafficked persons and potentially yield higher prosecution results (Heinrich, 2010: 3). Without strong national protections, victims are placed in a situation where “refusing services and going underground becomes an understandable response” (Heinrich, 2010:3; Jeffrey, 2005).

2.5 The Interdepartmental Working Group on Trafficking in Persons

The last component of the Government of Canada's framework to deal with human trafficking is the Interdepartmental Working Group for Trafficking in Persons (IWGTIP). Members include: Canada Border Services Agency (CBSA), Canadian Heritage, Canadian International Development Agency (CIDA), Criminal Intelligence Service Canada (CISC), Citizenship and Immigration Canada (CIC), Department of Justice Canada, Department of National Defence (DND), Department of Foreign Affairs and International Trade (DFAIT), Health Canada, Human Resources and Skills Development Canada (HRSDC), Indian and Northern Affairs Canada, Passport Canada, Public Prosecution Service of Canada, Public Safety Canada, Royal Canadian Mounted Police (RCMP), Statistics Canada, and Status of Women Canada (Department of Justice, 2012). It is the responsibility of this body to coordinate federal anti-trafficking efforts among departments and agencies and develop an anti-trafficking strategy that is consistent with Canada's international commitments (Department of Justice Canada, 2012). Responsible for the review of existing laws, policies and programs that may have an impact on trafficking, it is the duty of IWGTIP to identify best practices and areas that require strengthening and contribute this information to international data banks such as the United Nations Office on Drugs and Crime (UNODC), International Labour Organization (ILO), International Organization for Migration (IOM), Interpol, etc. (Barrett, 2011: 13; Department of Justice Canada, 2012). To date, the initiatives of partners in the IWGTIP have included the funding of several academic publications by Status of Women Canada and the RCMP. Furthermore, the RCMP was active in the development and distribution of anti-trafficking literature, such as a booklet, pamphlet and brochure in multiple languages. In 2005, a Human Trafficking National Coordination Centre (HTNCC) was established as part of the Immigration

and Passport Branch of the RCMP. Staffed by two officers and one analyst, and assisted by six regional RCMP human trafficking coordinators, the Centre “provides assistance to field investigators, and leads education and awareness campaigns” (House of Commons, 2006: [1205]; RCMP, 2010).

2.6 Victims in Canada

The status of a trafficked person is often complex, and although some are universally perceived as victims, for instance children who are exploited through the sex trade, others can be perceived as illegal migrants or criminals. The form of human trafficking prevention that has received the most government attention and resources to date is the ‘border-control approach to fighting terrorism’, which raises questions about the human and labour rights of international migrants (Oxman-Martinez, et al., 2005: 13). Trafficked persons are at risk of being perceived as deviant for violations of immigration and/or criminal laws (i.e. labour, prostitution), and held in some form of detention facility (Oxman-Martinez, et al., 2005: 13; Jeffrey, 2005: 37; Perrin, 2010a; Sikka, 2011). Given the likelihood of criminal proceedings because of their perceived status as illegal migrants and/or criminals, and the potential for retaliation from their traffickers, many trafficked persons consider the risk to their safety being higher by reporting to police than by remaining in their exploitative situation (Barnett, 2008: 11; Sharma, 2005: 96; Jeffrey, 2005: 38) In addition, trafficked persons are often socially vulnerable, and prone to dependency on traffickers due to: language barriers; lack of awareness of local services, supports and shelters; and a strong fear of police and deportation, particularly if they come from countries where the police are assumed to be corrupt or implicated in trafficking rings (Barnett, 2008: 13; Sharma, 2005: 96). Such individuals may also fear retaliation against family members if they try to

escape, or persecution by their traffickers if returned to their country of origin. The stigma associated with being trafficked can be problematic for many victims, and create fear about returning to their home communities or countries, afraid they will be shunned, even within their families (Oxman-Martinez & Hanley, 2004a: 16, 20; Oxman-Martinez, et al., 2005; Hodge & Lietz, 2007; Jones, 2011). Sikka (2011: 12) found that familial, community or intimate relationships with members of street gangs can be a risk factor in the trafficking of Aboriginal girls and women. Her research also indicated that the most common antecedent among Aboriginal girls who entered prostitution in Edmonton and Winnipeg was a history of involvement with the child welfare system (p.10).

The way victims were treated by the Canadian legal system was mentioned throughout the literature as an area in need of improvement (Oxman-Martinez, et al., 2001a; Oxman-Martinez, et al., 2005; Sharma, 2005; Jeffrey, 2005; Perrin, 2010a; Sikka, 2011). Some criticism focused around the narrow interpretation of ‘exploitation’, saying that it was exclusionary to many victims (Perrin, 2010a: 222; Sikka, 2011). Concerns were raised by Perrin (2010a: 103), and Jeffrey (2005: 34) about the subjectivity inherent in both the criteria and the evaluation process used to determine which individuals are granted ‘victim’ status, as opposed to ‘criminal’, by law enforcement officials and prosecutors. An individual must be viewed as a ‘victim’ to have access to legal assistance or social supports (i.e. victim compensation funds), therefore complications can arise when arbitrary judgments are made by officials, acting as gatekeepers, about the ‘true’ nature of ‘victimhood’, designating some victims as being ‘responsible for their choices’, while others are not (Sharma, 2005: 96; Jeffrey, 2005: 41; Sikka, 2011: 17). If trafficked persons are deemed to be complicit in their own suffering as a result of their ‘poor choices’, such as involvement in the sex trade or use of illicit drugs, they may be denied access

to their rights as victims. If the 'victim criteria' are satisfied, temporary housing arrangements and counseling can be provided and the individual can be approached about their willingness to testify or provide evidence in criminal proceedings. According to Jeffrey (2005: 39), victims are often perceived as the casualties of their own "harmful, backward cultures", and the criteria used to establish 'victimhood' is biased toward victims who appear submissive, quiet and grateful for rescue. Regarding domestic victims of trafficking, Sikka (2011: 17) notes that Aboriginal women are frequently excluded from the 'victim' category because of issues such as: addiction to drugs/alcohol, previous violent behaviour, repeated attempts to run away from home, and perceived as being complicit in their own victimization.

CHAPTER 3: Methodology

Contribution of research

This research adds to the current literature by giving a comprehensive, general report card⁹ on Canada's alignment with the UNHCHR Guidelines and Recommendations for implementation of the Palermo Protocol of 2000, specifically the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000c). While initially researching this topic, it was difficult to obtain a clear answer to the question "What has been done to address human trafficking in Canada?" This project adds some clarity to that question for the time period between January 2005 and December 2011. Four pieces of anti-trafficking legislation were passed between 2005 and 2010, and the first set of 'human trafficking' charges appeared in court from 2008 forward; these milestones made it a unique time to document Canada's anti-trafficking response. It was the aim of this project to bring together, through a human rights lens, much of the general disaggregated information on trafficking in persons available in Canada between into a single source.

3.1 Research questions

The general question guiding this research, "*Is Canada falling short of its obligations to combat trafficking in persons?*" is relevant because Canada signed the United Nations Palermo Protocol (2000) and ratified it into law in 2002, making a formal commitment to work toward ending the problem of trafficking in persons. This project is aimed at understanding the efforts made by Canada to align its legislative policy framework with the recommendations of the United Nations High Commission on Human Rights (UNHCHR) and comply with the

⁹ The term 'report card' is intended to mean 'a communication of the country's general performance'.

expectations set forth in the Palermo Protocol. The questions used in this paper were developed from the twelve UNHCHR Principles and Guidelines on Human Rights and Human Trafficking (2002), and adapted to fit the scope of this project.

To begin, the first specific research question asks if “*the promotion and protection of human rights is a priority*”¹⁰ in Canada’s response to trafficking in persons?” It is crucial that measures adopted to prevent and combat trafficking in persons do not have an adverse impact on the rights and dignity of all persons, including victims. For example, measures adopted to prevent terrorism should not interfere with the right of all Canadians to freedom of movement between and within provinces and territories. When viewing the problem of trafficking through a human rights lens, the individual rights of all parties, including victims and traffickers, are treated with importance and respect. Within this perspective, it is crucial that the protection of human rights is given priority over law and security issues if trafficking in persons is to be prevented and eradicated in alignment with the principles of the Palermo Protocol (UN, 2000c; UNHCHR, 2002). The UNHCHR considers human rights violations to be both a “cause and consequence of trafficking in persons”, and stresses the importance of states protecting these rights in all measures related to trafficking (UNHCHR, 2002: 5; Rijkjin, 2009). Previous Canadian literature identified the need for more attention to be cast on the protection of migrants rights in government efforts to address human trafficking and related issues (Oxman-Martinez & Hanley, 2004b: 11, 15; Oxman-Martinez, et al., 2005: 9). Canada has also been criticized for increasing powers given to law enforcement agencies to apprehend traffickers, without first putting into action legislative protections for victims (Bruckert, et al., 2004; Oxman-Martinez &

¹⁰ Within this project, the word ‘priority’ meant: ‘given precedence or superiority in rank; regarded with more importance and urgency than competing alternatives’ (Adapted from the Collin’s Essential Canadian English Dictionary & Thesaurus, 2006: 640).

Hanley, 2004b; Oxman-Martinez, et al., 2005; Perrin, 2010a, Jeffrey, 2005; Sikka, 2011). Concern has been raised about whether anti-trafficking laws contribute to worsening the conditions for women in the sex trade because they strengthen the power held by officials without empowering the women themselves (Jeffrey, 2005: 34). This could put sex workers at greater risk by driving the industry further underground to avoid police raids on sex-work establishments. According to Jeffrey, human rights abuses are most likely present in the conditions under which sex-work is carried out, and this receives little attention because the women engaging in sex-work are perceived “self-chosen whores” unworthy of human rights efforts (ibid: 34). Ensuring safe working conditions for sex-workers is a human rights issue that plays a significant role in the prevention of trafficking, and is considered a human rights issue by academics (Bruckert, et al., 2004; Jeffrey, 2005; Sikka, 2011).

“Is there an adequate¹¹ legislative framework in place related to human trafficking in Canada, and has it been used to effectively identify victims and perpetrators?” constitutes the second specific research question. According to the UN High Commissioner on Human Rights, lack of specific legislation on trafficking at the national level is one of the main obstacles in combating trafficking. Legal definitions, procedures and cooperation at the national and regional levels must be harmonized in accordance with international standards (UNHCHR, 2002: 8). The UN High Commissioner on Human Rights suggests that states consider enacting legislation to provide proportional and effective criminal penalties for trafficking, including provisions for the

¹¹ *‘Adequate’* generally means that efforts were ‘sufficient to meet or satisfy a need’ (Collins Essential Canadian English Dictionary & Thesaurus, 2006: 640). For the purposes of this project, the word ‘adequate’ was not specifically defined according to particular criteria. The UNHCHR (2002) uses the term vaguely so that each country can define it according to their legal system and precedents. However, the Recommendations mention that legislative provisions mandating the protection of victim rights, particularly for child victims, as well as legislation ensuring standardized data collection are part of an ‘adequate’ response from nations which signed the Palermo Protocol.

confiscation of instruments and proceeds of trafficking and related offences, reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking, such as employment, marriage and travel agencies, hotels and escort services. Additionally, provisions for the punishment of public sector involvement or complicity in trafficking and related exploitation are suggested by the UNHCHR. These protections for trafficked persons must be built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation would represent a significant security risk to the individual and/or their family, ensuring victims have the right to pursue civil claims against alleged traffickers and that protection for witnesses is enshrined in law (UNHCHR, 2002:8). If a trafficked person is not correctly identified by authorities, it is likely to lead to a further denial of that person's rights" (UNHCHR, 2002: 8). The UN mandates that states are "obliged to exercise due diligence in identifying traffickers, including those involved in controlling and exploiting trafficked persons"(UNHCHR, 2002: 6). Clear definitions are essential in effectively combating trafficking, and must be fully understood by all parties involved in the detection, detention, reception and processing of irregular migrants, to ensure accurate, swift identification of trafficked persons (UNHCHR, 2002: 6; UN, 2000a; UN, 2000b; UN, 2000c; UN, 2000d). Precise definitions ensure that victims are not prosecuted for violations of immigration laws or for activities they are involved in as a direct consequence of their situation as trafficked persons (UNHCHR, 2002: 6).

Concerns have been raised about the way 'exploitation' is interpreted, and whether certain groups are systematically excluded from the 'victim' category, such as Aboriginal women and girls. Sikka (2011) noted that drug use, even if it is encouraged and facilitated with

the aim of creating addiction/dependence, is not necessarily viewed as ‘exploitation’ of another person. Since the consumption of drugs is viewed as a ‘choice’, withholding drugs, or threats to do so, may not be considered ‘coercion’ or ‘control’ over another person (p.16). Individuals prostituted within a drug-debt bondage relationship (resulting from addiction), may not be considered ‘trafficked’ and could face criminal charges for possession, etc (ibid: 17). Additionally, the ‘victim’ label has received criticism for potentially contributing to the further marginalization of sex-workers by perpetuating the attitude that it is acceptable for some women to be exploited, while others are ‘legitimate victims’ in need of rescue (Jeffrey, 2005: 37).

The third specific research question: “*Is there an adequate response to human trafficking among Canadian law enforcement agencies?*” refers to specific training for relevant officials, which is necessary if legislation is to be effectively implemented. Definitions used in legislation must be consistently adopted and applied throughout the legal system for incidents of trafficking to be correctly identified and responded to. The UNHCHR (2002: 9) recommends that officials be sensitized to their role in ensuring the safety of trafficked persons, and where victims can be properly referred for additional support and information on their rights. Law enforcement officials are often the first contact victims will have with the legal system, and a sensitive response to individual situations is crucial if survivors and witnesses are to be accurately identified and treated appropriately (Dandurand, 2005: 21; 23). The ability of states to prosecute traffickers is dependant in many circumstances on cooperation of survivors and other witnesses. The term ‘law enforcement’ included any officials involved in the detection, apprehension, identification or receipt of traffickers and victims, including the Pre-Removal Risk Assessment officer involved in the *M.S. v. Canada (MCI)* case (FC, 2008-02-20).

The fourth specific research question is *“Does Canada offer adequate protection and support for trafficked persons?”* The Palermo Protocol insists that protection and support are extended to all persons without discrimination, and should not be made contingent on the willingness of the victims to give evidence in criminal proceedings (UNHCHR, 2002: 10; UN, 2000c). Victims are not to be held in any kind of detention facility, as this constitutes a re-victimization (UNHCHR: 14). Previous literature has identified that protection and support of victims has received minimal attention in legislation and law enforcement (Bruckert, et al., 2004: 1; Oxman-Martinez & Hanley, 2004b: 13; Oxman-Martinez, et al., 2005; U.S. Department of State, 2008). The UNHCHR Guidelines outline the expectation that trafficked persons, as victims of human rights violations, have an international legal right to “adequate and appropriate remedies”, however, few victims access such remedies because they “lack information on the possibilities and processes to obtain such remedies” (UNHCHR, 2002: 13).

“Does Canada have special measures for the protection and support of child victims of trafficking?” is the fifth specific research question. The UN considers the best interests of the child to be the primary priority in all actions concerning exploited children (UNHCHR, 2002: 12; UN, 2000a; UN, 2000c). The special rights and needs of child victims must be supported by providing them with assistance and protection under domestic legislation, and ensuring law enforcement officials are properly trained to identify potential victims (UNHCHR, 2002: 12; UN, 2000c). In Canada, legislation specifically condemning child exploitation, and providing mandatory minimum sentences is considered important in deterring offenders from engaging in such crimes, both domestically and internationally (Perrin, 2010a: 226). Child sex-tourism laws are also considered to be a reflection of state commitment to the protection of child victims by the UNHCHR (2002). Canada ratified the International Labour Organization’s Convention

concerning the *Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* in June 2000, however there have been no convictions in cases of forced labour trafficking involving minors to date (Perrin, 2010a: 174).

“Is analysis, evaluation and dissemination of research in the area of human trafficking being done in Canada?” constitutes the sixth specific research question. As previously mentioned, standardization in the collection and dissemination of statistical information on trafficking and related movements are essential in the identification of victims, as well as the successful detection, apprehension and prosecution of traffickers (UNHCHR, 2002: 12). Effective and realistic anti-trafficking strategies must be based on accurate, current information, experience and analysis. Standardization of statistical information on trafficking and related movements that may include a trafficking element, such as migrant smuggling, is a first step in ensuring there is a clear understanding of the issues in Canada specifically (Oxman-Martinez, et al., 2005). Transparent information is required for the relationship between the intention of anti-trafficking laws, policies and interventions, and their actual impact to be monitored and evaluated. Goals of the UNHCHR Guidelines include member states: supporting and bringing together ethical research into trafficking; recognizing the important role that survivors can play in the development and implementation of interventions and ongoing evaluation of their actual impact; and recognizing the central role that non-governmental organizations can play in improving law enforcement response by providing relevant information on trafficking incidents and patterns while respecting the privacy of victims (2002: 8).

The seventh specific research question is *“Has Canada taken specific action toward the prevention of human trafficking?”* The UNHCHR specifies that strategies aimed at the prevention of trafficking in persons must consider ‘demand’ as a root cause (2002: 11). States

and intergovernmental organizations “should give consideration to factors which increase vulnerability to trafficking, including inequality, poverty and all other forms of discrimination and prejudice” (ibid: 11). It is suggested by the UNHCHR that Canada work toward the development of programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups. Additionally, the factors generating demand for exploitative labour should be researched, with strong legislative and policy measures taken to address these issues (ibid: 12). Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration by examining the effect of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws is crucial to ending the problem of human trafficking within Canada, an internationally (ibid: 12). Improving children’s access to educational opportunities and increasing the level of school attendance, particularly by female children, while ensuring that potential migrants, especially women, are properly informed about the risks of migration and given information about where to seek help are suggested initiatives by the UNHCHR.

“Has Canada shown cooperation and coordination with other states and regions regarding the issue of human trafficking?” is the eighth specific research question. The UNHCHR Guidelines call trafficking “a regional and global phenomenon that cannot always be effectively dealt with at the national level” since a strengthened national response can result in traffickers moving operations elsewhere (2002: 15). International, multilateral and bilateral cooperation can play an important role in combating trafficking activities, particularly between countries that are involved in different stages of the trafficking cycle (UNHCHR, 2002: 15; Oxman-Martinez & Hanley, 2004b: 14; Dandurand, 2005). Previous Canadian literature noted that there was no systematic exchange of information between countries, and that statistical data

was largely based on border arrests and police records (fluctuations could reflect other variables, such as changes in border controls) (Oxman-Martinez & Hanley, 2004b: 14). The UNHCHR suggests that mechanisms be established to facilitate the exchange of information concerning traffickers and their methods of operation, as well development of procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned states (UNHCHR, 2002: 16).

3.2 Research method

This project is a qualitative case study that explores Canada's response to the UN Palermo Protocol since the implementation of Bill C-49 in 2005. This research is idiographic, and looks at Canada's response to the recommendations of the UN High Commissioner on Human Rights as a case study, through documentary analysis. As a result, the findings are not intended to be concrete conclusions; rather they are a starting point for additional research into this topic. A nominal coding scheme was chosen as the most effective way of establishing an overall impression of Canada's efforts to comply with the Palermo Protocol. A purposive/convenience sample was comprised of accessible documents, such as legislation, law enforcement responses, available legal cases, and literature produced by experts in the field and non-governmental organizations. These documents were analyzed qualitatively according to a nominal coding scheme derived and adapted from the UNHCHR Guidelines and Recommendations to establish whether Canada's legal framework and judicial response is in compliance with the Guidelines put forward by the UN High Commissioner on Human Rights.

3.3 Sample selection and characteristics

Reliable, accurate data on human trafficking is inherently difficult to find in Canada, which influenced the decision to approach the project qualitatively. Purposive/convenience sampling was chosen because of the inherent difficulty in gathering classified official information about trafficking in persons. As such, the most effective way to bring together all the information available in Canada was to focus on publicly accessible data and cases, and look at what has been openly and officially done to comply with the Palermo Protocol. Each of the documents represent a variety of different voices on Canadian anti-trafficking initiatives, and offer access to a multitude of official discourses regarding Canada's anti-trafficking efforts.

A total of twenty-two documents were analyzed for this project: seven court cases; four pieces of legislation (Bill C-49, Bill C-268, Bill S-223, Bill C-10:10); the Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology regarding Bill C-268 (2010); a publication from the Library of Parliament (2008); a document from Statistics Canada (2010) on the establishment of a National Data Collection Framework for human trafficking; a summary report by CISC (2008); two documents from the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR-CJP) (2010 and 2011)¹²; a recent threat assessment publication by the RCMP (2010); a Human Trafficking Reference Guide for Law Enforcement

¹² The ICCLR-CJP is a joint initiative of the University of British Columbia, Simon Fraser University and the International Society for the Reform of Criminal Law, which receives contributions from the Government of Canada and the province of B.C. The Centre is a component of the *UN Crime Prevention and Criminal Justice Programme* (created in 1991 by General Resolution 46/152) (Retrieved on the World Wide Web, from www.icclr.law.ubc.ca/Site%20Map/About_Us/About_Us.htm)

(2005)¹³; a recent book by Benjamin Perrin¹⁴ entirely on the topic of human trafficking in Canada (2010); and a 2007 Report from the House of Commons Standing Committee on the Status of Women regarding trafficking for the purposes of sexual exploitation, as well as their 2006 Parliamentary Hearing on the topic of human trafficking. These documents are listed in *Appendix B*.

The Immigration and Refugee Protection Act (sections 117,118, 122 and 123) was amended with the passage of Bill C-49¹⁵ (2005), Bill S-223¹⁶, and Bill C-10:10¹⁷ (2010). Bill C-49 criminalized human trafficking and smuggling across international borders, use of false travel documents to contravene the IRPA, and introduced sections 279.01 to 279.04 to the Criminal Code. Bill S-223 (2009) amended the IRPA to provide for the issuance of a victim protection permit for foreign nationals that are victims of trafficking. These permits can be issued for a short-term (180 days) or long-term (three years) if they are willing to assist authorities in the investigation or prosecution of trafficking-related offences, and/or if there is a serious possibility that removal from Canada would be harmful to the victim (2009: i). Bill S-223 also contains

¹³ Authored by Mr. Yvon Dandurand, a Canadian criminologist and Senior Associate of Research and Graduate Studies at the University of the Fraser Valley (www.ufv.ca/cics/faculty/yvon-dandurand/), and founding member of the *International Centre for Criminal Law Reform and Criminal Justice Policy* (ICCLR-CJP).

¹⁴ Benjamin Perrin is a founding member of *The Future Group*, a Canadian NGO dedicated to combating human trafficking and the child sex trade. He is an Associate Professor at the University of British Columbia, Faculty of Law and a senior fellow at the Macdonald-Laurier Institute for Public Policy. Perrin is considered an “internationally recognized researcher and advocate for victims of crime” (Retrieved from the World Wide Web, from www.law.ubc.ca/faculty/Perrin/)

¹⁵ Bill C-49, (2005), “An Act to amend the Criminal Code (Trafficking in Persons).

¹⁶ Bill S-223, (2009), “An Act to amend the Immigration and Refugee Protection Act and to enact certain other measures in order to provide assistance and protection to victims of human trafficking”.

¹⁷ Bill C-10, (2011), “An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts”.

provision for recipients of these victim permits to receive health and social services, and a requirement for the Minister of Health to establish a hotline to provide information and assistance to trafficking victims, as well as develop and implement a public awareness campaign related to trafficking (2009: i). In 2010, Bill C-10 (formerly Bill C-56) amended the IRPA to give immigration officers discretion to deny authorization of foreign nationals to work in Canada if, in their interpretation, the individual is at risk of being a victim of abuse or exploitation, following the officer's administration of CIC screening tools. In June 2010, a Private Member's Bill (C-268)¹⁸ toughened penalties for individuals convicted of trafficking in children and established minimum sentences. Parliamentary hearings for these two Bills contain information presented by representatives from Public Safety, the Canadian Centre for Justice Statistics, the International Centre for Criminal Law Reform and Criminal Justice Policy, the Criminal Lawyers' Association, Border Services, and the Department of Justice, as well as NGOs. Other documents analyzed in this project are: a publication on human trafficking produced by the Library of Parliament, a document from the Canadian Centre for Justice Statistics on the development of a national data collection framework, a reference guide for Canadian law enforcement officials regarding human trafficking, the RCMP's "Project Seclusion" publication, and a report released in 2008 by the Canadian Security Intelligence Service. Benjamin Perrin's book "Invisible Chains" was analyzed as a data source in this project because it provided information on government initiatives at local, provincial and federal levels, along with valuable contributions from NGOs that were unavailable elsewhere.

The cases used in this project are: *M.S. v. Canada* (MCI), *R. v. Nakpangi*, *R. v. Ng*, *R. v. Urizar*, *R. v. Downey and Thompson*, *R. v. Johnson*, and *Her Majesty the Queen v. Domotor* and

¹⁸ Private Members Bill C-268, (2010). "An Act to amend the Criminal Code (minimum sentences for offences involving trafficking of persons under the age of eighteen years)".

Kolompar. Each of the cases were obtained through online databases accessed through the Brian Dickson Law Library at the University of Ottawa (Carswell, Westlaw, and CanLii). Six cases involved charges under S.279 of the Criminal Code of Canada (CCC) between 2005 and 2011, three of them resulted in convictions. One case involved a plaintiff who took the Canadian Minister of Citizenship and Immigration to court to challenge the findings of a Pre-Removal Risk Assessment Officer (PRRA) who concluded that she should be deported (FC, 2008-02-20). This plaintiff felt that her rights were being infringed upon because there was a strong likelihood that her deportation would result in her being victimized and/or trafficked. This case was included because it had been reported to the United Nations Office on Drugs and Crime (UNODC) and offered a unique perspective into Canada's judicial treatment of individuals fighting deportation that claim to be victims of trafficking prior to arrival in the country. It was important that cases were included in this project because the judicial system relies heavily on precedent, and each case provides a window into Canada's interpretation of anti-trafficking policies.

3.4 Analytical Framework and Coding

The UNHCHR Guidelines and Recommendations were used as a base from which the coding scheme was adapted to better capture data that would be available publicly. For instance, specific UNHCHR Recommendations surrounding peacekeepers, foreign nationals, and diplomatic and humanitarian personnel were excluded because information was too sensitive and difficult to obtain due to national security concerns.

The coding scheme for this project is in *Appendix A*; please refer to it for detailed information about the indicators for each question. Research questions were listed with groups of

indicators and documents were analyzed for the presence or absence of these indicators. The nominal coding scheme had four possible options: “Yes”, “No”, “Not Applicable”, and “Not Disclosed”. The yes/no framework established the presence or absence of policies, procedures, programs and interventions related to each indicator, specifically identifying actions that have been taken or neglected. This allowed for anything that was a ‘goal’, ‘aim’ and ‘direction for future research’ to be eliminated from the findings; this took away some room for nuance, but helped to clarify Canada’s efforts to date which honour its commitment to the Palermo Protocol. Each document was coded individually, with notes taken about why the coding choice was selected. Each document was coded three separate times, each time in a new spreadsheet to ensure previous answers would not be viewed, the date was written on the sample sheet, and seven days passed before a document was coded again; a new coding sheet was used each time to ensure that findings were not tainted by previous impressions. After each document was coded three times, a coding summary was made which listed each theme and indicator, and underneath it a list of the documents that were coded as “Yes”, “No”, “Not Disclosed” and “Not Applicable”.

3.5 Methodological Limitations

Like all research techniques, content analysis suffers from certain limitations. Due to the lack of comprehensive data on human trafficking in Canada, and the fact that this project relied on secondary sources of information, such as publications and court cases, there is an inherent limitation in the findings of this paper. Findings can only be as good as the documents that were used. Since this paper looked only at publicly available data, there is always a chance that efforts are being made by the Canadian government that were not made available to the public during

the time data was collected for this project. This case study looked only at Canada's efforts to combat trafficking between 2005 and 2011, and therefore is not generalizable to other nations. This project had a single coder, which is a clear limitation since each individual's point of view is subjective. The lack of available court cases was a challenge for this project, since not all cases are written up into formal court documents, particularly if settled by plea bargain or oral judgment. Several cases which involved human trafficking were mentioned in the media (newspapers, television), and named in the RCMP 'Project Seclusion' publication, but had no official documentation accessible through online legal databases and had to be excluded from analysis in this project, despite taking place between 2005 and 2011.

CHAPTER 4: Analysis, Discussion and Implications

In this chapter, the findings from the content analysis of twenty-two documents will be presented. A complete list of these documents is provided in *Appendix B*, which include: court cases, legislation, Parliamentary and Senate hearings for legislation, publications from several government departments and law enforcement agencies. Findings will be organized according to the specific themes, and the sub-questions and indicators they were investigated for¹⁹. Results will be discussed within the context of the guiding research question: *Is Canada falling short of its obligations to combat trafficking in persons?*

4.1 Is the promotion and protection of human rights a priority in Canada’s response to trafficking in persons?

For this research question, four indicators were used to determine if Canada demonstrated ‘commitment’ to the protection of human rights in the context of human trafficking. These were derived from the UNHCHR Recommendations, and look for the presence of anti-trafficking policies, programs and interventions which do not adversely affect the “rights and dignity of all persons”, or the “right of all persons to seek asylum”, with mechanisms in place to monitor the human rights impact of those policies. Additionally, whether Canada is providing ongoing detailed reports on anti-trafficking efforts to UN human rights treaty-monitoring bodies was considered indicative of their commitment to view the issue of human trafficking through a

¹⁹ Due to the large number of indicators for each theme, and the overlap in some answers, not all indicators are listed at the beginning of each theme section. This was done to help organize the findings into a readable format and provide information on only the notable findings. A list of all indicators for each theme can be found in *Appendix A*.

human rights perspective, which acknowledges the interconnection of states and regions in combating human trafficking.

To comply with the Recommendations and Guidelines of the UNHCHR, an agency or bureau must be established, separate from law enforcement and the government which monitors the impact of anti-trafficking, prostitution, immigration and labour laws on human rights in Canada. The closest thing resembling this in Canada is the Interdepartmental Working Group on Trafficking in Persons (IWGTIP) which serves as the government's coordinating body on human trafficking. Made up of officials from seventeen different departments (previously listed in section 3.5), the IWGTIP is responsible for the creation of a federal strategy to address trafficking in persons, aligned with international legislation, and ongoing review of existing laws, policies and programs that may have an impact on human trafficking, to identify best practices and areas where additional attention and resources are needed (Barnett, 2008: 15). The IWGTIP has produced and distributed an anti-trafficking booklet, pamphlet and poster in multiple languages to Canadian embassies, missions and NGOs abroad, as well as within Canada, to warn potential victims of the dangers of trafficking (Barnett, 2008: 15; Barrett, 2011). Conferences, seminars and public outreach sessions have also been held to explore best practices and research while raising community awareness (Barnett, 2008: 15; Gervais, 2010). While the efforts of the IWGTIP have been helpful in raising awareness of trafficking, without viable alternatives to migration, individuals desperate to escape their circumstances may feel they must accept the risk that they may become trafficked in order to access a potential opportunity to escape poverty or otherwise desperate and dangerous life situations.

4.1.1 Effect of Canadian legislation on the rights and dignity of all persons

Bill C-268, a Private Members Bill enacted in June 2010 to amend the mandatory minimum sentences judges could apply to human trafficking cases involving minors, has sparked some concern for its potential to have an adverse impact on human rights (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010b: 2). According to Michael Spratt, Director of the *Criminal Lawyer's Association*, mandatory minimums represent a “one-size-fits-all” administration of justice, which removes judicial discretion, offers no incentive for the accused to settle the case early via guilty plea, meaning more cases will likely go to trial, and can disproportionately affect disadvantaged groups (ibid: 2). He also points out that some trafficking cases contain mitigating factors, such as individuals who assist in the transport of children in order to secure their own passage out of a war-torn area, and that a mandatory minimum sentence does not take this into account.

President of the *Canadian Association of Crown Counsel*, Jamie Chaffe, reinforced that Bill C-268 would, in practice, likely reduce guilty pleas and increase the rate at which these matters go to trial (ibid: 2). He mentioned that without additional funding for prosecutors, mandatory minimum sentences would increase the weight on an already overburdened system, and could affect the human rights of other persons involved in the justice system (ibid: 3). Due to limited resources, prosecutors and pre-trial judges may need to offer lower sentences or diversion for offenders with unrelated offences (non-trafficking) to compensate for the reduction of trial capacity caused by the additional trial load from Bill C-268 (ibid: 3). When cases go to trial instead of being plead out, victims must appear in court and potentially be subject to cross-examination, depending on the case. If the accused enters a guilty plea the victim does not have to appear in court and can still provide an ‘impact statement’ for sentencing (ibid: 3). There is

consensus between Mr. Spratt and Mr. Chaffe that the system is chronically underfunded, the prison system is overburdened, and if an accused person knows that regardless of a guilty plea, they will be sentenced to five years' incarceration (six in aggravating circumstances), they are more likely to risk a trial. This could create a situation in which the rights and dignity of an accused person are compromised, especially if they feel pressured into making a plea bargain.

Perrin (2010a: 221) believes current solicitation laws for prostitution may compromise the human rights of women and children in other typically less industrialized nations, because it is not against Canadian laws to solicit sex abroad. He claims this lack of strong, enforceable laws is potentially harmful to the rights and dignity of persons everywhere, and should be expanded to criminalize paid sex-acts "wherever they take place" to deter Canadians from exploitative sexual tourism (ibid: 221). This point of view was not echoed in all Canadian literature on sex trafficking in Canada; some academics point out that complete criminalization of sex work would not address the root issues driving and sustaining the global problem of human trafficking, such as the lack of viable employment opportunities in source countries. Additional penalization would not necessarily deter potential migrants from seeking a better life outside their country of origin, since a penal response will not tangibly alleviate any of the problems for which illegal migration appears to be a solution (Oxman-Martinez, et al., 2001a: 1; Sharma, 2005; Weitzer, 2007). The decriminalization of sex work could present the opportunity for labour laws and enforceable standards of employment to emerge, potentially with enhanced government regulation and oversight (Jeffrey, 2005). Additionally, it could also lower the likelihood that victims of trafficking are viewed as criminals and placed in detention facilities, which further compromises their human rights and dignity (Weitzer, 2007: 457; Jeffrey, 2005).

4.1.2 Effect of legislation on the right to seek asylum from persecution

The Immigration and Refugee Protection Act, along with Citizenship and Immigration Canada have been criticized for lacking clear, uniform policies and procedures related to the identification and treatment of trafficking victims (Barnett, 2008: 12). Perrin (2010a: 224) notes that current policies could affect the “right of all persons to seek asylum” by the decision not to independently include ‘trafficked person’ as grounds for claiming refugee status. The exploitation experienced by trafficked persons is not always considered a form of ‘persecution’ that would necessarily prevent individuals from returning to their country of origin. Research by the Library of Parliament indicated that refugee status can be granted to victims on an “ad hoc basis”, and that all submitted claims are considered by Citizenship and Immigration Canada (Barnett, 2008: 12).

The case of *M.S. v. Canada* (MCI) demonstrated that victims of trafficking may experience difficulties being recognized as persons in need of “asylum” due to the subjectivity inherent in the decision process (FC, 2008-02-20: 2 [5]). Pre-Removal Risk Assessment (PRRA) officers are the front-line workers responsible for initial decisions about whether the stories of individual asylum claimants are “legitimate”. *M.S.* claimed she was trafficked while in her home country of Romania and was at high risk of being re-trafficked if she was expatriated from Canada. She believed Romanian law enforcement officials were corrupt and would not help or protect her, since her traffickers had previously escaped prison. The PRRA officer responsible for reviewing her case decided the risk she faced was not severe enough to warrant an asylum claim and that she would be extradited (ibid: 2 [5]). This decision was later overturned by two judges who heard the case and criticized the PRRA officer’s decision for being “patently unreasonable” (ibid: 5 [7]). This case demonstrated that claimants can successfully challenge

deportation decisions in court and receive permission to stay in Canada. Additionally, the judge's decision calls into question whether appropriate training is being provided for PRRA officers, who have the responsibility to decide unilaterally whether individuals claiming to be trafficked are 'victims' or potential 'security threats'.

4.2 Is there an adequate legislative framework in place related to human trafficking in Canada, and has it been used to effectively identify victims and perpetrators?

Fourteen themes²⁰ were used to assess the adequacy of Canada's legislative response to the issue of human trafficking. Documents were investigated to establish the presence of: a National Plan of Action; criminal laws which contain precise definitions for trafficking and related activities (e.g. debt bondage), with detailed guidance on punishable elements and corresponding penalties, along with provision for additional penalties to be applied in aggravating circumstances (i.e. involvement of state officials, children, etc.). The review of laws, administrative controls and conditions related to the licensing and operation of businesses that may serve as cover for trafficking, and provisions allowing the "confiscation of instruments and proceeds" of trafficking were also investigated as indicators of an effective legislative response. Within anti-trafficking legislation, the presence of: provisions preventing victims from being prosecuted, detained, punished or summarily deported for their activities as trafficked persons; of guaranteed protection for witnesses, and provisions for victims to receive social support to meet their immediate needs were also considered to indicate the adequacy of Canada's legislative response to trafficking, in relation to UNHCHR Guidelines and Recommendations. Furthermore,

²⁰ Complete list available in *Appendix A*.

the presence of a ‘National Rapporteur’ and ‘National Referral Mechanisms’ are considered as part of a sufficient strategy.

4.2.1 Canadian anti-trafficking legislation

Canadian legislation enacted in 2005 (Bill C-49) specifically criminalizes ‘trafficking in persons’ and related activities, with some guidance provided on punishable elements of the offence. Bill C-268, enacted in 2010, provides for stricter penalties to be applied to individuals convicted of child trafficking. All pieces of Canadian legislation related to trafficking use consistent definitions that are aligned with the Palermo Protocol, though not identical. No specific provisions have been enacted which give protection to trafficking victims, and none are formally included or embedded in Canada’s existing laws. Research by the Library of Parliament says “the particular issue of victim’s rights is often sidelined within the larger struggle against organized crime” and viewed as a “secondary concern” (Barnett, 2008: 10). The treatment of victims will be discussed in greater detail in research question four.

As of December 2011, Canada did not have an established National Plan of Action, National Rapporteur, or formalized National Referral Mechanisms. A National Action Plan is “vital in articulating a coherent, cohesive and comprehensive strategy and operational plan to counter human trafficking” (Gervais, 2010: ii). It should outline methods of coordination and cooperation among different levels of government, delegate responsibilities between agencies, and contain a budget, timelines and deadlines (ibid: ii). A ‘National Rapporteur’ is an individual or department, ideally at arms-length from the government, whose mandate is to report to the largest audience possible on the nature and extent of human trafficking in Canada, and the impact of anti-trafficking policies and government efforts. ‘National Referral Mechanisms’ are

coordinated partnerships between government and NGOs which strategically link trafficking victims with appropriate services and ensure their rights are respected and protected (Gervais: ii).

4.2.2 Canadian legislation related to international trafficking

The Department of Citizenship and Immigration provides temporary resident permits (TRPs) to trafficked persons. This policy works within the existing legislative framework, and allows immigration officers to issue TRPs that are valid for up to 180 days to persons considered to be victims of trafficking (Senate of Canada, 2009: i; Status of Women Canada, 2007; Barnett, et al., 2010). As mentioned earlier, recipients of TRPs can apply for work permits exempt from all processing fees, and are eligible for medical and social counselling assistance and other health service benefits under the Interim Federal Health Program (Senate of Canada, 2009: i; Barnett, et al., 2010; Barnett, 2008: 13). Victims are not obligated to cooperate with a law enforcement investigation to receive these benefits, and can be granted an extended permit or subsequent temporary residence permit if an immigration officer determines that deportation would constitute a risk to the individual's physical safety (Senate of Canada, 2009: i; Barnett, et al., 2010). Victim compensation programs and health care services fall within provincial/territorial jurisdiction, making the social benefits available to trafficked persons mutable, dependent on services available in the relevant location (Gervais, 2010; Status of Women, 2007). This occurs because Canada lacks national legislation mandating the provision of basic support services to victims. The Status of Women report "Turning Outrage Into Action" (2007) noted the case of a woman who filed for a TRP, but was only able to support herself during the legal process by renewing the exotic dancing visa she originally entered Canada with (2007: 38). The report recommended that shelter, as well social and health services, be provided for all persons that

request a TRP, and that data be kept about all applications and their results (ibid: 40). This report also noted that potential victims were held in detention facilities while they were evaluated by CIC and the outcome of their case decided (p. 40). Even after receiving ‘victim’ status and a TRP, individuals are still listed as potential security risks, and can be held in detention until their situation can be heard before a judge (ibid: 41). Status of Women recommended a review of TRP policy and its implementation to ensure the human rights of potential victims are not adversely impacted; the report suggests that NGOs be included in each aspect of the discussion. Victims treated as security threats first and human beings second indicate the need for human rights to be made a priority in the policies and practices related to border security and immigration.

4.2.3 Gaps in the law

Canadian legislation (Bill C-49, Bill C-268, IRPA) employs a definition of ‘human trafficking’ that is more narrow than the agreed definition in the Palermo Protocol (Perrin, 2010a: 137). The Criminal Code definition of human trafficking centers on the victim’s experience of ‘fear’ for their ‘safety’ or the safety of someone close to them. This has been criticized for restricting the definition of ‘victim’ to include only those who experienced physical harm, or ‘feared’ it due to threats/intimidation, and excluding victims who were coerced with psychological and emotional harm, such as blackmail; withholding drugs, affection, money, food, etc. (Perrin, 2010a: 137). Furthermore, victims bear the burden of convincing the court that the level of ‘fear’ they experienced gave their trafficker control over their movements. Perrin notes that the definition may fail to address methods such as fraud, deception, abuse of power/position of vulnerability, or payment of someone to control the victim unless they can be

linked directly to the concept of physical ‘safety’ (ibid: 137). He says that traffickers in Canada have been able to escape charges/convictions as a result of this definition loophole, and trafficked persons have been denied ‘victim status’ because it was doubted that the coercion and exploitation they experienced would cause them to fear their physical safety was in jeopardy (ibid: 137).

The case of *R. v. Urizar* illustrates how the burden of proof surrounding ‘fear for one’s safety/life’ can be judicially interpreted. Mr. Urizar was charged with fourteen offences and found guilty of thirteen: robbery, assault with a weapon, assault causing bodily harm, uttering death threats, sexual assault, trafficking in narcotics, forcible detention, possession of a weapon with intent to commit an offence, human trafficking, material benefit, extortion, criminal harassment, and sexual assault causing bodily harm (J.C.Q., 2010-08-15: 26). The judge dropped a single charge when giving his verdict, that of “assault endangering life”. He said he “had reasonable doubt as to whether the injuries suffered by the complainant actually endangered her life” (ibid: 26). This is despite his earlier statement that the victim “did not contradict herself on the substance of her testimony and the Court is convinced that, on the whole, she is telling the truth about the acts the accused is charged with” (ibid: 22). The court believed that Mr. Urizar uttered death threats, caused bodily harm, controlled her behaviour, hit her in the head and thighs with a belt, hit her in the back with a broom, and pointed a Taser gun in her face, but did not accept that abuses suffered by the victim would cause her to feel that her life was in danger (ibid: 26). To convict on the charge of human trafficking it is necessary that she feared for her safety, but evidently that does not necessarily mean that she had reason to believe her life was in danger. This case illustrates one way that ‘fear’ and ‘safety’ have been judicially interpreted in Canada.

4.3 Is there an adequate response to human trafficking among Canadian law enforcement agencies?

For this research question, the ‘adequacy’ of law enforcement was investigated using eight indicators. These themes determined the presence of: “guidelines and procedures for all relevant authorities involved in the detection, detention, reception and processing of illegal migrants”, as well as those with any role in identifying illegal migrants as trafficked persons. The presence of specialized “training programs” which sensitize officials to the needs of trafficked persons and educate them about their “responsibility to ensure the safety and well-being” of trafficked persons. Additionally, the presence of “investigative powers which enable effective detection, investigation and prosecution of traffickers”, and the establishment of “specialized anti-trafficking units comprising men and women” were considered as indicators of an adequate law enforcement response, as well as “cooperation between authorities and NGOs“ to ensure trafficked persons receive support and assistance.

The Human Trafficking National Coordination Centre (HTNCC) is a specialized anti-trafficking unit within the national police force (RCMP). Established in 2005, the efforts of the HTNCC have focused on awareness campaigns and the provision of training to police forces, authorities and officials across the country; their role does not appear to involve the active targeting and disruption of human trafficking operations in Canada (RCMP, 2010; Barrett, 2011; Perrin, 2010a). Training programs used by the HTNCC contain information from the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR-CJP) publication, *“Human Trafficking: A Guide for Canadian Law Enforcement”*. This aims to sensitize officials to the circumstances of trafficking, and their responsibility to ensure the safety and well being of victims (Dandurand, 2005). The HTNCC works in cooperation with the

IWGTIP, as well as many NGOs and law enforcement agencies to share information, provide training and increase awareness of human trafficking.

Det. Sgt. Lori Lowe (National Coordinator for Human Trafficking, Immigration and Passport Branch, Border Integrity, Federal and International Operations, RCMP), said in a presentation given to the Standing Committee on Status of Women (2006), that actions taken by the HTNCC largely focused on: awareness campaigns, training and educational initiatives, coordination with other departments, agencies and NGOs, and on the development of a national victim protection program (House of Commons, 2006: [1115]). Det. Sgt. Lowe claimed future goals of the HTNCC include:

[T]he development and administration of workshops for NGOs to enhance cooperation and facilitate sharing of information; provision of information to Canadian peacekeepers travelling to source countries; cooperation with Canada Border Services Agency to develop training for law enforcement and other agents who may have first contact with potential or actual trafficking cases; coordination of regional law enforcement conferences to discuss specific investigations, share intelligence (etc.); partnerships with municipal bylaw officers to monitor agricultural farm workers; assisting with the development of awareness programs for orphanages and foster agencies domestically and abroad; development of an inventory of victim protection measures; and coordination with the International Organization for Migration and RCMP liaison officers to develop a structure for the repatriation of victims (House of Commons, 2006: [1120]).

Despite these promising ambitions articulated by the RCMP in 2006, no clear information was available regarding the current state of progress toward these goals. In their 2010 publication, ‘Project Seclusion’, the RCMP rescinded prior estimates on the number of persons trafficked within the country due to problems obtaining reliable data. As of May 2011, the *International Centre for Criminal Law Reform and Criminal Justice Policy* noted that seven trafficking convictions were entered, with one judicial opinion considering the application of Canadian trafficking laws, which left law enforcement officials with very “little judicial guidance on the interpretation of broad new laws” (Barrett, 2011: 14). According to the RCMP, section 279 of

the Criminal Code may be more consistently interpreted and applied if more funding was made available for the Human Trafficking National Coordination Centre (HTNCC) to work on training and education in different jurisdictions (House of Commons, 2006: [1205]).

4.3.1 Labour trafficking investigations by law enforcement

The RCMP has not identified the involvement of known organized crime groups in labour-trafficking, and investigations (to date) have found that most cases “involve individuals or family units who take advantage of foreign nationals for personal gain” (RCMP, 2010: 36). This was the situation in the case of *Her Majesty the Queen v. Domotor and Kolompar*, in which a single family recruited numerous victims through contacts in their home country of Hungary, organized their entry into Canada, and exploited them for personal profit (O.N.S.C, 2010-01-26). This was the first major case involving labour trafficking, and affected over twenty victims. The RCMP suggests that the largest number of *potential* forced labour cases they are aware of involve third parties hiring foreign workers already illegally living in the country with numerous complaints alleging deceit and misrepresentation were filed by individuals and employers against third parties (broker or agency) that arranged for foreign workers (RCMP, 2010: 36). For example, investigations found Canadian recruiters in Montreal, Calgary and Toronto had lured foreign nationals with bogus job opportunities under the Live-in Caregivers Program. Victims were left without employment, defrauded for the service fees paid to recruiters and bound to a work visa issued to a nonexistent job (ibid: 36). The sectors of concern identified by the RCMP report include “agriculture, sweatshops, processing plants, domestic work, food retail chains, restaurants and technology”, but they do not have jurisdiction to investigate labour trafficking violations that are not criminal, which is a barrier to enforcement (RCMP, 2010: 32; Barrett,

2011: 14). For instance, Canadian Border Services Agency is the main investigative agency for files involving illegal workers that have come forward to allege exploitation against their employer (RCMP, 2010: 36).

According to MP Joy Smith (2010), the investigatory powers provided to law enforcement officials must be expanded. She says that forced-labour trafficking cases involving children have been observed in Canada, though no convictions have been secured (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 2; Barrett, 2011: 15; Perrin, 2010a: 177), and mentions an example concerning fifty Honduran children being trafficked to Vancouver and used as drug dealers, but the law being unable to press charges due to the lack of mandatory minimum sentences (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 2).

4.3.2 Law enforcement and sex trafficking

The case of *R. v. Nakpangi* (2008) demonstrated that the response of law enforcement officials was not sufficient in preventing the use of free internet advertising sites, such as Craigslist, to facilitate prostitution (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 2). This was the first successfully prosecuted case of human trafficking in Canada, it was instrumental in the enactment of Bill C-268 and cemented the absence of a national ‘victim compensation fund’ as a critical problem in Parliamentary discussions (ibid: 2). While there is still work to be done combating online advertisements for sexual services, law enforcement showed a willingness to respond with immediate protective and preventative actions once they became aware of Mr. Nakpangi’s victims (Perrin, 2010a: 123). However, few police resources are allocated for officers to

investigate potential cases of trafficking, or give a timely response to every reported incident that comes to their attention (Perrin, 2010a: 140). A conviction for human trafficking was also obtained in the case of R. v. Urizar (2010). The victim (eighteen years old) approached police with her story and seemingly received appropriate treatment as a person who had been trafficked for the purpose of sexual exploitation (J.C.Q., 2010-08-13).

In the case of R.v. Ng, it appeared as though the powers given to law enforcement were sufficient for the investigation of potential illegal activity within Mr. Ng's massage parlour, since his business was the subject of an undercover investigation prior to victims reporting their allegations directly to police (B.C.P.C., 2007-06-21). Officers were capable of, and willing to, make an arrest based solely on accusations of exploitation made to the Vancouver police by two illegal migrants (ibid: 6 [38], 8 [45]). The women were provided with language interpretation/assistance (ibid: 8 [51], 14 [93]) and were able to remain in Canada for the duration of the trial, despite one victim's claim that she was still in love with Mr. Ng and had contacted him and even lived with him at some point during legal proceedings against him (ibid: 7 [40]). These claims could not be verified because evidence on where the victims stayed prior to their repatriation was unclear (ibid: 7 [40]). It appears that neither of the women were charged with criminal offences and held in custody since the judge speaks of them being returned to China. Though he was not convicted of trafficking, Mr. Ng received convictions under the IRPA for bringing both women into the country with false identification, and under the Criminal Code for prostitution related offences.

4.3.3 Challenges to improving law enforcement response

Det. Sgt. Lowe (RCMP) identified the biggest challenge faced by law enforcement as the lack of funding/resources to adequately investigate cases and provide protection to victims. She says, “[w]e have six immigration and passport sections in Canada. There are not even six officers who we’ve been able to dedicate to this” (House of Commons, 2006: [1205]). She also noted the need for “people to do research, especially in the Northern communities and the prairies” and engage with local NGOs and law enforcement agencies, but the lack of resources exclude such initiatives (ibid: [1205]). Additionally, the provision of adequate training/education for parties with a role in the detection, detention, identification and processing of illegal migrants, was identified as a challenge for law enforcement and a by-product of the overall lack of resources (House of Commons, 2006: [1205]; Perrin, 2010a: 140; Barrett, 2011: 27). Mr. Dandurand mentions this in a presentation to the Standing Committee on Status of Women, and notes that prior to 2005, only the RCMP were responsible for enforcement of the Immigration and Refugee Protection Act (IRPA), which contained the country’s only criminal offences for trafficking related to border crossing (House of Commons, 2006: [1205]). After Bill C-49 in 2005, every police force in the country was responsible for the enforcement of anti-trafficking laws, though not allocated enough funds to consistently train officers on how to implement the new legislation.

The Criminal Intelligence Service Canada cautions that traffickers take advantage of the lack of coordination between jurisdictions, municipalities, agencies (etc.), and relocate to cities or provinces that are less active in combating human trafficking (CISC, 2008: 33). Perrin claims a “slow shift toward cooperative work among federal, provincial-territorial, and municipal police forces can be observed in pockets of the country” (Perrin, 2010a: 139). He thinks law

enforcement powers should be expanded and greater resources allocated for the “detection of human trafficking through undercover operations, wiretaps, and international investigations” (ibid: 226). He says the ‘vice units’ of major police forces are often responsible for investigating activity related to guns, gangs, drugs and prostitution, but many of these units have been emptied of resources and downsized to a handful of officers (ibid: 226). Perrin’s research found that mandatory training is not being provided to all police officers on human trafficking offences contained in the Criminal Code (ibid: 141). Without proper knowledge of when and how to identify trafficking crimes, gather evidence and proceed with charges, it is unlikely that extending the powers of police would be useful in combating human trafficking.

Perhaps it is unnecessary to increase the investigatory powers of law enforcement until sufficient resources are available to fund the full use of powers currently available to officials, as well as education and training on how to use them. The main challenges mentioned by law enforcement officials seem to be the lack of officers and resources allocated for the investigation of trafficking cases. This indicates that law enforcement agencies need to give anti-trafficking issues more attention in their current budgets, and amongst their staff, before any consideration should be given to expanding their investigatory powers.

4.4 Does Canada have adequate protection and support for trafficked persons?

For this research question, sixteen themes were used to assess the ‘adequacy’ of protection and support for victims in Canada. These themes are: the presence of policies which prohibit trafficked persons from being held in detention facilities or other forms of custody, and/or prosecuted for activities directly related to their status as trafficked persons. The presence of procedures and processes for the consideration of asylum claims from trafficked persons and

smuggled asylum seekers, as well as a compensation fund for victims of trafficking (financed with assets confiscated from traffickers) were also looked for as indicators of an adequate response. Procedures in place which ensure trafficked persons are informed in a language they understand, of their right to access: diplomatic and/or consular representatives, temporary residence permits if necessary, legal and social assistance; legal remedies (criminal, civil, or administrative); safe shelter, not contingent on their willingness to give evidence in criminal proceedings; primary health care and counselling; protection from harm, threats and intimidation by traffickers and associated persons, and warned of the risks, difficulties and capacities of law enforcement in this regard. Policies which ensure the safe and voluntary return of trafficked persons to their country of origin (if possible), with the option of third-country resettlement in specific circumstances. The presence of policies which ensure victims have access to remedies, as well as assistance accessing those remedies, indicate the adequacy of Canada's response to victims of trafficking.

There are no consistent, formal mechanisms used in Canada to determine whether an individual is a trafficking victim. Instead, their status and the availability of services varies on a case-by-case basis according to situation and jurisdiction (Dandurand, 2005: 12). The arbitrary determination process used by Pre-Removal Risk Assessment officers working with CIC is the closest thing to a 'formal mechanism' used by the government, and is only applicable to cases involving foreign nationals. Police, healthcare providers, social service providers and others may also make front-line decisions about who is identified as a trafficking victim, though the process is less formal than with CIC, it is equally subjective (Senate of Canada, 2009; Barnett, et al., 2010; Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 2). There is consensus in the literature that education/training programs for

service providers that may have first contact with victims are necessary to ensure fewer people fall through the cracks of the system (particularly Aboriginal women and girls) (House of Commons, 2007; Perrin, 2010a: 95).

Since Canada has no uniform national legislation in place which guarantees the right of victims to access assistance and remedies, services are provided at the provincial/territorial level vary by jurisdiction (Gervais, 2010: 6). Bill S-223²¹ outlines that provinces and territories are to work on setting up a system to provide victims with healthcare, but does not guarantee their right to access the same funding as other victims of crime (Perrin, 2010a: 223). Mr. Dandurand told the Committee on the Status of Women that it would be difficult to find an organization working with victims that “does not face serious resource issues” (House of Commons, 2006: [1220]). Special measures had to be assembled by the RCMP and other agencies to provide support for the “handful” of victims that came forward before 2006 (ibid: [1220]). He mentioned that such a response is unsustainable, and a network of victim service-providers must be adequately funded to allow rapid response. If numerous victims are discovered at one time there would be a demand for immediate services, which Canada’s NGOs are not properly funded to absorb the cost of (ibid: [1220]). MP Belinda Stronach also identifies underfunding as a point of concern in her comments to the Committee, saying that her community (Aurora, within the York region of Toronto) has “struggled to make resources available” to local police, and that because of that underfunding, “police don’t offer much in support of the victims” (ibid: [1220]). One tool that could help to fund the efforts of NGOs and other victim support services, according to Perrin (2010) is existing legislation that authorizes the seizure and forfeiture of the proceeds of crime

²¹²¹ Bill S-223, (2009), “An Act to amend the Immigration and Refugee Protection Act and to enact certain other measures in order to provide assistance and protection to victims of human trafficking”.

and unlawful activity. He says this has been ordered in two Canadian convictions that involved human trafficking (2010b: 141).

The provinces and territories currently administer numerous programs and services that may be available to trafficking victims, though services vary by jurisdiction (Gervais, 2010: 6). Most jurisdictions provide emergency income assistance to trafficking victims through existing social services, with some variation in access depending on whether the victim is a Canadian citizen. Emergency shelters are accessible to victims across jurisdictions, but individual shelters may not offer services specific to victims of trafficking (Gervais: 7). Training programs are not currently offered to shelter staff to provide exposure to the needs of trafficked persons and the challenges they face, but the development of such programs has been suggested (Perrin, 2010a: 108, 227; Gervais, 2010). In most provincial/territorial jurisdictions, victims of trafficking are able to access some form of community service programming, but currently British Columbia is the only province that provides specialized victim services tailored to trafficked persons.

In 2007, British Columbia became the first province to formally recognize the problem of human trafficking in Canada when it created the Office to Combat Trafficking in Persons (OCTIP) under the Ministry of Public Safety and Solicitor General (Perrin, 2010a: 107). Their objectives are to identify, protect, and coordinate services for trafficked persons; and reduce and prevent trafficking through contributions to national and international efforts (including prosecutions) (Perrin, 2010a: 107). Funding comes from the Ministries of Public Safety, Solicitor General, and Children and Family Development. In the case of foreign trafficked children, OCTIP works to meet their specialized needs in partnership with the B.C. Migrant Services Program. In their early days, OCTIP struggled to find willing partners to engage in efforts to enhance systems for identifying and assisting victims in the province, and arranging meetings

with key agencies was difficult (ibid: 107). However, changes have been happening slowly as victims are identified. In March 2009, the CIC in B.C. issued the provinces first temporary residence permit (TRP) for a trafficking victim (Perrin, 2010a: 108).

The Action Coalition on Human Trafficking (ACT) has been formed in Alberta, which is composed of government agencies, NGOs, survivors of trafficking and the general public who are concerned with identifying and responding to issues of trafficking (Gervais, 2010: 7; Perrin, 2010a: 108). A Human Trafficking Response Team (HTRT) was formed in Manitoba and organized by the Salvation Army of Winnipeg to coordinate responses from parties involved in the provision of services to victims of trafficking (Gervais, 2010: 7; Perrin, 2010a: 110). The Government of Manitoba also launched an initiative called “Tracia’s Trust”, a \$2.4 million dollar anti-child exploitation strategy named after a fourteen year-old victim, which provides increased resources to promote the accountability of offenders who sexually exploit children, as well as raise awareness and develop victim services and educational campaigns (Perrin, 2010a: 184). Furthermore, Manitoba’s “Stop Sex With Kids” campaign aims to prevent the sexual exploitation of children through their awareness-raising billboards, leaflets and website. These portray tragic stories and shocking statistics from the provincial government (i.e. an estimated 400 children are exploited each year in Winnipeg’s street sex trade (Perrin, 2010a: 181). The Assembly of Manitoba Chiefs is developing a response to trafficking of Aboriginal women and children, with a focus on young people, especially women, in urban centres of Manitoba (Gervais, 2010: 7; Perrin, 2010a: 109). In Quebec, the *comité interministériel sur la traite des femmes migrantes*, chaired by the Ministry of Justice, is primarily responsible for provincial work related to trafficking. This committee is involved in the establishment of a provisional provincial model to respond to the needs of victims, particularly shelter, psychological

intervention and assistance with immigration status, and help shelters and other stakeholders to collaborate with government ministries and other partners (Gervais, 2010: 7; Perrin, 2010a: 110). Prince Edward Island has an advisory group of federal and provincial officials, police and community members, while Ontario has an “ad hoc Human Trafficking Team composed predominantly of NGOs” (Gervais, 2010: 10). Perrin notes that Ontario’s lack of a comprehensive system to assist trafficking victims is “particularly alarming and unacceptable”, being that it is the most populous province, with the highest volume of prosecutions and foreign trafficking victims that are recognized by the CIC (Perrin, 2010a: 227). These existing provincial efforts, regardless of their strength, could provide the foundation from which a national Canadian anti-trafficking structure (National Plan of Action) can be developed.

Victims are not to be summarily deported from Canada (as mentioned in 4.2 of this thesis) or held in any form of detention facility. The Department of Citizenship and Immigration allows victims of trafficking to apply for temporary residence permits (TRPs) at no cost (Senate of Canada, 2009). The decision to grant a TRP belongs to a sole immigration officer at the regional office where the application is made, which is highly subjective and may result in inconsistent decisions (FC, 2008-02-20; Perrin, 2010a: 106, 144). Perrin’s research suggests that significant disagreements take place between immigration authorities and the RCMP (2010a: 106). He discusses a case the B.C. Office to Combat Trafficking in Persons (OCTIP) became aware of in 2008 which involved a minor being deported because CIC disagreed with the RCMP over the child’s status as a victim of human trafficking (Perrin, 2010a: 145). Furthermore, NGOs in Ontario and Alberta, along with B.C.’s OTIP have expressed concern about CIC assessment procedures for trafficking victims (ibid: 144). Perrin recommends additional training for officers, and the assignment of complex cases to senior officials as steps that would improve the approach

of the CIC and result in fewer victims being unnecessarily deported or held in detention facilities (ibid: 145).

In the case of *R. v. Downey and Thompson*, the victim was held in custody for thirteen days for her failure to appear in court as a trial witness. Her defendants had connections in the same small Nova Scotia town she still lived in with her parents, and it was presumed by the judge that she feared retaliation if she provided testimony against them (O.N.S.C., 2010-03-15: [38]), since she refused to attend the court date for undisclosed reasons, despite a witness warrant being issued. The judge acknowledged that she was likely afraid of retaliation for participation in the Crown's case, though he could not consider the victim's custody as an aggravating factor in sentencing since there was no evidence of threats or coercion from the offenders (ibid: [39]). No further information was available about the conditions of her arrest or whether she was formally charged or convicted with an offence (ibid: [38]). It appears that protection for victims and their families is offered and provided to victims (to the extent possible), though more could be done to improve the capacity of Canadian law enforcement in this regard.

The primary points of agreement among the documents investigated for this project are that: more information on trafficking victims is needed, including the establishment of a National Rapporteur; more funding needs to be provided to NGOs and other agencies involved in service provision to victims of trafficking; and legislation which guarantees victim rights must be enforced, including the establishment of provincial hotlines to provide victims with information about where to access services (Gervais, 2010). Finally, there must be a re-evaluation of the way definitions of 'fear' and 'exploitation' are being interpreted judicially to ensure victims are not being unjustly excluded from protection and support.

4.5 Does Canada have special measures to ensure the protection and support of child victims?

For this research question, eight themes were used to investigate the presence of protection and support measures for child victims. The presence of policies and procedures which include a consistent definition of child trafficking, and reflect the need for special safeguards and care; policies in place which provide for the support (physical, psychological, educational, legal, housing and healthcare) of child victims; and procedures which ensure the privacy and identity of child victims is protected. Policies must include provision for special arrangements to be applied to children who cannot be returned to their family, and guarantee that children who are capable of forming their own views are able to express those views freely, particularly concerning the decision to return them home. The presence of legislative measures which ensure: victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons; and that the rights and interests of trafficked children are protected at all stages of criminal proceedings against alleged traffickers, and during procedures for obtaining compensation. Additionally, the presence of mandatory, specialized training programs for all persons working with child victims of trafficking was considered as an indicator of 'adequate' protection and support for child victims of trafficking.

Until June 2010, Canada did not have legislation with special provisions related to child trafficking. Joy Smith, the Member of Parliament for Jildonan-St.Paul in Manitoba brought forward Private Members Bill C-268, which contained provisions for a mandatory minimum sentence of five years imprisonment for anyone convicted of child trafficking. The definitions contained in the Bill are compliant with the minimum standards of the Palermo Protocol. The Proceedings from the Standing Senate Committee on Social Affairs, Science and Technology,

where Bill C-268 was heard directly before becoming law, contained statements from Joy Smith which indicate that support services for victims under eighteen years old are being strengthened, but are still administered on a case-by-case basis (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 2). She stated that she has been working on a “national strategy that incorporates care, support, safe houses, counselling and job finding”, and references one of Nakpangi’s victims as an example of a child victim who suffered unduly as a result of insufficient policies. She also claims that Bill C-268 contains an “additional tool for prosecutors” which would help them to track the financial transactions of suspected traffickers so that proof of exploitation can be obtained more easily (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 3).

The House of Commons Standing Committee on the Status of Women recommended that funding be provided to establish counter-human trafficking police units able to operate across multiple regions and municipalities (House of Commons, 2006; House of Commons, 2007). They acknowledged that without a coordinated police response problems will not be resolved, only be transported to another jurisdiction (ibid: 2006; ibid: 2007; Perrin, 2010a: 226). Perrin (2010a: 226) says that specialized child exploitation units are already in place, as well as the RCMP Centre for Missing and Exploited Children, but could better identify cases of trafficking if they were able to work in partnership with specialized law enforcement units.

4.6 Is Canada committed to research, analysis, evaluation and dissemination of information on trafficking in persons?

For this research question, five indicators were used to investigate Canada’s ‘commitment’ to research on trafficking in persons. These themes are: application of consistent

definitions within all policies and agencies involved in data-gathering related to trafficking; the presence of policies mandating the collection of standardized, statistical information on trafficking and related movements (i.e. migrant smuggling) disaggregated based on gender, age, nationality, and regional differences; the existence of ethical academic research on trafficking (which is supported by the government), and research on the relationship between the intention of anti-trafficking measures and their 'real' impact, to distinguish measures which reduce from those which transport the problem.

Much of the activity undertaken by government agencies and law enforcement agencies between 2005 and 2011 has not included detailed monitoring and evaluation, and has produced data that is largely descriptive” (Barrett, 2011: 28). In 2010, the Canadian Centre for Justice Statistics (CCJS) examined the feasibility of developing a national data collection framework to measure human trafficking; their research was funded by Public Safety and Emergency Preparedness Canada. Key stakeholders were consulted from federal and provincial departments, including members of the Interdepartmental Working Group on Trafficking in Persons (IWGTIP), the law enforcement community, non-governmental organizations (NGOs) and academics (Ogrodnik, 2010: 5). The prevailing theme found throughout their research was the “lack of comprehensive, reliable and comparable data on human trafficking” due to the underground nature of trafficking activities, victims’ reluctance to report crimes to the police, difficulties identifying victims, and the sensitive nature of the data present challenges for reliable data collection (ibid: 5).The information that is available in Canada is dispersed across different departments and agencies within the government, law enforcement and NGOs, each of which has their own definition and unique criteria for identifying victims of trafficking, and “thus generating non-comparable information” (ibid: 5).

Mr. Barry Mackillop (Director General for the Law Enforcement and Border Services Directorate at Public Safety Canada), reinforces that no legislation is in place which mandates the collection of national statistical data on trafficking, and no National Plan of Action indicating where or whom cases (and incidents of potential trafficking) should be reported to (Proceedings of the Standing Committee on Social Affairs, Science and Technology, 2010a: 8). Canadian data on prosecutions is not always reliable, and it may be easier to collect and quantify data on victim service provision, but “there is a lack of research beyond the qualitative and anecdotal” (Barrett, 2011: 15). This means “patterns of victim experiences and characteristics, routes and networks, or of trafficking perpetrators working in different settings and contexts cannot be clearly identified, quantified or assessed” (Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010a: 9). Natalie Levman (Counsel, Criminal Law Policy Section, Department of Justice Canada) affirms that sentencing decisions can go unreported whenever the accused pleads guilty (ibid: 9). Without information on such cases, it is impossible to know how mitigating and aggravating factors are weighed by judges when sentencing decisions are made. Laura Emerson is mentioned as an example of a case lacking a written sentencing decision. Emerson plead guilty to human trafficking involving minors and received a lengthy sentence of 41 years, but due to the guilty plea no documents are available to indicate the judge’s reasons behind the sentencing decision (ibid: 9; RCMP, 2010: 25).

Currently, the lack of comprehensive statistical data on the problem of human trafficking is the most significant challenge to creating an appropriate strategy to address it. The Canadian Centre for Justice Statistics (CCJS) suggests several approaches to improve data collection on human trafficking in Canada, such as: developing consensus on definitions, indicators and concepts; examining the feasibility and implications of enhancing content of existing CCJS

databases, and addressing specific information gaps through targeted research studies (Ogrodnik, 2010: 22). The CCJS concludes that “data sharing may be the most challenging hurdle to overcome” and should be addressed by strengthening partnerships with stakeholders and improving inter-agency cooperation and communication (ibid: 22). There is consensus among the documents investigated for this project that more academic research - both general and specific, qualitative and quantitative - is needed to understand the scope and depth of the human trafficking problem in Canada.

4.7 Has Canada demonstrated commitment to the prevention of trafficking in persons, both domestically and internationally?

For this research question, eight themes were used to investigate the ‘commitment’ of Canada to the prevention of trafficking in persons. These are: information material provided to migrants and potential migrants about the dangers of trafficking and where to seek help; information campaigns for the general public which raise awareness of trafficking; the presence of ethical research into the factors that generate and perpetuate human trafficking; legislation and/or other measures taken to address the issues related to ‘demand’ for exploitative commercial sexual service (i.e. ‘John Schools’) and exploitative labour. The presence of programs which offer livelihood options to people living in identified ‘source’ countries, including basic education, skills and literacy training (especially for women and other traditionally disadvantaged groups), as well as programs which improve children’s access to educational opportunities, particularly for female children, were considered as indicative of Canada’s ‘commitment’ to prevention. Furthermore, the presence of “regulatory and supervisory mechanisms” which protect the rights of migrant workers, and review immigration policies to

ensure that people are not compelled to resort to irregular/illegal migration as a result of repressive and/or discriminatory nationality, property, immigration or migrant labour laws. Lastly, the capacity of law enforcement officials to arrest individuals suspected of trafficking as a preventative measure was investigated.

Targeted socio-educational programs and community-based projects can address some of the causal factors which make people most vulnerable to becoming trafficked (Barrett, 2011: 24). Programs based in crime prevention and community safety initiatives, but which address targeted risks in the larger context of global exploitation, can include: programming for young men and boys to change attitudes towards girls and women, implant knowledge of respectful relationships and provide alternative role models (ibid: 24). NGOs often play a leadership role in the initiation of these socio-educational and community based programs.

4.7.1 Canadian international prevention efforts

The HTNCC claims that efforts have been made to address the ‘supply’ aspect of trafficking through various international awareness campaign materials (pamphlets, posters, etc.) in a multitude of languages, as mentioned previously. Perrin notes that the use of ‘scare tactics’ which report only the risks and dangers of migration must be coupled with policies that present accessible, legal migration options for awareness campaigns to be effective. Perrin’s book (2010a) lists a number of NGOs that are working with victims of trafficking in Canada, including, but not limited to: “Changing Together” in Alberta (p.109); “StreetReach” in Manitoba, which works to identify missing and runaway children and coordinate services to assist them, as well as track suspected child sex offenders (p.184); “Cinderella’s Silence” in Montreal, which developed a handbook containing relevant law, statistics and a discussion guide

for talking with potential victims, targeted at youth between twelve and eighteen. Their handbook has been widely used by NGOs and law enforcement agencies within and outside Canada (p. 181). Officers from the Peel Regional Police Vice Unit started “New Beginnings”, an NGO which is entirely supported by the goodwill of regular Canadians, largely through the donation of skills and time by dentists, counsellors, lawyers, tattoo artists, (etc.) (p.106). This particular NGO makes visible the personal commitment felt by many police officers to the prevention and eradication of human trafficking.

Government initiatives aimed at increasing education and literacy rates (particularly for females) in source countries have not been developed independently from similar pre-existing efforts of UN and international agencies (i.e. UNICEF, WHO, Amnesty International) and Canadian NGOs and charities (Perrin, 2010a). As stated in 4.6, the standardized collection of information related to human trafficking is not currently happening in Canada. Without accurate statistics it is impossible to know if targeted prevention campaigns (domestic and international) are aimed at the right groups, successful in their communication of the risks/dangers of migration, or effective in decreasing overall rates of human trafficking (Ogrodnik, 2010). The Canadian federal government considered increased restrictions and monitoring of the “exotic dancer visa program” as a trafficking prevention effort following a concern that was expressed about some of the visa contracts resembling slavery (i.e. club owners having the right to hold all ID and monies until the terms of the contract were fulfilled) (House of Commons, 2006: [1230]; Status of Women Canada, 2007: 38; Senate of Canada, 2009; Barnett, et al., 2010; Perrin, 2010a: 44).

Overall, prevention is rather narrowly defined in many UN protocols and international conventions, and according to Barrett (2011) there is a tendency to conflate prosecution needs or

victim services with ‘prevention.’ The majority of work undertaken to combat human trafficking both internationally and within Canada, has involved criminal justice and security activities, and the provision of protection and support to trafficking victims (Barrett, 2011: 11). This includes legislation, increased border controls and police powers, protocols and training, as well as support for, and communication with NGOs. While some of this activity may have a deterrent effect and could be viewed as ‘preventative’, less focus has been given to prevention approaches that address underlying causes of trafficking (both ‘supply’ and ‘demand’). Apart from the aforementioned criminalization of trafficking and general awareness campaigns, not much action has been taken to prevent people from becoming victims (House of Commons, 2006: [1245], [1150]; Gervais, 2010; RCMP, 2010; Perrin, 2010a; Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, 2010; Barrett, 2011).

4.7.2 Domestic efforts toward prevention of ‘supply’ and ‘demand’

Canada has received criticism for lacking strong policy responses to the systemic poverty and uneven distribution of life chances experienced by traditionally disadvantaged groups, particularly Aboriginal women and children (Gervais, 2010: 42). The precise number of trafficked Aboriginal women and girls is unknown, but their vulnerability as a group has been documented throughout the literature (Gervais, 2010: 41; Barrett, 2011; RCMP, 2010; Dandurand, 2005; House of Commons, 2006; CISC, 2008; Perrin, 2010a). According to the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR-CJP), Aboriginal females that are trafficked for the purpose of sexual exploitation make up the majority of domestic trafficking victims (Gervais, 2010: 41). Additionally, it was suggested that programs be implemented which improve access to culturally sensitive education and literacy

training, economic opportunities and addiction rehabilitation programs in Aboriginal communities are necessary for the reduction of domestic trafficking (ibid: 41). Furthermore, the ICCLR-CJP noted the lack of sufficient resources was commonly identified as “the most significant obstacle preventing the implementation of targeted, culturally-specific interventions in First Nations communities” (2010: 42). The root causes of Aboriginal women and girls over-representation in cases of human trafficking are complex, and almost identical to those which sustain their over-representation in other areas (i.e. prostitution, prison, etc.) (House of Commons, 2007; Perrin, 2010a). These root causes include a legacy of: colonialization, violence, poverty, substance abuse, racism, increased gang activity, gaps in service provision, discriminatory policies and legislation, and lack of awareness, acknowledgment and understanding of sexual exploitation (Gervais, 2010: 44). It appears that NGOs working with Aboriginal youth have engaged in information sharing with one another, as well as with the Minnesota Indian Women’s Resource Centre in the United States, though the extent of these relationships between organizations is unreported (ibid: 44).

Canadian efforts to address the ‘demand’ side of trafficking have been limited, though Perrin mentions that Toronto has been particularly active in the diversion of first-time offenders in prostitution-related offences into “John Schools”, where they learn about the lived realities of sex work, hear first-hand accounts from women who have experienced extreme violence, and women who have exited the sex trade (Perrin, 2010a: 189). These programs aim to change the attitude of “Johns” and discourage them from continually purchasing sex acts by “confronting them with the consequences of their behaviour” (i.e. potentially enabling the exploitation of trafficking victims) (ibid: 189). These programs allege that fewer men will seek commercial sexual services if they are made aware of the lived experience of some prostituted women. The

overall effectiveness of “John School” programs is measured by the rate of recidivism among offenders who participated in the program after their first offence, but do not include graduates of the program who solicit sexual services undetected by police. The revenue generated from Streetlight Support Services in Toronto are used in part to pay the wages of female counselors who are ‘survivors of the sex trade’ and to fund programs that help women break the cycle of exploitation (Perrin, 2010a: 190). These programs are controversial, not considered to be appropriate or effective ‘prevention’ efforts by some academics and groups who point out that these programs do not address the economic problems that often factor into exploitative situations (Gervais, 2010; Jeffrey, 2005; Sikka, 2011). It is essential that new programs and interventions are developed which target economic desperation within Canada and internationally if the ‘supply’ of potential trafficking victims is to be significantly reduced (UNHCHR, 2002; Oxman-Martinez, et al., 2001a; Oxman-Martinez, 2005). One component of an effective national prevention strategy could include mandatory human rights education in schools and workplaces. This could help the general public be more aware of their duty to end human rights abuses, a responsibility that belongs to each citizen of the globe according the Universal Declaration of Human Rights (UDHR, 1949).

4.8 Does Canada engage in formal cooperation and coordination with other states and regions regarding trafficking in persons?

For this research question, seven themes were used to investigate whether Canada works cooperatively with other states and regions regarding human trafficking. The presence of cooperation policies with NGOs, officials and other relevant authorities on: the identification of trafficked persons (related to their nationality and right of residence); the provision of

information relating to trafficking incidents and patterns; and the facilitation of information exchange regarding the routes and operation methods of traffickers. Additionally, the presence of bilateral agreements aimed at trafficking prevention, including agreements related to labour migration (which contain provisions for minimum work standards), were investigated. Separate from the Canadian government, the existence of cooperative relationships between NGOs and other civil society organizations in countries of origin, transit and destination (while respecting privacy) was considered thematic of ‘cooperation and coordination’ with other states and regions.

A comprehensive strategy based on UN Guidelines requires a number of characteristics, including government departments working both cross-sectionally, and horizontally with other governments and their departments. The complex realities of human trafficking demand that protection and prevention initiatives be related to local contexts and situations, as well as being flexible and adaptable over time. Cooperative work with civil society partners, including NGOs and the private and business sectors, must establish a series of goals (short and long term), funding streams, leverage resources and strong components for monitoring and evaluation (Barrett, 2011: 26). Again, the development of effective initiatives requires clear diagnoses be made of the context and situation of vulnerable sectors and groups, which can be assisted at the local level by safety audits.

4.8.1 Information-sharing among provinces, states and regions

The way Canada’s government is structured affects the type of national strategy that can be developed. A pressing goal for Canada is the movement toward a shared understanding of Federal/Provincial-Territorial/Municipal responsibilities and cooperative approaches to

combating human trafficking (Barrett, 2011: 26; Ogrodnik, 2010: 5). The lack of a National Plan of Action and corresponding strategy for information sharing creates challenges in the timely exchange of data (cross-sectionally and horizontally) between Canadian jurisdictions. This could be addressed through the establishment of a National Rapporteur with the responsibility of collecting and distributing relevant information to different authorities, agencies, departments and NGOs. According to the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR-CJP), establishing mechanisms to explore the existing labour framework which governs sectors that employ migrant and foreign workers could increase consistent application of labour trafficking legislation across provinces and territories (ibid: 50).

According to a publication by the Library of Parliament Information and Research Service, Citizenship and Immigration Canada (CIC) has negotiated several bilateral information-sharing agreements on illegal migration to the United States, the United Kingdom, Australia and the Netherlands, while enhancing information-sharing between Canadian jurisdictions (Barnett, 2008: 15). No information was provided about the number of such agreements, or their content. The United States independently rates countries on a three-tier system, according to their interpretation of a nation's efforts to combat human trafficking. Canada was demoted to a "Tier II" country in 2003, which indicated a lack of compliance with minimum standards as set by the U.S. Department of State in compliance with the Palermo Protocol. Canada was promoted to "Tier I" status in 2005, after the enactment of Bill C-49 and amendments to the IRPA, though no information is provided about whether information exchange was a specific factor in the designation of tier status (Perrin, 2010a: 131; Barrett, 2011). The RCMP does not publicly state their policies regarding communication with American authorities, but statements are made throughout their literature about various pieces of "reliable intelligence" which show trafficking

victims are moved across the Canadian-American border, but also say that “significant intelligence gaps still exist” (RCMP, 2010: 27). Unmanned aerial “drones” (remote-controlled aircraft) are being used to watch remote stretches of the border, but the effectiveness of these measures is unreported (ibid: 27). Perrin requested interviews with the RCMP HTNCC, but they were unwilling to discuss the details of their joint efforts with the U.S., and no public information is available (2010a: 183).

It is critical that Canada and the United States provide timely information to one another in confronting the problem of trafficking, while working with source countries to dismantle criminal networks identified in trafficking cases. Beyond the prosecution of individual traffickers, full investigation of all the links in a trafficking chain is necessary to take apart criminal syndicates, otherwise networks will adapt and replace convicted individuals with persons unknown to authorities (Perrin, 2010a: 183). Internationally, the Migration Integrity Officers network with Canadian Border Services Agency (CBSA) is attempting to reduce illegal migration to Canada from over forty countries, including smuggling and human trafficking (ibid: 183). The increased attention and vigilance has led to a surge of undocumented or illegal migrants hoping to get to Canada that are intercepted in their native countries (ibid: 183). Under the *Access to Information Act*, CBSA revealed documents showing that “only thirty percent of inadmissible persons attempting to enter Canada were intercepted overseas in 1990, the number increased to more than seventy percent by 2005” (ibid: 183). This does not address the root causes of trafficking, but offers topical symptom relief by decreasing the number of trafficked persons identified and dealt with under Canadian law. Whether this is good or bad is a matter of opinion, the identification of illegal migrants overseas could translate into fewer supports being offered to them, and less transparency required of CBSA officials dealing with these matters,

since they are not on Canadian soil. Victims could theoretically be sent back to worse conditions than they were attempting to leave behind, perhaps left in debt for any smuggling fees they paid up front, under the assumption they would be able to repay loans upon arrival and employment in Canada.

The case of *R. v. Ng* involved Canadian authorities working in collaboration with Chinese law enforcement to identify victims, collect information on circumstances surrounding deportation, and ensure the immediate safety of the two victims upon repatriation. While no detailed information was provided about how this was carried out, there was no indication within any literature investigated for this project that the victims were not returned safely to China. In the case of *Her Majesty the Queen v. Domotor and Kolompar* (still before the courts when data-gathering for this project ended in December 2011), Canadian authorities worked in cooperation with Hungarian law enforcement to identify victims, gather facts related to the case and ensure the safety of victim's families (O.N.S.C, 2011-01-26) These are not conclusive results, but indicate some willingness among Canadian authorities to share information about their international cases with officials in relevant countries.

According to Perrin, more cooperation is needed in particular between Canada, the United States and Mexico to help address the movement of trafficked persons across North American borders (2010a: 226). He suggests that Integrated Border Enforcement and Intelligence Teams could increase activities to detect and identify illegal border crossing, and prosecutors on both sides of the Canada-U.S. border could work together to dismantle international trafficking networks, while NGOs work together to meet needs of cross-border victims (Perrin, 2010a: 328). Not much has been said in the literature about the work done by Canadian NGOs in cooperation with grassroots initiatives in source countries. Perrin was a

founding member of The Future Group, an organization which he says works with several groups in Cambodia, he names one group called AFESIP (in English, “Acting for Women in Distressing Situations”) which is dedicated to fighting the trafficking of women and children for sex slavery (Perrin, 2010a: xvii). Perhaps academics and NGOs require more funding and government encouragement to work with organizations providing services to trafficking victims in source countries to establish the scale of the problem through more comprehensive research, offer alternatives and assistance at the local level to individuals at risk of becoming trafficked, and ensure the rights and dignity of victims is protected to the fullest extent possible should they be repatriated to their country of origin.

4.8.2 Partnership with NGOs

Two non-governmental organizations (NGOs) working with sex trafficking victims in Canada expressed reluctance to work with the government in their trafficking cases. They explained that victims are concerned about: CIC providing law enforcement with information on individuals who have applied for temporary residence permits due to alleged trafficking; pressure from law enforcement to pursue prosecution (despite official policy that victims can be granted a TRP without providing testimony against traffickers); insufficient provisions for victim protection in current anti-trafficking legislation; and “information that border guards have previously deported suspected child trafficking victims” (Gervais, 2010: 37). It appears that service providers working with sexually exploited children in Canada are reliant on referrals from law enforcement to identify trafficking victims (ibid: 38). This complaint-driven system requires an official legal complaint in order to initiate an investigation (in cases where the exploitative act is not observed), and may not be sufficient in identifying victims of trafficking. It

is possible that a large number of victims would be identified should Canada support NGOs more fully and enhance their ability to cooperate with the government, ideally as equal partners in a National Referral Mechanism (discussed earlier in 4.1 of this thesis).

CONCLUSION

This project concentrated on Canadian efforts to combat trafficking in persons via legislation, law enforcement, victim protection and support, research, prevention measures, and cooperation with other states and regions. Twenty-two documents were selected and investigated qualitatively for the presence of various principles, policies, concepts and capacities that are components of a human rights-based approach to human trafficking, as recommended by the United Nations High Commissioner for Human Rights (2002).

Documents were investigated according to eight specific research themes which compared Canada's strategy to the United Nations High Commissioner of Human Rights (UNHCHR) Guidelines and Recommendations (2002) for implementation of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000c). It was found that Canada was not entirely committed to making organized efforts to combat and prevent human trafficking both internationally and at home. The principles of human rights were not being directly violated, but little attention or resources have been directed toward monitoring and evaluating the human rights impact of legislation, policies, programs and interventions in all areas related to human trafficking (i.e. labour, sex work, immigration, citizenship, technology, law enforcement, etc.).

With regard to Canada's compliance with human rights issues, the existing legislative provisions related to human trafficking pose a potential threat to the basic rights and dignity of persons everywhere, most particularly the right of accused persons involved in the criminal justice process to have their case processed in a fair and timely manner. The absence of a human rights monitoring body was noted in many documents as a weakness in Canada's anti-trafficking

response. In terms of legislation, minimum efforts have been made to comply with the Palermo Protocol through enactment of Bill C-49 (2005), Bill S-223, Bill C-10:10, and Bill C-268 (2010). However, no national legislation is in place to guarantee the protection and support of victims, only limited and disorganized provisions currently exist at the provincial and municipal levels. A National Plan of Action is needed, which encourages coordination between all agencies and groups involved in the detection, identification, investigation, prosecution and provision of support services related to human trafficking. Several documents raised concerns about labour trafficking laws, and indicated that businesses which may serve as cover for trafficking needed to be more thoroughly investigated (RCMP, 2010; Status of Women Canada, 2007).

Challenges have arisen as anti-trafficking legislation is translated into practice, such as the lack of uniform criteria, tools and training for the identification of victims, and a high burden of proof when it comes to establishing whether the level of ‘fear’ experienced by potential victims resulted in their loss of freedom (*R. v. Urizar*, 2010). More attention and resources must be directed toward human trafficking within Canadian law enforcement agencies for the current legislative definition of ‘human trafficking’ to be applied more consistently across the country. Individual law enforcement jurisdictions, divisions and/or officers have made some extraordinary efforts to work cooperatively and compassionately with trafficking victims (i.e. Peel Regional Police, vice unit). Unfortunately, most NGOs and front line service providers face chronic financial limitations which affect their ability to provide specialized staff training and resources for trafficking victims.

The needs of victims may not be met in a comparable way across the country, due to the lack of uniform national legislation guaranteeing their rights to protection and support. The services available to victims vary greatly between provinces/territories, jurisdictions and

municipalities, and are largely provided by resource-strapped NGOs. One of the most significant barriers in the provision of protection and support to victims in Canada stems from the absence of a consistent definition and diagnostic criteria for establishing who will be considered a ‘victim’. While progress has been in the establishment of temporary residency permits (TRPs) through Citizenship and Immigration Canada (CIC), the forward motion has been weighted down by the absence of transparent assessment criteria (Status of Women, 2007). Unless policies are available for review by monitoring bodies, researchers, academics, and NGOs to ensure they do not have a negative impact on human rights and dignity, they are susceptible to bias and discrimination. Individual immigration officers are entrusted with the power to decide what a ‘victim of trafficking’ looks like. The UNHCHR (2002) recommends the relaxation of immigration policies that could create unnecessary difficulty for trafficking victims wishing to obtain citizenship, along with the creation of additional visa options which could help to prevent illegal migration among populations vulnerable to trafficking.

Domestic trafficking victims are also impacted by a lack of national legislation to guarantee rights, protection and support. Since they do not need to apply for TRPs or undergo a CIC evaluation, often they receive no assistance accessing information and social programming unless they live in a jurisdiction which provides specialized services (i.e. shelters with trained staff that are sensitized to the needs of trafficked persons), and are able (through their own efforts) to make contact with a knowledgeable employee of an NGO or law enforcement agency. The lack of a national victim compensation fund for trafficked persons makes for unequal access to financial assistance (depending on province/territory, jurisdiction, and ability to access legal assistance) (Sikka, 2011; Gervais, 2010). This has a disproportionate impact on marginalized populations, particularly First Nations women and girls, immigrants unable to speak or understand either

French or English, individuals struggling with substance abuse, sex workers, (etc). (Sikka, 2011; Jeffrey, 2005). NGOs, health care professionals, counselors and other front line workers need to be leaders in the discussion about what constitutes 'adequate' shelter, social services, medical care, legal remedies, etc. These concepts should not be solely defined by government, law enforcement, or the judiciary. In addition to nationally legislating the rights of victims, it is necessary that all officials who may come into contact with survivors receive the same training on how to identify a potential victim of trafficking, and what their responsibilities are in such situations. It is only through the training and awareness of front line workers that survivors of trafficking will be more consistently and accurately identified, protected and assisted.

There was consensus among the literature that most documented Canadian cases of trafficking have come to the attention of officials as a result of victims coming forward. Victims often fear coming into contact with authorities because they could be charged with offences and incarcerated, deported, or otherwise re-victimized. If the rights of victims were guaranteed in legislation, over time it may encourage more survivors to approach law enforcement officers for assistance, and give NGOs more confidence advising them to officially document their cases. To enshrine the rights of trafficked persons in law would not guarantee that the legislation would be translated into meaningful or appropriate practices, but it could provide victims with the right to access the discussion about the protection, services and treatment they receive, and their "right to access the right" to membership in the Canadian community (Arendt, 1949).

As stated previously, current Canadian research on human trafficking is sparse, disorganized and almost entirely reliant on police and prosecution data, leaving the nature and scope of the problem unclear. Without a deeper understanding of the extent and nature of the problem it cannot be effectively dealt with, more effort must be made to establish a national data

collection framework, though Statistics Canada has taken some steps in this direction. Canadian action to address the root causes of trafficking, including both ‘supply’ and ‘demand’ has been very limited, to date. The CIC has made efforts to disrupt smuggling operations by intercepting migrants in their home countries, but little has been done to address the economic hardships or cultural disadvantages (i.e. access to literacy training, education and employment opportunities) which fuel and sustain global illegal migration. No efforts to address the ‘demand’ side of trafficking were mentioned in the literature aside from awareness campaigns targeting violence against women, and “John Schools” for prostitution-related offences, which many believe to be ineffective in addressing the root causes of exploitation.

Without strong preventative action that takes into account the relative poverty and history of abuse commonly experienced by victims, there will continue to be a ‘supply’ of disadvantaged persons that can be exploited by traffickers at both the domestic and international level. Two Canadian populations particularly in need of attention and services are children, and Aboriginal females according to Sikka (2011). It is recommended that NGOs and service providers working with these populations receive the necessary funding to identify and accommodate victims of trafficking. Cooperation and collaboration between Canada and other states and regions is restricted by the lack of accurate, comprehensive and comparable data and research on trafficking within Canada. Communication and organization within and among provinces, jurisdictions and municipalities must be strengthened for standardized data collection and inter-state collaborations to improve.

When looking at human trafficking through a human rights lens it becomes clear that Canada could show more hospitality to vulnerable persons, particularly trafficking victims. In this sense, hospitality refers to the reception of the ‘other’ with kindness and friendship (Derrida,

1994; Bennington, 1997). Mahatma Ghandi famously said, “A nation’s greatness is measured by how it treats its weakest members”, and similarly, a nation’s commitment to human rights can be appraised by looking at how its most vulnerable members are treated. Stateless persons, such as trafficking victims, are “without their right to access rights”, as Hannah Arendt (1949: 43) pointed out. The lack of national legislation ensuring all victims are able to access uniform protection, support, legal remedies and permanent resident status if necessary, indicates that Canada considers the human rights of victims as a lower priority than issues of law enforcement and border security.

In conclusion, Canada hurriedly enacted legislation that was in shallow compliance with the standards agreed to in the Palermo Protocol soon after being downgraded to a “Tier II” nation by the United States in 2003 (Perrin, 2010a). Nearly a decade after signing the UN Convention, Canada is in superficial compliance with its basic duty to criminalize trafficking in persons. However, the country has certainly fallen short of obligations to protect and support victims of trafficking (including children); standardize data collection on trafficking and related activities; establish a National Plan of Action; work in cooperation and collaboration between and within ministries, departments and agencies; and work to prevent human trafficking by addressing the systemic social and economic disadvantages which drive and sustain the exploitation of human beings across the globe. While Canada has met international obligations to criminalize the activities of traffickers, efforts are still insufficient from a human rights perspective. More preventative efforts must be made internationally and domestically to address the roots of inequality which continue to fuel the globalized trafficking of human beings.

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APPENDIX A

THEME	INDICATORS	CODING (Nominal)
(1) Canada is committed to the promotion and protection of human rights in the context of human trafficking.		
#1	Measures adopted have an adverse impact on the rights and dignity of all persons.	
#2	Anti-trafficking law, policies, programmes and interventions negatively affect the right of all persons to seek and enjoy asylum from persecution in accordance with international refugee law	
#3	Established mechanisms exist which monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions (NGOs and independent institutions encouraged to participate).	
#4	Detailed information about the measures taken by Canada are presented to UN human rights treaty-monitoring bodies.	
(2) Canada has an adequate legal framework in place to deal with human trafficking		

THEME	INDICATORS	CODING (Nominal)
#1	A National Plan of Action exists, which builds links and partnerships between governmental institutions involved in combating trafficking and/or assisting victims.	
#2	National legislation has been amended so trafficking is precisely defined in law with detailed guidance provided on punishable elements.	
#3	All practices covered by the definition of trafficking (debt bondage, forced labour and enforced prostitution) are criminalized.	
#4	Provisions made for effective and proportional criminal penalties (including custodial penalties giving rise to extradition).	
#5	Current laws, administrative controls and conditions related to the licensing and operation of businesses that may serve as cover for trafficking have been reviewed to ensure they do not encourage exploitation.	
#6	Provision in place for additional penalties to be applied to individuals found guilty of trafficking in aggravating circumstances (i.e. children, involvement with state officials).	
#7	Provision made for the confiscation of instruments and proceeds of trafficking and related offences.	

THEME	INDICATORS	CODING (Nominal)
#8	Provisions in place preventing survivors from being prosecuted, detained or punished for the illegality of their entrance, residency or activities directly related to their situation as trafficked persons.	
#9	Protection for trafficked persons is written into anti-trafficking legislation (including protection from summary deportation or return where such action would present a significant security risk to the individual or their family).	
#10	Provisions in place protection for survivors who voluntarily cooperate with law enforcement, including protection of their right to lawfully remain within the country of destination for the duration of any legal proceedings.	
#11	Provision for trafficked persons to be given legal information and assistance in a language they understand.	
#12	Legislative provision made for trafficked persons to be given social support sufficient to meet their immediate needs (treated as a right).	
#13	Guaranteed protection for witnesses provided in legislation.	

THEME	INDICATORS	CODING (Nominal)
#14	Legislative provision made for the punishment of public sector involvement/complicity in trafficking and related exploitation.	
(3) Canada has an adequate law enforcement response to trafficking in persons		
#1	Guidelines and procedures are in place for all relevant authorities involved in detection, detention, reception and processing of irregular migrants.	
#2	Specialized training is provided to all relevant authorities with a role in the identification of trafficked persons.	
#3	Law enforcement training makes officers aware of their responsibility to ensure the safety and immediate well-being of trafficked persons.	
#4	Law enforcement training ensures officers are sensitive to the needs of trafficked persons, particularly those of women and children. NGOs considered in the training.	
#5	Authorities provided with investigative powers which enable effective investigation and prosecution of suspected traffickers.	
#6	Specialized anti-trafficking units have been established (comprising both men and women).	

THEME	INDICATORS	CODING (Nominal)
#7	"Rescue" measures are reviewed to ensure they do not further harm the rights and dignity of trafficked persons.	
#8	Law enforcement authorities work in partnership with NGOs to ensure trafficked persons receive necessary support and assistance.	
(4) Canada has adequate protection and support for trafficked persons (victims)		
#1	Trafficked persons are prosecuted for violations of immigration law or for activities directly related to trafficking.	
#2	Trafficked persons held in immigration detention or other forms of custody.	
#3	Procedures and processes are in place for the consideration of asylum claims from trafficked persons and smuggled asylum seekers	
#4	(a) Compensation fund established for victims of trafficking (b) Financed with assets confiscated from traffickers.	
#5	Safe, adequate shelter is made available to trafficked persons (in cooperation with NGOs) not contingent on their willingness to give evidence in criminal proceedings.	

THEME	INDICATORS	CODING (Nominal)
#6	Trafficked persons are held in immigration detention centres or vagrant houses.	
#7	Trafficked persons are given access to primary health care and counselling (not subject to mandatory testing for disease/infections).	
#8	Trafficked persons are informed of their right to access diplomatic and consular representatives from their State of nationality.	
#9	Legal proceedings involving trafficked persons are prejudicial to their physical or psychological well-being, rights or dignity.	
#10	Legal and other assistance related to criminal, civil or other actions against traffickers/exploiters is provided for trafficked persons.	

THEME	INDICATORS	CODING (Nominal)
#11	<p>(a) Trafficked persons are provided with protection from harm, threats or intimidation by traffickers and associated persons (no public disclosure of their identity - privacy is respected to extent possible while accounting for right of the accused to a fair trial).</p> <p>(b) Trafficked persons given full advanced warning of the difficulties inherent in protecting identities and not given false or unrealistic expectations of the capacity of law enforcement in this regard.</p>	
#12	<p>(a) Safe, and where possible, voluntary return of trafficked persons is ensured.</p> <p>(b) The option of residency in the country of destination or third-country resettlement in specific circumstances is available.</p>	
#13	<p>Trafficked persons who return to their country of origin are provided with necessary assistance and support to ensure well-being, and prevent re-trafficking.</p>	
#14 (Access to remedies)	<p>Victims have enforceable right to fair and adequate remedies (may be criminal, civil or administrative in nature), including the means for as full a rehabilitation as possible.</p>	

THEME	INDICATORS	CODING (Nominal)
#15	Legal and other assistance to access remedies is provided to trafficked persons, as well as the information needed to access that assistance.	
#16	Arrangements in place to allow trafficked persons to remain safely in the country for the duration of any proceedings.	
(5) Canada has special measures to ensure protection and support for child victims		
#1	Definitions of child trafficking (in law and policy) reflect the need for special safeguards and care.	
#2	Child victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.	
#3	Care arrangements in place for children who cannot be safely returned to their family.	
#4	Children capable of forming their own views enjoy the right to express those views freely, particularly concerning decisions about possible return to their family.	
#5	Special policies and programmes in place to support child victims (provided with physical, psychological, legal, educational, housing and healthcare assistance).	

THEME	INDICATORS	CODING (Nominal)
#6	Legislative measures established which protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.	
#7	Privacy and identity of child victims is protected.	
#8	All persons working with child victims receive specialized training.	
(6) Canada is committed to research, analysis and evaluation of information on trafficking in persons		
#1	The definition of trafficking contained in the Palermo Protocol is adopted in legislation and consistently used by law enforcement agencies.	
#2	Standardized statistical information on trafficking and related movements (i.e. migrant smuggling) is recorded.	
#3	Ethical research into trafficking is undertaken, and supported by government.	
#4	The relationship between the intention of anti-trafficking measures and their real impact is researched to distinguish measures which reduce from those which transport the problem	

THEME	INDICATORS	CODING (Nominal)
(7) Canada is committed to prevention of trafficking in persons		
#1	Migrants/potential migrants are informed about the risks/dangers of trafficking (e.g. exploitation, debt bondage, health and security issues, etc.), and where to receive assistance.	
#2	(a) Factors that generate demand for exploitative commercial sexual service and exploitive labour are researched and analyzed. (b) Strong legislative, policy and other measures taken to address this issue.	
#3	Programs in place which offer livelihood options in source countries, including basic education, skills training and literacy (especially for women and other traditionally disadvantaged groups).	
#4	Programs in place which improve children's access to educational opportunities (especially female children).	
#5	Information campaigns are in place for the general public, aimed at promoting awareness of trafficking.	

THEME	INDICATORS	CODING (Nominal)
#6	Immigration policies are reviewed to ensure people are not compelled to resort to irregular/vulnerable labour migration (due to repressive and/or discriminatory nationality, property, immigration, or migrant labour laws).	
#7	Regulatory and supervisory mechanisms are in place which protect the rights of migrant workers.	
#8	Law enforcement agencies have the capacity to arrest and prosecute those suspected of involvement in trafficking (as a preventative measure)	
(8) Canada participates in formal cooperation and coordination agreements between States and regions		
#1	Relevant authorities/officials and NGOs work cooperatively to facilitate the identification of trafficked persons, and provision of assistance.	
#2	NGOs provided with information on trafficking incidents and patterns (while preserving privacy of victims).	
#3	Bilateral agreements in place aimed at trafficking prevention.	

THEME	INDICATORS	CODING (Nominal)
#4	Labour migration agreements in place, which include provision for minimum work standards, model contracts, modes of repatriation (etc.), in accordance with international standards.	
#5	Cooperation agreements in place which facilitate rapid identification of victims, (including the sharing and exchange of information in relation to their nationality and right of residence).	
#6	Cooperative mechanisms in place to facilitate exchange of information regarding traffickers and their operation methods.	
#7	NGOs and other civil society organizations in countries of origin, transit and destination work cooperatively by sharing information while respecting privacy.	

APPENDIX B

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