

Trafficking in Persons in North America

Regional

This report will review the situation of human trafficking in the United States, Canada, and Mexico since the Palermo Protocol in 2000. While these three governments are working together to address trafficking, there have been no regional treaties or conventions between the three governments specifically on trafficking.

The United States, Canada, and Mexico strengthened links between their economies, particularly the trade in agricultural products, with the North American Free Trade Agreement in 1994, yet border patrols by the United States were strengthened after September 11, 2001. The result of stricter immigration policies combined with an increasing demand for labor in the United States was to drive migrant laborers underground and increase their vulnerability to trafficking. Demonstrating regional cooperation, the three countries convened in December of 2001 to participate in a North American Regional Consultation on the Commercial Sexual Exploitation of Children, with representatives from NGOs, law-enforcement, and government agencies.¹ The U.S. government has been focused on increasing cooperation with its neighbors, providing trainings, and improving border patrols. However, the political and economic differences in working with Canada and Mexico impact the degree to which these efforts have been successful.

The United States of America

Background

As an economically developed country with a strong, market-based economy, the United States has historically relied on an influx of migrant labor to meet the needs of U.S. producers and service-providers. However, the lack of legal protection for these workers and strict border patrols, have increased the vulnerability of migrants to trafficking and forced them to increasingly rely on smugglers and recruiters, as demonstrated by the rise of highly organized and clandestine operations along the border between Mexico and the United States.² The demand for labor extends beyond factories and agriculture to all other areas of the economy, including domestic work, sex work, and tourism.

The El Monte case in 1995, when U.S. police identified 72 Thai workers kept as forced-laborers in Los Angeles, sparked significant media attention surrounding the issue of modern-day slavery in the United States.³ However, since then, most media coverage has focused on the phenomenon of trafficking in the developing world, rather than cases of abuse and exploitation of those trafficked into the United States. Despite the lack of awareness among the general population, the U.S. government has made great strides addressing trafficking since 2000, both in terms of legal provisions and direct services. Under the administration of George W. Bush, trafficking became a significant focus of policy-makers and donors, evidenced by the \$50 million pledged this year to anti-trafficking assistance in Brazil, Cambodia, India, Indonesia, Mexico,

¹ U.S., *Canadian and Mexican Representatives Meet to Combat Sexual Exploitation of Children*, University of Pennsylvania News, November 28, 2001 Found at <http://www.upenn.edu/pennnews/article.php?id=436>

² Peter Andreas (2001), "The Transformation of Migrant Smuggling Across the U.S.-Mexican Border," *Global Human Smuggling*, David Kyle and Rey Koslowski, Eds., Johns Hopkins University Press (Baltimore) 116-117.

³ Chanchanit Martorell and Julie Su (1997), "Law Enforcement To Prosecute Traffickers and Ensure Human Rights of Trafficked Persons with a Focus on the El Monte Slavery Case" Paper presented at the GAATW Regional Meeting on Traffic in women in Asia and Pacific.

Moldova, Sierra Leone, and Tanzania.⁴ Most efforts have been directed towards work at the international level, with large amounts of aid, but many initiatives have also been undertaken domestically.

The United States has primarily served as a destination country for trafficked persons, with current estimates of 14,500-17,500 people trafficked into the country annually. Previous estimates ranged upwards to 50,000 beginning in 1998; however, approaches to data collection and methodology have shifted to more accurately reflect the situation.⁵ In its 2004 report, *Assessment of U.S. Activities to Combat Trafficking in Persons*, the U.S. Department of Justice estimated that 80% of trafficked persons were female, with the majority of trafficked persons to the United States coming from East Asia and the Pacific (5,000-7,000), followed by Latin America and Europe (3,500 – 5,500 each). The government approaches trafficking as a global problem with domestic implications, and thus promotes initiatives addressing the issue within a wider, global context.

Legal Initiatives

In 2000, the United States government passed the Victims of Trafficking and Violence Protection Act (TVPA), which redefined trafficking under federal law to comply with the definition set forth by the United Nations in the Palermo Protocol. The new definition enabled prosecutors to more easily convict traffickers by recognizing coercion and deception as tactics for recruiters that render the consent of trafficked persons irrelevant. In support of this measure, prison sentences for traffickers were increased to a maximum of twenty years, with life imprisonment for cases involving the death of a trafficked individual.⁶ The 2000 Act introduced the T-Visa, specifically for victims of trafficking, and the U-Visa, for migrant victims of specific crimes, which allow victims to remain in the United States for the duration of time necessary to prosecute traffickers by trial or up to three years, and in some cases permanently. In 2003, the Department of Homeland Security approved 297 T-Visas out of 601 applications, while 30 were denied and the rest remain pending.⁷ The Office to Monitor and Combat Trafficking in Persons was then established at the Department of State, along with the President's Interagency Task Force to Monitor and Combat Trafficking in Persons, to focus specifically on addressing trafficking.

The cornerstone of U.S. anti-trafficking policy and the 2000 Victims Protection Act has been the creation and annual publication of the *Trafficking in Persons Report*, which ranks countries in tiers according to the extent of their national policies and initiatives to combat trafficking. Countries that fail to meet minimum standards or work towards those standards are threatened with the suspension of non-humanitarian, non-trade related assistance. The allocation of significant sums of aid are linked to the Report, driving governments to adopt only those strategies and initiatives approved under U.S. policy. This has been clearly demonstrated by efforts to deny funding to any organizations that might directly or indirectly support sex workers through their work to protect trafficked persons.

The Trafficking Victims Protection Reauthorization Act was passed in 2003 to strengthen the original TVPA of 2000. Governments are now pressed to produce more extensive evidence detailing the number of investigations, arrests, prosecutions, and convictions relating to trafficking cases. The new act introduced the Tier 2 "watch list" to the *Trafficking in Persons Report*, for those countries with a high number of victims, yet failing to make progress in their anti-trafficking

⁴ *A Human Rights Report on Trafficking of Persons, Especially Women and Children: United States*, The Protection Project, Found on October 3, 2004 at <http://www.protectionproject.org/main1.htm>

⁵ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004), United States Department of Justice, p.5

⁶ See ECPAT Country Profile of the United States at <http://www.ecpat.net>

⁷ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004), p. 21

efforts.⁸ The Report has been both praised and criticized by the anti-trafficking community. In many cases, the Report has provided the necessary pressure for negligent governments to take action and address trafficking as both a domestic and international problem. Others note the lack of accurate evaluation applied to government initiatives, potentially concealing ineffective and superficial strategies to assist and protect trafficked persons.

Other criticisms have developed in response to the extent of real protection offered to immigrants and trafficked persons in the United States. The T-Visa, while a significant step towards victim protection, has generally been extended to only those who are willing to cooperate with prosecutors and law enforcement by providing testimony or going to trial. This practice neglects the lack of security trafficked persons could experience upon returning to their country, particularly retaliation from recruiters or organized crime members.⁹ In many cases, trafficked persons remain vulnerable to prosecution under immigration violations, as trafficking victims are not always accurately identified. In the case of domestic workers, where women are often deceived about their working conditions and abused, there is little protection afforded to them under labor laws. They are excluded from the Fair Labor Standard Act, the National Labor Relations Act, and the Occupational Safety and Health Act. Similarly domestic workers employed by diplomats are incredibly vulnerable to abuse since their employers possess diplomatic immunity.¹⁰ In such cases, too little progress has been achieved to protect the human rights of all laborers, particularly undocumented migrants and those working in the informal sector. For them, victim protection laws apply after the crime has been committed and little protection is offered to them in the workplace itself.

Prevention Initiatives

At the international level, the government directs a great deal of funding towards prevention efforts through organizations and governments in countries of origin. Last year, the United States committed \$70 million to countries around the world for rehabilitation and work training, housing shelters, awareness campaigns, and training for government and law enforcement officials.¹¹ They have also worked with organizations to raise awareness and promote 'best practice' strategies, demonstrated by the 2003 conference on "Pathbreaking Strategies in the Global Fight Against Sex Trafficking," which involved the participation of activists from 113 countries. The network to End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) has played a role in addressing demand issues by leading A Coalition to End the Involvement of US Military Personnel in Prostitution and launching a "Code of Conduct" for the North American travel industry in conjunction with UNICEF.

Domestically, the government conducts little prevention work; however, there are many non-governmental organizations working at the local level in the United States to raise awareness and improve labor conditions. Girls Educational and Mentoring Services (GEMS) works with young women at risk for sexual exploitation by providing preventative and transitional services. Similarly, Refugee Women's Network conducts trainings on leadership, microenterprise, and health promotion to empower female refugees. Other organizations, like Free the Slaves, Captive Daughters, and the Boston Coalition Against Trafficking and Slavery, are focused on raising awareness and advocating for new initiatives to prevent trafficking in the United States.

⁸ The International Rescue Committee, "Trafficking Watch", Issue no. 5, Summer 2004

⁹ Wendy Patten (2004), *U.S. Efforts to Combat Trafficking and Slavery: Human Rights Watch Testimony before the U.S. Senate Judiciary Committee*, found on October 4, 2004 at <http://hrw.org/english/docs/2004/07/15/usdom9075.htm>

¹⁰ *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Human Rights Watch, 13(2), found on October 4, 2004 at <http://www.hrw.org/reports/2001/usadom/>

¹¹ See <http://www.state.gov.r/pa/ei/rls/33109.htm>

As a major donor to foreign governments, the United States does not always direct funding and assistance to those organizations addressing root causes in their prevention work. Often, U.S. policy and political beliefs inform the allocation of aid and a reluctance to work with certain organizations impacts the efficacy of its efforts. Ignoring the impact of unfair labor conditions for sex workers, for example, and focusing on rescue and rehabilitation efforts, as done by major recipients like International Justice Mission, overlooks the circumstances under which women initially become vulnerable to trafficking.

Recovery Initiatives

Identification of trafficked persons has been one of the administration's greatest challenges in domestic anti-trafficking efforts. The most effective initiative thus far has been the U.S. Department of Justice's Trafficking in Persons and Worker Exploitation Complaint Line, which has provided leads for over half of the Department's trafficking investigations.¹² Once identified, the U.S. government has been active in providing outreach services and assistance to trafficked persons. The Department of Health and Human Services has been working to extend services to trafficked persons similar to those offered to refugees, as well as promoting awareness of a hotline to assist victims.¹³ By April of 2004, the Department issued \$8 million in grants to 28 different domestic anti-trafficking organizations and \$3.5 million to organizations providing outreach services to trafficked persons.¹⁴ Many organizations, such as Boat People SOS, Arizona League to End Regional Trafficking, and Florida Freedom Partnership, work locally with police and FBI agents to identify and assist victims of trafficking by providing shelter, medical care, and food. In terms of legal services, the Legal Services Corporation, a non-profit established by Congress, is directed under the TVPA to provide legal services for trafficked persons. In 2003, the Legal Services Corporation grantees assisted 81 trafficked persons, over half of whom were in California, followed by 25 trafficked persons in Texas.¹⁵

The government has been struggling to provide more extensive support to victims of trafficking. In response to criticisms set forth by Amy O'Neil Richard in *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, the Department of Health and Human Services now endeavors to provide housing, employment, mental health counseling, and specialized foster care for children, in addition to the basic support of temporary housing, legal assistance, transportation, and educational and cultural trainings.¹⁶ However, the majority of recipients for such support services have been male. Out of 151 certifications and benefits eligibility letters issued by the department in 2003, 145 letters were issued to adults. 54% of those recipients were male, compared to 20% in 2002, indicating the low number of female trafficking victims who are being identified and assisted. In terms of nationality, 38% of the victims were from India, followed by 11% from Vietnam, and 9% from Mexico.¹⁷

Monitoring and Evaluation

¹² *Assessment of U.S. Activities to Combat Trafficking in Persons* (2003), U.S. Department of Justice, p. 10

¹³ See <http://www.state.gov/r/pa/ei/rls/33109.htm>

¹⁴ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004) p. 14

¹⁵ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004) p. 20

¹⁶ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004) p. 14

¹⁷ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004) p. 15

While the government does not assess the United States in the *Trafficking in Persons Report*, they incorporate monitoring and evaluation of domestic efforts through the annual *Assessment of U.S. Activities to Combat Trafficking in Persons* by the Department of Justice. This comprehensive report not only evaluates government initiatives, but also provides details on trafficking cases, prosecutions, convictions, victims receiving federal benefits and non-immigrant visas, as well as training and outreach services provided during the fiscal year. Part of the Assessment's focus is to note weak areas in U.S. anti-trafficking efforts. The 2003 Assessment cited the lack of nation-wide research on the overall situation of trafficking into the United States as one area for improvement. Another challenge outlined in the Assessment is the identification of victims. Since enactment of the TVPA, the government has only assisted 450 victims, a statistic which falls significantly short of the estimate of 14,500-17,500. Similarly the Assessment calls for a better analysis of the geographical placement of service providers, stronger outreach efforts, better data collection, continuous training for relevant federal agencies, and ratification of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.¹⁸

CANADA

Background

Under pressure from the United States government, Canada has only recently strengthened its anti-trafficking efforts, moving the country from Tier 2 to Tier 1 on the *Trafficking in Persons Report* for 2004. However, there has been minimal awareness of trafficking in Canada generally and the government has been predominantly focused on the criminal aspects of trafficking, rather than the needs of trafficked persons. Canada serves as a destination and transit country, with the majority of trafficking for transit directed towards the United States. Estimates for trafficked persons are comparatively low, with the Royal Canadian Mounted Police (RCMP) reporting only 800 persons trafficked into Canada annually, and 1,500-2,200 people trafficked through Canada to the United States.¹⁹ This link between the United States and Canada has been the impetus for increased coordination and cooperation between the two countries.

The Global Alliance Against Traffic in Women Canada initiated the first consultation among North American NGOs at the "North American Regional Consultative Forum on Trafficking in Women in 1997", which began to foster awareness of the issue. However, trafficking did not begin to attract media attention until 1999 with the increasing coverage of brothel raids in Vancouver and Toronto, and the case of 600 Chinese migrants who were smuggled to British Columbia that summer. There was a general lack of clarity regarding the definition of trafficking, and cases of smuggling, prostitution, and migration became intertwined with the issue by both media and government reports.²⁰ In many cases, trafficked women were stereotyped as "Asian migrant sex slaves."²¹ In reality, women were trafficked to Canada from Latin America, Russia, Eastern Europe, and Asia, in addition to women who were trafficked domestically.

In 2001, the Canadian government responded by passing Bill C-11 under the Immigration and Refugee Protection Act and created the Interdepartmental Working Group on Trafficking in Persons. There has been discussion currently about the formation of a RCMP human trafficking

¹⁸ *Assessment of U.S. Activities to Combat Trafficking in Persons* (2004), p. 51-52

¹⁹ *United States Trafficking in Persons Report*, (2004), United States Department of State, found at

<http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm>

²⁰ Annalee Lepp, Ed., (2000), "Transnational Migration, Trafficking in Women, and Human Rights: The Canadian Dimension," *Global Alliance Against Traffic in Women*, p. 5

²¹ Annalee Lepp, p. 49

team that would work with law enforcement in the U.S. to investigate smuggling operations, reflecting an effort to increase coordination with the U.S.²² The Canadian government has also improved its cooperation efforts with other foreign governments, as well as local NGOs. The government seems to have responded slowly to the rise of trafficking in Canada however, and only held its first seminar on human trafficking in March of this year, to train and educate police, prosecutors, and immigration officials.

Legal Initiatives

Bill C-11 established trafficking as a crime under Canadian law, and solidified a definition for the offence in line with the Palermo Protocol. However, the Bill focuses entirely on punishing traffickers, with no provisions for trafficked persons, and thus does not lessen their vulnerability. The punishment for trafficking (potential life imprisonment and/or up to \$1,000,000 fine) is quite severe, and it is unclear whether or not it would be applied to traffickers who had been former victims themselves, as is sometimes the case.²³ In terms of prosecution, the Justice Department reported prosecution cases for 40 traffickers in 2003, with 16 successful convictions and the rest ongoing.²⁴ In response to U.S. criticism, the government reportedly has plans to strengthen criminal codes even further.²⁵

As for immigration law, the Bill maintains the dependency of legal migrants on their sponsors in Canada, who may be abusive to women entering for marriage or domestic work. There are no special provisions, such as temporary visas and work permits, for trafficked persons. In some cases, immigration laws are too lenient, creating loopholes for traffickers. The *U.S. Trafficking in Persons Report* notes that Canadian laws allowing some foreign nationals to enter without a visa, such as South Koreans, have led to increased trafficking flows via Canada to the U.S.²⁶ Additionally, trafficked women are still subject to detention, which treats them as criminals rather than victims.²⁷

Prevention Initiatives

Aside from overseas aid and border patrols, the Canadian government's main prevention initiative has been the publication and distribution of a booklet entitled "Don't Become A Victim in the Illegal Trade in Persons." The booklet includes information on the tactics of traffickers, the legal consequences for traffickers, the rights of victims, and the ways to seek help. The book was translated into fourteen languages and distributed domestically and abroad.²⁸ There is no evaluation information about the booklet project and its estimated impact, reflecting a lack of attention to either evaluation or the dissemination of such information. Unfortunately, from the literature

²² "Human Trafficking Laws to be Toughened: Justice Minister to also Co-Operate with U.S. on Tackling 'Slave Trade,'" *The Ottawa Citizen*, March 8, 2004.

²³ Annalee Lepp, p. 41.

²⁴ *United States Trafficking in Persons Report* (2004).

²⁵ "Human Trafficking Laws to be Toughened: Justice Minister to also Co-Operate with U.S. on Tackling 'Slave Trade.'"

²⁶ *United States Trafficking in Persons Report* (2004).

²⁷ Annalee Lepp, p. 36

²⁸ The Canadian Department of Justice, found on October, 10, 2004 at <http://canada.justice.gc.ca/en/index.html>

available, there also seems to be a lack of attention to the root causes of trafficking, and addressing issues such as community development and women's empowerment.

The government has directed its efforts primarily towards awareness raising, demonstrated by the formation of an anti-trafficking forum in 2004, hosted by the Department of Justice and the Canadian Ethno cultural Council for NGOs and academics. A poster to raise awareness of trafficking in Canada was also launched at the forum. There do not seem to be many NGOs engaged in prevention work domestically, but the International Centre to Combat Exploitation of Children has been active in preventing the sexual exploitation of children within the rights-based framework.

Recovery Initiatives

Unlike the Trafficking Victims Protection Act in the United States, there is little formal protection afforded to identifiable victims of trafficking. While documented victims of trafficking have access to government services, undocumented aliens will inevitably be deported, unless they qualify for refugee status.²⁹ Government officials still struggle with proper identification of trafficked persons, as there is no officially outlined criteria and process for reference. There is a lack of initiatives, such as hotlines and dissemination of information, to significantly improve outreach efforts. Considering the already existing challenges of identifying and reaching trafficked persons, the lack of effort to improve such processes reflects a lack of awareness and commitment.³⁰ Another active organization, the Canadian Council for Refugees, has been working to improve services available to trafficked persons by developing the capacity of relevant NGOs, organizing forums for discussion, and providing information on trafficking.³¹

Conclusion

In summary, the lack of available literature and detail regarding Canada's anti-trafficking initiatives indicates the general lack of dedication and understanding by the government. It is unclear why the Canadian government was promoted to Tier 1 in the 2004 *U.S. Report on Trafficking in Persons*, but this also reflects a weakness in the report itself. Overall, Canada's trafficking situation is less severe than most countries, which has probably led it to become less of a priority to the government.

Mexico

Background

Note: As the majority of information on trafficking in Mexico is available in Spanish, this report represents information presented by predominantly American sources and is thus, somewhat biased.

Similar to other countries in the North American region, Mexico serves as a country of origin, transit, and destination for trafficked persons. The Mexican government has been placed on the Tier 2 Watch List by the *U.S. Trafficking in Persons Report*, and has yet to significantly address the rise of trafficking. In contrast with the United States, forty percent of Mexico's population is

²⁹ *United States Trafficking in Persons Report* (2004).

³⁰ "Trafficking in Women and Girls," The Canadian Council for Refugees, found on October 10, 2004 at

<http://www.web.ca/~ccr/trafficking.htm#canada>

³¹ "Trafficking in Women and Girls"

impoverished, which drives many to seek work across the U.S. border both legally and illegally.³² Even though the North American Free Trade Agreement reduced economic barriers, the United States has strengthened its border patrols in recent years, forcing many migrants from Mexico to rely on underground channels. In fact, most people migrate illegally from Mexico to the United States, often originating in Central America, by relying on smugglers that charge exorbitant fees, some of which are forced to be repaid through indentured servitude.³³ This massive unregulated flow of labor creates opportunities for trafficking and exploitation. Mexico lacks specific anti-trafficking laws and weak law enforcement has allowed Mexico to become a growing haven for child prostitution and trafficking. An estimated 16,000-20,000 children have been victims of sexual exploitation in Mexico, and the country has become an increasingly popular destination for sex tourism.³⁴

Legal Initiatives

Mexico lacks national anti-trafficking legislation and policies to address the problem of trafficking at the national level. Generally, Mexico has a weak judicial system compared to the United States and Canada, and corrupt police often undermine investigations.³⁵ In March of 2004, Mexico and Guatemala agreed to a Memorandum of Understanding that would increase cooperation in anti-trafficking efforts. However, cooperation between the Mexican government and its bordering neighbors is still insufficient to manage the large flows of illegal migrants crossing the border. In response to border control efforts by the United States, such as the Arizona Border Control Initiative, the Mexican government expressed concerns for the potential violation of the rights of illegal migrants and the need for cooperation on both sides.³⁶ This reflects the different approaches of each government, as the United States often appears more concerned with security than the rights of illegal migrants.

Inadequate law enforcement has created a profitable environment for traffickers, particularly for forced prostitution and trafficking of children.³⁷ Since there is no legislation on trafficking, prosecutors rely on the existing criminal code, which does criminalize forced prostitution but does not address the other aspects of trafficking. In 2003-2004, the federal government reported that only 27 arrests were made for sexual exploitation trafficking cases, a number which falls well below estimates for frequency of the crime.³⁸

³² David Shirk and Alexandra Webber (2004), "Slavery Without Borders: Human Trafficking in the U.S.-Mexican Context," *Hemisphere Focus*, Center for Strategic International Studies, 7(5).

³³ David Shirk and Alexandra Weber (2004).

³⁴ *United States Trafficking in Persons Report 2004*, United States Department of Justice, Found at <http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm>

³⁵ Dr. Wayne A. Cornelius and Dr. David A. Shirk (2003), "Civil Society and Access to Justice in Mexico," Conference Report, found at http://usmex.ucsd.edu/justice/civil_society.html

³⁶ "The Arizona Border Control Initiative," Joint Press Release by the Ministry of Foreign Affairs and the Ministry of the Interior, Found at <http://portal.sre.gob.mx/sre/popups/newswindow.php?id=127>

³⁷ "U.S., Canadian and Mexican Representatives Meet to Combat Sexual Exploitation of Children"

³⁸ *United States Trafficking in Persons Report* (2004).

Prevention

There is little information available on prevention work done by the Mexican government and the main focus seems to be on border patrols. There are active local organizations, but information presented in their literature and on the Internet is in Spanish. One organization, Centro de Apoyo a Migrantes works with local maquiladoras to hire migrant workers and advocates for the protection of migrant workers rights.

Recovery

The Bi-Lateral Corridor Coalition is an alliance of international, national, and local agencies and NGOs in the United States and Mexico working to assist and provide services to victims of trafficking. They conduct outreach and education activities to build the capacity of law enforcement and service providers, as well as providing direct assistance to victims and assisting with the prosecution of traffickers.³⁹ There are many local organizations working with migrants, such as Casa del Migrante, which provides meals, shelter, and assistance to migrant workers. Sin Fronteras I.A.P assists the return of migrants by providing legal and social assistance, vocational training, and education.

³⁹ Dr. Wayne A. Cornelius and Dr. David A. Shirk (2003).