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Sex Trafficking at the Border: An Exploration of Anti-trafficking Efforts in the Pacific Northwest

Alex Norfolk
University of Victoria

The prevalence of human trafficking for the purposes of sexual exploitation and forced labour in the Pacific Northwest has been well documented in recent years. This paper focuses specifically on trafficking for sex work across the British Columbia and Washington State border. The paper seeks to determine whether the border is an effective instrument or tool for the identification and intervention of human trafficking for sex work. We provide an exploration of the legal frameworks and policies on either side of the border, and offer an analysis of the cross-border anti-trafficking efforts carried out at the borderlands. The paper concludes that current mechanisms fail to appropriately address and combat the issue of cross-border sex trafficking for a number of reasons, including: a lack of uniform definitions of sex trafficking; the conflation of migrant sex work and sex trafficking, leading to misidentification at the border; and an emphasis on border security measures over victim support. The paper provides recommendations for enhanced responses.

Introduction

Few human rights issues have captured the attention of the North American population in the twenty-first century like human trafficking has. The exploitation of human beings, whether it be for labour or sex, has become somewhat of a *cause célèbre*, giving rise to a myriad of campaigns spearheaded by federal, municipal, and non-profit institutions in both Canada and the United States. This surge in interest was generated, in large part, by the development of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2000 (UN Protocol), which called for states to increase efforts to fight the problem within their own countries.

The UN Protocol defines human trafficking as an act of maintaining control over an individual through force, fraud, or coercion, in order to exploit them (UN Protocol, 2000; Peters, 2015). This exploitation can manifest itself in various forms, including “the exploitation of the prostitution of others or other forms sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN Protocol, 2000).

The prevalence of human trafficking for the purposes of sexual exploitation and forced labour in the Pacific Northwest has been documented by regional law enforcement and government agencies (RCMP, 2010; 2013; Washington State Task Force, 2008). This paper will focus specifically on trafficking for sex work (or, sex trafficking) in British Columbia (BC) and Washington State. Through an analysis of the region’s current anti-trafficking efforts and policies, the paper seeks to determine whether the border is an effective instrument or tool for the identification and intervention of human trafficking for sex work.

The first section of the paper addresses definitions and terminology surrounding the complex issue of trafficking. Secondly, a brief overview of sex trafficking in BC and Washington State will be provided. Thirdly, the paper will explore the legal frameworks and policies that are in place on either side of the border, as well as the anti-trafficking efforts currently carried out at the borderlands in response to the issue. The final sections provide an exploration and analysis of the responses to sex trafficking at the BC-Washington border. Recommendations for enhanced responses are then given.

Definitions and terminology

Human trafficking / Sex trafficking

For a discussion of human trafficking to take place, it is first necessary to understand what exactly we mean by the term. The following summary of human trafficking is presented in Article Three of the UN Protocol (2000, p. 2):

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

It is useful to note some of the keywords used in the above definition, namely: force, fraud, and coercion. These words or their synonyms are present in both the Canadian and American legal

descriptions of trafficking. Consider this section of Canada's Criminal Code provided by the Department of Justice (DOJ) (2015):

Trafficking in persons is about exploitation and does not necessarily involve movement. For the purpose of the trafficking offences, the Criminal Code states that a person exploits another person if they: cause someone to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

Instead of including the words 'force', 'fraud', or 'coercion' in this description, the Canadian Criminal Code emphasizes the means by which force or coercion can occur, i.e. the overarching threat to the individual's safety. It is also worth noting that the description here makes it clear that the act of human trafficking need not involve movement. For comparison, the Washington State Criminal Code uses the following definition (Washington State Legislature, 2013):

- (1) A person is guilty of trafficking in the first degree when:
 - (a) Such person:
 - (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, (A) that force, fraud, or coercion... will be used to cause the person to engage in:
 - (I) Forced labor;
 - (II) Involuntary servitude;
 - (III) A sexually explicit act; or
 - (IV) A commercial sex act, or (B) that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act.

The Victims of Trafficking and Violence Protection Act (TVPA), drafted and signed into United States law in 2000, addresses sex trafficking specifically, placing it under the banner of 'severe forms of trafficking'. Again, the terms force, fraud, and coercion remain key to the definition, and are distinguishing features of what constitutes a trafficking crime:

- The term "severe forms of trafficking in persons" means—
- a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
 - b) the recruitment, harbouring, transportation, provision, or obtaining of a person for labour services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Drawing on the above definitions, this paper defines sex trafficking as: *an act of maintaining control of an individual through the use of force, fraud, or coercion for the purposes of sexual exploitation*. We acknowledge that the definition used here is relatively simplistic and generalized; this is in large part because we want to be inclusive of the wide range of legal definitions. Scholars have frequently noted the difficulty in producing international uniform definitions of sex trafficking and human trafficking in general, an issue that is highlighted later in this paper.

Human smuggling

Foreign nationals who pay to be willingly transported into Canada or the US are not victims of trafficking, as they have willingly acquired the services of a third party to assist them in crossing the border, and the transaction ends once they enter the country; smuggling does not involve the exploitation of one individual by another (RCMP, 2010; McAdam, 2013). However, it is also important to note that both smuggling and trafficking involve vulnerable individuals, and it is possible that “a smuggled person one day may be a trafficked person the next” (Miller & Baumeister, 2013, p. 28).

Sex worker / Sex work

The term ‘sex worker’ is used in this paper to describe any individual who provides sexual services in exchange for money or goods. We use the description provided by the World Health Organization (WHO) to define ‘sex work’ as “the provision of sexual services for money or goods” (WHO, 2002). A number of studies cited in this paper refer to sex workers as ‘prostitutes’ and sex work as ‘prostitution’; in instances where we have quoted such studies, the original terms used by the author(s) have not been altered.

Migrant sex work

Migrant sex workers are individuals, either citizens or foreigners, who migrate to work in various sectors of the sex industry, including on the streets, in exotic dance clubs, and massage parlours (Migrant Sex Workers Project, n.d.; Kapur, 2003; RCMP, 2013; Jeffrey, 2005; Schwartz, 2014). Contrary to many conservative or abolitionist narratives, migrant sex workers who voluntarily choose to work in the sex industry do not perceive themselves as ‘victims’ in need of saving; indeed, a large proportion of individuals who engage in this work want to be recognized as professionals providing a legitimate service (Ferris, 2015). Many individuals who self-identify as consensual migrant sex workers continue to lobby for the legalization and destigmatization of sex work (Brownstone, 2015; Ferris, 2015).

It is difficult to measure how prevalent migrant sex work is in Canada and the US (Canadian Public Health Association, 2015; Pivot Legal Society, 2016). The Canadian Public Health Association (CPHA) released a report in December of 2014 which stated that efforts to quantify the population of sex workers in the country have only resulted in rough estimates (CPHA, 2014); the report approximates that, as of 2014, there were around 1,200 to 2,600 sex workers living in Vancouver, and that “First Nations, Inuit and Metis women are over-represented in the sex trade with an especially high number of youth, ranging from 14%-60% of sex workers across various regions of Canada” (CPHA, 2014, p. 4).

The conflation of sex trafficking and migrant sex work

The legal definitions of trafficking provided here make a distinction between forced and voluntary labour. However, several studies have noted that the conflation of voluntary migrant sex work with sex trafficking continues to be an issue with regards to legal frameworks and public perceptions in Canada and the US (Desyllas, 2007; Augustin, 2006; Pickering & Ham, 2013).

In her article on how ideology shapes policy with regards to trafficking, Ditmore (2005) states that, “historically, trafficking in persons has been equated with prostitution” (p. 108). This conflation of sex trafficking with sex work continues today, and has been well documented in recent years (see Augustin, 2006; Chuang, 2010; Corvid, 2014; Jackson, 2016; Jeffrey, 2005; Pickering & Ham, 2013). Over the past decade, neo-abolitionists in North America have lobbied to criminalize all forms of sex work, arguing that sex work (including migrant sex work) is

tantamount to sex trafficking regardless of context and individual circumstances (Augustin, 2006; Chuang, 2010).

A number of academics have noted that the treatment of all sex workers simply as victims is highly problematic; as Jeffrey (2005) explains, linking sex work to sex trafficking “justifies paternalist and criminalizing approaches to the sex-trade, which fail to provide sex-workers with the decent working conditions that they have been demanding” (p. 34). Others have posited that painting migrant sex workers and actual victims of sex trafficking with the same brush robs voluntary sex workers of personal agency, characterizing them as helpless victims rather than working professionals (Brown, 2016; Corvid, 2014; Jackson, 2016).

Scholars have taken further issue with this victim/voluntary professional binary. Peters (2015) contends that participation in the sex industry should instead be viewed on a continuum, with sex trafficking on one end, and voluntary, professional sex work on the other. Included on this continuum are those individuals who may not have initially chosen this line of work, but who continue to make a living from it, as well as instances where the level of force, fraud, or coercion exerted on an individual is difficult to determine.

A case that would likely fall somewhere in the middle of the aforementioned spectrum would be one in which a migrant sex worker is in a romantic relationship with an individual who is also acting as his/her pimp; in such a situation it might be difficult to categorize whether the work is either completely voluntary or completely forced (Peters, 2015). Likewise, an individual at the poverty line who migrates to sell sex as a means of providing support to his/her family would not necessarily be considered a victim or a voluntary sex worker, as the ‘choice’ to engage in sex work was made as a result of personal circumstance. However, as Jeffrey (2005) explains, “even if entry into the trade was a less-than-perfect option, it does not mean that, once in the trade, women do not define their interests as making as much money as possible in the safest environment possible, and that these interests should be ignored as false consciousness” (p. 34).

Law enforcement and border officials have a responsibility to address these distinctions appropriately in their approaches to sex work and sex trafficking. Nowhere is it more vital to acknowledge the complexities surrounding sex workers and trafficked victims than at border crossings. As a demarcated point where individuals are first observed by authorities and “systematically sorted” (Pickering & Ham, 2013), the border has the potential to be a crucial place for the identification of trafficking and trafficked victims, and for developing effective responses to the problem.

Sex trafficking in the Pacific Northwest

This section provides a brief overview of the current state of sex trafficking in the region. We recognize that, due to the complex and clandestine nature of this crime, available data is often incomplete and subject to dispute. Moreover, any discussion of statistical information concerning sex trafficking must also address the lack of nuance in quoting numbers and fact-based generalizations. Reports provided by government or law enforcement agencies often do not specify how data was collected, nor do they acknowledge the diverse experiences and circumstances of those affected by sex trafficking. The following paragraphs thus offer a ‘snapshot’ of the situation rather than an exhaustive representation of the extent of sex trafficking in the region, or of the individuals affected by the crime.

Thirteen international border crossings dot the 687 kilometre stretch of land that separates Washington State and British Columbia (BC); of these 13 crossings, the four that serve the area surrounding Vancouver and Seattle are the busiest in the region (BC Ministry of Transportation and Infrastructure, 2016). Researchers, government officials, and law enforcement agencies have reported that traffickers have used border crossings between these two districts to transport their victims (Perrin, 2010; United States-Canada, 2006).

The 2006 Bi-national Assessment of Trafficking in Persons stated that perpetrators of trafficking have been known to use a variety of entry points to transport victims into the US from Canada, including land ports, airports, marine ports, and “less monitored areas between ports of entry” (United States-Canada, 2006, p. 9). The report explains that the movement of victims across certain designated entry ports “is facilitated by the large volume of commercial and traveler traffic between the two countries, and in some instances, aided by criminal elements influencing or operating at these ports” (US-Canada, 2006, pp. 9-10).

According to the 2016 US Department of State Trafficking in Persons (TIP) Report, in Canada and the US, women, children, men, and transgender individuals are subjected to sex trafficking (US Department of State, 2016). In British Columbia, women and girls who are of Indigenous descent are particularly vulnerable to these crimes (Canadian Public Health Association; 2014; Sethi, 2007). Foreign victims in this region have been known to come from areas of Eastern Europe, Asia, and Africa (RCMP, 2010; Washington State Task Force, 2008). A number of reports have stated that victims of trafficking in BC and Washington tend to be in their 20’s and 30’s, however many are much younger (RCMP, 2010; Pham, 2012). Several sources claim that children as young as 12 and 13 have been victims of sex trafficking in the area (RCMP, 2010, 2013; The Genesis Project, 2013; Pham, 2012). As detailed in the 2016 TIP report, individuals who engage in sex trafficking activities generally target vulnerable girls and women, such as at-risk youth, runaways, new immigrants, or victims of domestic violence (US Department of State, 2016).

A report released by the Royal Canadian Mounted Police (RCMP) in 2010 indicated that many sex trafficking victims are foreign migrant workers who either enter Canada or the US legally, or they are migrants who pay to be smuggled in illegally, but are then coerced into forced sex work soon after they arrive (RCMP, 2010). This switch from legal immigrant or irregular migrant upon entry, to trafficked victim once entered, is a large part of what makes trafficking victims so difficult to identify.

Scholars have noted that Canada has been used as a transit country through which traffickers funnel victims. For instance, Benjamin Perrin (2010) claims that from 1996 up until 2010, a total of 1,336 “potential South Korean victims” were trafficked through Canada to the US, most of whom were women “destined for sexual exploitation” in various cities, including New York, Los Angeles, San Francisco and Seattle (p. 25). Citing a 1997 US Human Rights report, Young (1998) points to a case in which three young Canadian women were forced into sex work in Vancouver, “where they earned money to pay for their passage to the United States”; when these young girls entered the US, they were taken to work in the sex industry in California, Hawaii, and Washington (pp. 78-79). The 2006 Bi-national Assessment of Trafficking in Persons confirms Canada as a transit country, estimating that 1,500 to 2,200 victims are trafficked through Canada, into the US each year (United States-Canada, 2006).

The RCMP (2010) reports that perpetrators of sex trafficking in the region tend to be males aged 19 to 32, however, females “are increasingly becoming involved in human trafficking” (p. 11). Research suggests that individuals who engage in sex trafficking crimes often “have a history of

early exposure to sexual abuse, violence, drug use, and family or community connection to prostitution” (Pham, 2012, p. 19). Scholars have noted that traffickers ‘recruit’ their victims through multiple forms of deception, fostering trust by posing as boyfriends or legitimate employers (Perrin, 2010; Sethi, 2007; The Genesis Project, 2013). While ‘recruiting’ the victim, traffickers may give gifts and expensive clothing to the individual, the cost of which ends up turning into debt for the victim to repay through forced work (BC, 2013). Perpetrators of sex trafficking are often reported to have used websites such as Craigslist or other internet classifieds to recruit their victims (Green, 2016; RCMP, 2010).

The Washington State Task Force Against Trafficking in Persons (WA Task Force, 2008) states that individuals who engage in trafficking exert tight control over their victims, often keeping them hidden or disguised, or moving them frequently. Tactics of violence and drug addiction are reportedly used to control victims and force them to engage in sex work (BC, 2013). Perpetrators of trafficking have been known to withhold foreign victims’ documentation, passports, or legal paperwork in order to maintain control over them (WA Task Force, 2008; Young, 1998).

Legal framing and responses to trafficking

Since the adoption of the UN Protocol in 2000, the US and Canadian governments have continually sought to develop effective legal processes to address human trafficking, and both nations aim to uphold the three-pronged approach put forth in the UN Protocol, which calls for: a) the prevention and combat of trafficking in persons; b) protection and assistance to the victims; and c) the promotion of cooperation among State Parties (UN Protocol, 2000, Article 2).

In 2000, the US State Department introduced The Victims of Trafficking and Violence Protection Act (TVPA) (US Dept. of State, 2000). The TVPA criminalizes the act of forcing individuals into exploitative labour situations, and aims to protect victims of such offences. The Act set out to strengthen law enforcement to reduce violence against women, as well as provide more comprehensive services to victims of violence (US Dept. of State, 2000). The TVPA has been reauthorized several times since inception, and has been followed by several further legislative acts addressing the problem of trafficking in the United States (US Dept. of Homeland Security, 2015). Canada has taken similar steps to combat trafficking, creating the Immigration and Refugee Protection Act (IRPA) in 2001 (Government of Canada, 2016; Oxman-Martinez, Hanley & Gomez, 2005), passing a number of laws against trafficking from 2005 onward, and developing the nation’s first and only Office to Combat Trafficking in Persons (OCTIP) in British Columbia in 2007 (Barrett, 2010; BC, 2013).

Both the BC and Washington State governments have been leaders in the regional fight against human trafficking. Washington was the first state in the US to create a law criminalizing human trafficking, and the state has maintained a human trafficking Task Force since 2002, the first in the country (Godziak & Collett, 2005; Kohl-Welles, 2012; WA Task Force, 2008). In 2013, the British Columbia Ministry of Justice put forth a three-year Action Plan to combat human trafficking in the province, focusing primarily on sexual exploitation of youth and within Indigenous communities, as well as labour exploitation of vulnerable workers (BC Ministry of Justice, 2013).¹ In conjunction with the Action Plan, the provincial government launched a series

¹ The plan identified the following five priority areas to address in an effort to curb trafficking in the region: 1) raise awareness and increase public understanding of human trafficking in BC; 2) Increase the number of service providers and frontline personnel with training on human trafficking; 3) Empower and build capacity in local BC communities (including Indigenous communities) to prevent human trafficking

of free online anti-trafficking training modules aimed at service providers and first responders who may come into contact with victims of trafficking (OCTIP, 2014).

Individual politicians within the BC and Washington State governments have recently been increasing their efforts to fight human trafficking. The work of Washington State Senate member Maralyn Chase was instrumental in ensuring the passing of a 2015 bill (Senate Resolution 8644) to support the reduction of trafficking in the state (WA Legislature, 2015). In BC, Minister of Justice Suzanne Anton has been working in conjunction with OCTIP to deliver the province's three-year Action Plan to Combat Human Trafficking (BC, 2015).

Provincial and state-level law enforcement

Law enforcement officials in BC and Washington generally conduct reactive investigations which rely heavily on the cooperation and reliability of the victim and his/her testimony. Because traffickers often silence victims with threats of violence and/or victims may fear deportation or arrest, investigations can often fall short of effectively targeting and prosecuting the criminal operations or individuals responsible for exploiting the victims (Barett, 2010; Perrin, 2010; RCMP, 2010; Sethi, 2007; WA Task Force, 2008).

Regional law enforcement teams have made few domestic sex trafficking arrests and convictions in recent years. In early November of 2015, a British Columbia man named Reza Moazami was sentenced to 23 years in prison on charges of human trafficking. He was convicted of forcing 11 young girls, between 14 to 19 years old, into prostitution in Vancouver. Mr. Moazami used various tactics, "ranging from coercion and intimidation to humiliation and outright violence to ensure they continued to make money for him" (Fraser, 2015). This case underscores the reality that trafficking crimes do not require the movement of individuals. It was the first human trafficking conviction in BC under the Criminal Code (Porter, April 19 2016). More recently, in early 2016, a large joint operation between the Seattle police force and the King County Sheriff's Office led to the arrest of 12 men and one woman who were running a brothel in which "prostituted women from South Korea were forced to work often for 12 hours a day, seven days a week, to pay off debts" (Green, 2016).

Punishments for trafficking in persons range in severity, and are largely dependent on the nature and extent of each individual crime. In Canada, convicted traffickers have faced sentences ranging from two or three years of incarceration, to 41 years or more (Perrin, 2010; RCMP, 2010). Penalties for trafficking in the US also vary, but a conviction of engaging in sex trafficking of a minor, for instance, carries a punishment of life imprisonment and a US\$ 250,000 fine (US Immigration and Customs Enforcement, 2015).

Criminalizing and victimizing migrant sex workers in Canada and the US

In North America (as in many other parts of the world), the issue of sex trafficking is frequently tied to that of migrant sex work; this is in large part due to the ongoing stigmatization of sex work and certain aspects of the legal framing of sex work that currently exists in Canada and the US. Weitzer (2007) argues that a 'moral crusade' against sex work has been influential in establishing

and provide assistance to trafficked persons; 4) Increase coordination of services to address the unique needs of trafficked persons in B.C. communities, emphasizing culturally appropriate responses; and 5) Increase research, policy and legislative responses to human trafficking in BC (Ministry of Public Safety and Solicitor General, 2016). The third-year status report of the Action Plan, released in September 2016, details some of the key initiatives taken by OCTIP and other organizations and service providers throughout the province (see Ministry of Public Safety and Solicitor General, 2016).

anti-sex work laws on both sides of the border, forcing those who engage voluntarily in sex work to face tougher restrictions and to experience increased vulnerability to sex trafficking.

In Washington State, sex work is a misdemeanor under state legislature, and “a person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee” (WA Legislature, RCW 9A.88.030). Promoting sex work (i.e. profiting from, or soliciting customers for, sex workers) is considered a felony, and “patronizing a prostitute” is considered a misdemeanor in Washington State (WA Legislature, RCW 9A.88.070; RCW 9A.88.080; RCW 9A.88.110).

The Protection of Communities and Exploited Persons Act (or, Bill C-36), introduced in Canada in 2014, specifically targets ‘pimps’ and clients (also known as ‘johns’) rather than the sex workers themselves (CPHA, 2014; Hon Chu & Glass, 2013; McIntyre, 2015; Schwartz, 2014). As such, this Act closely resembles the so-called ‘Nordic Model’ of addressing sex work, which decriminalizes the act of selling sex but “criminalizes the purchase of sex” (Hon Chu & Glass, 2013, p. 101). Although regarded by some as a progressive step forward, many sex workers argue that instead of offering protection, this approach tends to “force outdoor sex workers to engage in rushed encounters, increase the likelihood of coercion, and push outdoor sex workers into secluded, unsafe locations” (CPHA, 2014, p. 7). Studies have maintained that ongoing stigma and the legal framing of sex work in both Canada and the US effectively block sex workers from accessing essential support services, such as health care, and increases their overall vulnerability to violence and trafficking (Jeffrey, 2005; Lazarus et al., 2012).

Examining the legal responses to sex work on either side of the Canada-US border can help to explain the responses that each country has toward migrant sex workers *crossing* the border. In her discussion of Canada’s treatment of migrant sex workers, Jeffrey (2005) posits that existing legal frameworks essentially regard migrant sex workers entering Canada as “a foreign policy problem, not a national problem”, thereby allowing “the government to argue for tighter security measures, particularly in border controls and policing, in order to protect women – measures which only penalize migrants and makes them more vulnerable to abuse” (pp. 42-43).

Responses to sex trafficking at the border

Border policy

In ratifying the 2000 UN Trafficking Protocol, the United States and Canada agreed to adhere to each of the 20 Articles within the document, including Article 11, which holds that “States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons”, and that “States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication” (pp. 6-7). In the wake of the terrorist attacks of September 11, 2001, the measures previously taken by Canada and the US to curb trafficking were immediately eclipsed by the further steps each nation took to tighten border security and reinforce controls on immigration in the face of terrorism (Oxman-Martinez et al., 2005).

Following 9/11, Canada and the US have worked bilaterally to develop new restrictions with regards to border crossing, “particularly for refugees and individuals from countries that the United States has identified as linked to threats of terrorism” (Oxman-Martinez et al., 2005, p. 12). The 2001 Canada-US Smart Border Declaration and the 2002 Safe Third Country Agreement on Refugees are examples of such reforms, both of which call for higher instances of deportation, harsher penalties for those found using false documents, and regular detention of migrants who

cannot prove their identities satisfactorily (IRPA, 2001; Oxman-Martinez et al., 2005). In 2011, Canada and the US initiated the Beyond the Border (BTB) Action Plan, a long-term partnership which seeks to augment “collective security and accelerate the flow of legitimate goods, services, and people, both at and beyond the border” (Government of Canada, 2015).

Ackleson, in his 2011 study on cooperation in border security in the developed world, maintains that these increased efforts to enhance control and security are primarily concerned with risk management and risk assessment. It should be noted, however, that such changes have been criticized for denying certain human and labour rights to migrants; as Oxman-Martinez et al. (2005) posit, under the abovementioned reforms, individuals “seeking entry to Canada are first seen through a security lens before a compassionate or humanitarian lens” (p. 13). Moreover, scholars have also maintained that increased security at the Canada-US border has driven the human trafficking and smuggling trade deeper underground, and has made migrants more vulnerable to abuse and violence (Kapur, 2005).

Cross-border efforts to combat trafficking

Recent cooperation between Canada and the US has resulted in the adoption of several important bilateral agreements to increase security at the border. Integrated Border Enforcement Teams (IBETs) were formed in 2002, comprising of representatives from the RCMP, Canada Border Services Agency (CBSA), the Office of Border Patrol, US Department of Homeland Security, US Immigration and Customs Enforcement, and the US Coast Guard (Williamson, 2009). As stated in the United States-Canada Bi-national Assessment of Trafficking in Persons (2006), the “IBETs are designed to enhance border integrity and security along the shared Canadian-US border by identifying, investigating and interdicting persons and organizations that pose a threat to national security, or are engaged in organized criminal activity, such as [trafficking in persons], illegal migration, smuggling of drugs or other goods, and terrorism” (p. 19).

Integrated Border Intelligence Teams (IBITs) complement the IBETs by “collecting, analyzing and disseminating tactical, investigative and strategic intelligence information pertaining to cross border crime between the United States and Canada” (United States–Canada, 2006, p. 19). On the US side of the border, unmanned aerial drones are used to survey remote areas of borderland, providing video to IBITs for analysis (Perrin, 2010). Although Public Safety Canada (2015) notes that the IBETs and IBITs have been successful in intercepting cross-border smuggling networks, details regarding their success in combating human trafficking were not readily accessible.

In a further move to enhance Canada-US border security, the RCMP and US Coast Guard worked together to introduce Integrated Cross-Border Maritime Law Enforcement Operations (ICMLEO) in 2012 (Government of Canada, 2012). This agreement, also known as Shiprider, enables specially trained RCMP officers to work on board US Coast Guard vessels within US territory, and vice versa. As explained by the RCMP, the Shiprider program “removes the international maritime boundary as a barrier to law enforcement by enabling seamless continuity of enforcement and security operations across the border” (RCMP, 2015, para. 5). Shiprider operations cover a total of 250 kilometres of the shared Canada-US maritime border in the Pacific region and, as of 2013, the Shiprider program consists of 83 cross-designated officers (Government of Canada, 2015). At the time of writing this paper, we did not find any publicly released information regarding how effective Shiprider has been in identifying and intercepting cross-border trafficking cases.

Adopted in 2011, the Entry/Exit Initiative is an agreement between Canada and the US to “exchange biographic entry information on third-country nationals (non U.S. or Canadian citizens), permanent residents of Canada who are not U.S. citizens and lawful permanent

residents of the U.S. who are not Canadian citizens at land ports of entry” (Canada Border Services Agency, 2016). This information sharing system allows law enforcement officials from both countries to collect the following data elements: first name, middle name, last name, date of birth, nationality, gender, document type, document number, document country of issuance, work location code/U.S. POE codes, date of entry, and time of entry (Canada Border Services Agency, 2013). In March 2016, the Canadian and US governments “reaffirmed the commitment to a coordinated entry and exit information system and pledged to build upon the process already in place” (Canada Border Services Agency, 2016); one significant outcome of this reaffirmation has been the introduction of legislation allowing the Canada Border Services Agency (CBSA) “to collect routine biographic information on all travellers exiting Canada” in addition to those entering the country (CBSA, 2016).

Formed in 1997, the Canada-United States Cross-Border Crime Forum (CBCF) holds regular joint meetings involving senior law enforcement and justice officials from various organizations in Canada and the US. The forum “addresses transnational crime issues such as organized crime, counter-terrorism, smuggling, economic crime and other emerging cross-border threats” (Public Safety Canada, 2015). A report on topics addressed at this year’s forum has yet to be released.

As mentioned earlier in this paper, Canada has been identified as a ‘transit country’ for sex trafficking (Perrin, 2010; USAID, 2015). Border officials have reported several instances of traffickers using cities in BC as mid-way points between the source country and the final destination in the US. In the summer of 2006, for example, the IBET associated with the Okanagan RCMP worked together with the US Border Patrol in Washington State to “[intercept] 10 Korean nationals attempting to walk across the Canada-US border near Osoyoos” (United States-Canada, 2006, p. 21). The group consisted of eight females and two males, and the evidence collected by border officials “indicated that [the female migrants] would likely have been forced into providing sexual services at massage parlours in various major cities in the US” (United States-Canada, 2006, p. 21). The joint operation that led to the interception of this group is an example of successful bilateral cooperation between the two countries.

It has been reported that trafficking cases involving the use of Canada as a transit country is due, in large part, to the country’s relatively lax immigration laws and visa waiver program (Oxman-Martinez et al., 2005; Perrin, 2010). In particular, the lack of visa requirements for South Korean nationals travelling to Canada has been a major draw for traffickers wishing to transport South Korean victims through Canada and overland into the US (Perrin, 2010; 2010; United States-Canada, 2006). In early 2016, however, the Canadian government announced a new system that requires all foreign nationals travelling under the visa waiver program to apply for an Electronic Travel Authorization (eTA) before travelling to the country (Citizenship and Immigration Canada Newsletter, 2015).

Similar to the Electronic System for Travel Authorization (ESTA) in the US, the eTA system allows border officials to screen travellers for admissibility before they arrive at a Canadian port of entry (Government of Canada, n.d.; US Customs and Border Protection, 2016). At the time of writing this paper, Canada has yet to fully institute the eTA system; the office of Immigration, Refugees and Citizenship Canada (IRCC) has stated that “as of November 10 [2016], most visa-exempt visitors to Canada must have completed the online eTA form and been approved before boarding a Canada-bound aircraft” (Citizenship and Immigration Canada Newsletter, 2016). It is as yet unclear whether the implementation of the eTA system, used in concert with the ESTA, will have an effect on traffickers’ use of Canada as a transit country. Some scholars have posited that the eTA/ESTA system will not necessarily make it easier to identify trafficked individuals, as

there is no way of knowing who will or will not be a victim prior to their arrival in the destination country (Perrin, 2010).

Introduced along with the TVPA in 2000, the T-visa aims to provide protection to foreign victims of trafficking by granting them temporary non-immigrant status in the country for up to four years (US Citizenship and Immigration Services, 2011). As stated by US Citizenship and Immigration Services (2011), to be eligible for a T-visa an individual must have been a victim of a trafficking crime, must prove that they “would suffer extreme hardship involving unusual and severe harm if [they] were removed from the United States”, and must be willing to “comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking” (para. 5). In 2001, the Canadian government adopted a similar approach to supporting trafficked victims as part of the IRPA; Temporary Resident Permits (TRPs) are issued to foreign individuals in Canada who have been victims of a trafficking crime and who are unable to return to their country of origin. In contrast to the T-visa, the TRP does not require victims to collaborate with law enforcement or testify against their traffickers (Government of Canada, 2016).

Analysis of border mechanisms

From 2000 onward, Canada and the United States adopted numerous collaborative securitization strategies at the border, the majority of which have been a direct response to the threat of terrorism following the attacks of September 11, 2001. So far there has been limited reporting on the success of these cooperative reforms in tackling the issue of sex trafficking and human trafficking in general.² Perrin (2010) notes that although bilateral programs and activities have indeed made the border between BC and Washington more secure, specific detailed information on how effective these measures have been in combating human trafficking in the region is sparse. Law enforcement agencies such as the RCMP’s Human Trafficking National Coordination Centre, the US Human Smuggling and Trafficking Centre, and US Immigration and Customs Enforcement are reportedly “unwilling to discuss any details of their joint efforts” (Perrin, 2010, p. 183).

In recent years, provincial and state governments in BC and Washington have independently increased their efforts to directly respond to human trafficking by establishing anti-trafficking enforcement teams (BC’s OCTIP, and the Washington State Task Force Against the Trafficking of Persons) and, in the case of BC, launching a three-year Action Plan to combat trafficking. Although the actions taken by these two regional governments have been heralded as significant and necessary steps in the fight against trafficking, it is the lack of communication and alignment between BC and Washington law enforcement at the border that remains an issue.

One way this lack of communication manifests itself is in the multiple and vague definitions used, particularly with regards to sex trafficking. Legal definitions in both the US and Canada have remained fairly broad so as to encompass all forms of sex trafficking, but this has led to frequent “inconsistencies in victim identification,” causing law enforcement and border officials to be subjective in their responses to the crime (Peters, 2015, p. 82). The sweeping language used to

² The parameters of this report are such that research is limited to secondary sources; an in-depth review of the effectiveness of these policies and strategies in combating trafficking, consisting of primary research involving border officials (i.e. interviews and/or focus groups) - although much needed - is beyond the scope of this paper.

describe sex trafficking in the TVPA, IRPA, and in the Criminal Codes of both BC and Washington, creates space for law enforcement officials on either side of the border to interpret sex trafficking differently (Peters, 2015). Although all definitions use the terms ‘force’, ‘fraud’, and ‘coercion’ (or synonyms), the lack of a uniform definition which is shared and agreed upon by law enforcement agencies on both sides of the border is problematic. As Peters (2015) asserts, “the multilayered law on the books leads to complexities in how the law is envisioned in the minds of those implementing it, resulting in uneven consequences for victims” (p. 70).

Further compounding the absence of specificity and analogous definitions in the law, trafficking can be extremely difficult to clearly identify at the border and, very often, border officials are tasked with spotting the *potential* for a sex trafficking crime to occur rather than the crime itself (Ham, Segrave, & Pickering, 2013; McAdam, 2013; Miller & Baumeister, 2013). The nature of trafficking is such that the exploitation of an individual being trafficked across the border is rarely visible *at* the border. Traffickers take precautions to hide themselves, and exploitative acts that involve force, fraud, or coercion most often occur at the source or destination site rather than during the migration process (Aromaa, 2007; Perrin, 2010; Pickering & Ham, 2013). For example, a victim at the border might be in possession of valid documentation and an entry visa, and they may not necessarily appear to be frightened or in any type of distress. In such instances, it is possible that victims may have been coached by their trafficker(s) on how to act, or that an individual may have been brought or lured into the country on false promises of legitimate employment, unaware that they are destined to be exploited (Perrin, 2010).

Peters (2015) notes that the ways in which law officials and border agents approach potential trafficking cases tend to be moulded by their previous experiences with trafficking crimes, and their own preconceived ideas of what sex trafficking looks like. In their 2013 study of the role of borders in identifying sex trafficking, authors Pickering and Ham found that “despite the sophistication of surveillance technologies [at the border], risk assessments... ultimately rely on officers’ judgements about the clothing women wore and what this signified about their sexual risk” (p. 12). The subjective identification of trafficking activity can potentially lead to the wrongful prosecution of migrant sex workers in some cases, or could perhaps enable those actually involved in a trafficking crime to elude law enforcement at the border. Underlying this subjective identification of sex trafficking at the border are the ideologies and morality judgements that can often influence assessments. The ongoing stigmatization of sex work and the tendency to conflate migrant sex work with sex trafficking can often have damaging consequences for individuals crossing the border.

Studies have pointed to the adoption of the T-visa for foreign victims of trafficking in the US to illustrate how the government’s anti-trafficking efforts prioritize prosecution over protection and prevention. Desyllas (2007) holds that the T-visa and its eligibility requirements place “the burden of proof on the migrant to ‘prove her innocence’ and ‘coercion’”, and to assist in the arrest and conviction of the trafficker(s) (pp. 67-68). The reliance on non-citizen victim testimonies, and the process of determining whether the victim’s narrative indicates that a trafficking crime has occurred can be fraught with complications; many victims have difficulty recounting events due to the traumatic nature of the crime, and many remain silent due to shame or fear of reprisals by the trafficker (Peters, 2015).

For foreigners who have been trafficked into or between the US and Canada, eliciting a reliable testimony from them can be problematic, as they may not speak the language, they may be distrustful of government or law enforcement agencies, or believe they may be deported (MacDonald, 2014). Furthermore, Wetmore (2003) argues that placing the onus on the victim to prove they would suffer ‘extreme hardship’ and ‘unusual and severe harm’ if they returned home

is too high a standard, and one that most individuals will find unattainable. She adds that foreign “trafficking victims should no longer be treated as illegal aliens first and foremost, and the T-visa does not take the victims far enough away from that characterization” (Wetmore, 2003, p. 176).

Further critiques

It is important to highlight here some of the other concerns and critiques raised by several leading academics in the field with regards to established anti-trafficking policies, both at the border and beyond it. Researchers have noted that current anti-trafficking efforts in Canada and the US fail to address root causes of the issue, such as poverty and inequality, and often take a reactive rather than preventive approach to combating trafficking (Oxman-Martinez et al., 2005; RCMP, 2010; Sethi, 2007). Feminist critiques have challenged traditional anti-trafficking approaches and existing legal frameworks, while others have pointed to racial profiling as a major cause of victim misidentification and the criminalization of migrant sex workers.

Feminist critiques

Scholars have taken issue with the wording used in anti-trafficking policies, particularly terminology that victimizes women. For example, one feminist critique has argued that the title alone of the Victims of Trafficking and Violence Protection Act (TVPA) “demonstrates how the government depicts “women as ‘victims’ to be ‘rescued’ and ‘protected’”, further perpetuating the stereotype that sex workers, in general, are passive and in need of saving (Desyllas, 2007, p. 65). Further criticism has been raised with regards to how the TVPA parses out victims of trafficking from ‘guilty’ sex workers; Chapkis (2003) posits that “the law relies heavily on the distinction between ‘innocent victims’ of forced prostitution and ‘guilty sex workers’ who had foreknowledge of the fact that they would be performing sexual labour” (p. 929). She explains that by making such a distinction, the TVPA fails to protect the rights of consenting sex workers, in effect punishing them for choosing this line of work (Chapkis, 2003).

Other feminist arguments focus on the need to shift trafficking policy from state-centric to people-centric. Such a shift would involve designing legal frameworks specifically around access to social services and the protection of basic human rights. Proponents of this position draw specific attention to the threat that border patrol, law enforcement, and the state itself pose to the security of trafficked women (Lobasz, 2009). This view maintains that, under the current system, determining whether an individual crossing a border is doing so willingly or under coercion is of less importance than the fact that the individual is entering illegally; it is therefore vital that border policies adapt to put the best interests of people before those of the state (Lobasz, 2009).

Underlying many feminist critiques of anti-trafficking policy is the role that gender stereotypes play in the design and implementation of legal frameworks, and the absence of the female voice in the wider anti-trafficking narrative (Chapkis, 2003; Desyllas, 2007; Ferris, 2015; Lobasz, 2009; Segrave, 2009). As Segrave (2009) asserts, “there is no platform for women's subjectivity and identity to be given a voice here – their needs and desires may only be heard within the terms of what destination countries are willing and able to provide” (Segrave, 2009, p. 258). Kapur (2005) adds to this, stating that women’s cross-border movements are still mostly viewed and acted upon “within normative understandings about women’s sexuality” (p. 36). Indeed, if we are to establish appropriate legal frameworks with which to address sex trafficking, the inclusion of sex workers and trafficked victims in policymaking processes is crucial.

Citizens vs. 'Others'

Several academics have pointed to xenophobic elements within Canadian and American legal frameworks. For instance, The Canadian Alliance for Sex Work Law Reform (2015) has argued that Canadian laws concerning foreign migrant sex workers are such that they assume “all non-White or non-Western sex workers are in Canada illegally and should be deported” (p. 2). The threat of deportation also looms for foreign victims of trafficking in the US who are unable to provide satisfactory evidence that they have been victims of a trafficking crime (as illustrated in the above discussion of the T-visa). Segrave (2009) posits that the practice of deporting or ‘repatriating’ trafficked victims to their country of origin cements their status as ‘Others’ – non-citizens – and thus reduces the obligations of destination countries to provide support to foreign victims.

Scholars have also argued that this stance on foreign migrants and trafficked individuals has been used as a means by which to enforce other immigration or anti-terrorism laws. In her study on Canada’s foreign policy as it relates to migrant sex work, Jeffrey (2005) notes that immigration legislation introduced under the IRPA in 2001 focuses primarily on security measures rather than the rights of foreign migrants or victims of trafficking. As she explains, “such approaches often belie an interest in other agendas, and the use of the rhetoric of protection of victims can be used to justify harsh security and criminal measures” (Jeffrey, 2005, p. 37). Under this type of legislation, Aradau (2003) argues, foreign women who have been trafficked are often viewed as security risks, “always ‘in danger’ of being re-trafficked and therefore posing a continuous risk to Western societies” (p. 57).

As the people who are first to interact with individuals entering a country, border officials have a responsibility to treat foreign migrants and trafficked victims with dignity, not simply as ‘Others’ or threats, to be cast out and returned to where they came from.

Indigenous perspectives

As mentioned earlier in this paper, Indigenous girls and women are particularly vulnerable to sex trafficking (Sethi, 2007). This vulnerability, as Bourgeois (2015) posits, is directly linked to racist and sexist stereotypes stemming from the legacy of colonialism. Scholars contend that existing legal frameworks in both Canada and the US fail to appropriately address this issue and thus enable the recurrent marginalization of these groups (Barrett, 2010; Bourgeois, 2015; Sethi, 2007). While substantial research exists in relation to issues facing women and girls in Indigenous communities, we argue that further investigation is warranted into how enduring stereotypes affect the identification of trafficking at the border.

Recommendations

A number of improvements must be made in order for the BC-Washington border to be an effective tool for identifying human trafficking for sex work. Enhanced collaboration and communication mechanisms between Canada and US border agencies, and between BC and Washington border officials and anti-trafficking teams, could create a vastly improved cross-border anti-trafficking system. Several promising strategies are recommended here.

Align definitions of sex trafficking and distinguish it from sex work

The definition of sex trafficking, and of what constitutes a sex trafficking crime, must be agreed upon by law enforcement along the Canada-US border. Particular effort must be made to distinguish sex trafficking from migrant sex work, and avoid conflating the two distinct terms.

Increase anti-trafficking training for border officials

As this paper has demonstrated, border security officials often lack the tools necessary to properly identify sex trafficking at the border. In order to be as proficient as possible in recognizing potential sex trafficking crimes, members of the CBSA and the US Border Patrol must engage in regular, up-to-date training programs that focus specifically on sex trafficking and accurate victim identification. Additional joint training and capacity building sessions that include officials on both sides of the BC-Washington border would serve to bolster anti-trafficking efforts significantly.

Open channels of communication between OCTIP and the Washington State Task Force

In conducting research for this paper, we did not find evidence to suggest that OCTIP and the Washington State Task Force Against the Trafficking of Persons had made efforts to liaise with each other, or that either office had devised channels for the sharing of information and intelligence. Although neither organization operates specifically at the border, establishing an open line of communication between the two offices would help to build a stronger cross-border partnership in the Pacific Northwest. Enhanced information flows would encourage the exchange of smart practices and could facilitate more efficient cross-border anti-trafficking investigations.

Conduct an official evaluation of bilateral efforts to combat trafficking in the BC-Washington region

Local governments in BC and Washington should work together to conduct an evaluation of recent bilateral anti-trafficking activities in the Pacific Northwest. A report of the findings should be produced and used to improve cross-border collaboration.

Establish bilateral, uniform data collection mechanisms for cross-border trafficking

Just as trafficking terminology and definitions must be uniform across the border, so must be the mechanisms for collecting data. This would provide clear and shared data on human trafficking activity along the BC-Washington border, allowing for a more efficient response to trafficking in the region.

Increase public awareness in areas near the border and among Indigenous groups

Local government and service providers in BC and Washington should work to increase public awareness about human trafficking in border areas along the BC-Washington border, particularly in cities or towns that are located close to any of the 13 designated border crossings. The same effort must be taken to deliver trafficking awareness to Indigenous groups in the region.

Lower eligibility requirements for the T-visa

To fully protect the rights of trafficking victims, and to provide appropriate services and supports to these individuals, the eligibility requirements for the T visa in the US must be softened significantly. As mentioned earlier in this paper, trafficking victims are often unable to meet the high standards set out by US policy. We recommend that US requirements for victims of trafficking to receive temporary residency be aligned with Canadian TRP standards.

Decriminalize sex work and solicitation of sex workers on both sides of the border

As indicated in this paper, the current legal framing of sex work in Canada and the US denies sex workers of certain rights and services and forces them to work in unsafe locations, thereby increasing their vulnerability to dangers such as sex trafficking.

Renew BC's Action Plan, identifying cross-border collaboration as a priority area

The OCTIP-led three-year Action Plan to Combat Human Trafficking reaches its end in 2016. As at the time of writing, no commitment has been made by the BC government or OCTIP to renew the plan. The final report on the Action Plan, released in September 2016, states only that human trafficking in BC will continue to be addressed by the Community Safety and Crime Prevention Branch as part of its violence against women program (Ministry of Public Safety and Solicitor General, 2016). It is important that the BC government and OCTIP renew the Action Plan, and we recommend that cross-border collaboration - specifically with Washington State - be an added priority area.

Conclusion and suggestions for further research

Sex trafficking continues to be an incredibly complex and difficult issue to address in North America. Over the past decade and a half, Canada and the United States have taken major steps to combat this crime, adopting numerous policies and bilateral programs aimed at increasing national security and stemming international cross-border trafficking. With a specific focus on the Pacific Northwest regions of British Columbia and Washington State, this paper has demonstrated that the current cross-border efforts to fight sex trafficking in the region face significant challenges in providing effective responses to the issue. An exploration and analysis of these challenges has enabled us to provide several promising strategies which, if implemented, will serve to effectively target sex trafficking at the border.

Further research is required to develop a more comprehensive evaluation of current cross-border anti-trafficking efforts and data collection mechanisms. Primary research consisting of interviews and/or focus groups with individual border officials will allow for a deeper understanding of the varying attitudes toward – and perceptions of – sex trafficking and sex workers at borderlands.

Appendix

Glossary of terms

BC – British Columbia

BTB – Beyond the Border Action Plan

CBCF – Cross-border Crime Forum

CBSA – Canada Border Services Agency

CPHA – Canadian Public Health Association

DOJ – Department of Justice

ESTA – Electronic System for Travel Authorization

eTA – Electronic Travel Authorization

IBETs – Integrated Border Enforcement Teams

IBITs – Integrated Border Intelligence Teams

ICMLEO – Integrated Cross-border Maritime Law Enforcement Operations / Shiprider

IRCC – Immigration, Refugees and Citizenship Canada

IRPA – Immigration and Refugee Protection Act

OCTIP – Office to Combat Trafficking in Persons

RCMP – Royal Canadian Mounted Police

TRP – Temporary Resident Permit

T-Visa – Temporary Non-Immigrant Status Visa

TVPA – Victims of Trafficking and Violence Protection Act

UN Protocol – The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

USAID – United States Agency for International Development

WA – Washington State

WHO – World Health Organization

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