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## "The Tip of the Iceberg": Human Trafficking, Borders and the Canada-U.S. North

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# “THE TIP OF THE ICEBERG”: HUMAN TRAFFICKING, BORDERS AND THE CANADA- U.S. NORTH

*Mike Perry*<sup>†</sup>

*If Nunavut has become a Vietnam or Thailand or Cambodia because people’s desperation is so great that they feel that their only remedy is letting their child go with a 30-year-old man . . . then there are some fundamental questions here for Canada.*

ABSTRACT: Most Canadians would be shocked to learn of human trafficking in the North and the use of the northern Canada-U.S. border by modern day slave-traders. Increased border controls are identified by political leaders and public policy-makers as orthodoxy for combatting human trafficking. However, given their contemporary constructs, accompanying legal powers and political implications in an age of unparalleled security concerns, borders are inherently statist exercises of territorial sovereignty with only secondary, if not tertiary, regard for individuals. This article examines the complex nature of human trafficking in the North and its unique aspects for indigenous peoples. Canadian and U.S. border law and policy are canvassed, focusing on the border between Alaska and the Yukon. This article challenges the hegemony of current border discourses to combatting human trafficking, arguing that the focus on borders is misplaced and that the dominant border paradigm of security, criminality and law enforcement needs to be replaced by a human security approach in order for anti-trafficking efforts to be effective. The article concludes with policy recommendations for border reform and broader measures, including in the context of the North, prescribing more impactful action to end slavery.

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Talk of Canada’s Northern borders traditionally conjures images of the red-drenched Royal Canadian Mounted Police, snowy wooden outpost cabins, and pine-filled mountain landscapes. Most Canadians would be shocked to learn of the prevalence of human trafficking in the North<sup>1</sup> and the use of the Canada-U.S. northern border by modern day slave-traders.<sup>2</sup>

The International Labour Organization estimates that some two-and a-half million people worldwide live in slavery. Human trafficking, tied with the illegal arms trade, has been deemed the world’s second most profitable criminal enterprise.<sup>3</sup> Other estimates hold that each year, more than 500,000 women and girls are trafficked into the United States for forced sex,<sup>4</sup> while between 1,500 to 2,000 people are trafficked in or across Canada’s borders annually.<sup>5</sup> The North is not immune.

Despite a lack of public awareness, human trafficking, the modern term for slavery, has been a concerning reality in the North for some time.<sup>6</sup> While accurate data are scarce, in a recent report, the Ontario Native Women’s

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<sup>1</sup> The “North” is contested space that is both a real and imagined. For the purposes of this article, the North includes indigenous, natural and settled lands and experiences of: Alaska, the Northwest Territories, Nunavut and the Yukon. Myths of the North are part of the specific Canadian nationalist discourse. Boundaries, narratives and demarcations of the North shift and its definitions, while constructed with increasing complexity, must include both objective and subjective human realities. *See generally* Amanda Graham, *Indexing the Canadian North: Broadening the Definition*, *NORTHERN REV.* 21 (2012); *see generally* HELEN ROOS, *FINAL REPORT: PHASE I - SERVICE AND CAPACITY REVIEW FOR VICTIMS OF SEXUAL EXPLOITATION AND HUMAN TRAFFICKING IN NUNAVUT* (2013); *see also*, Rachel Brown, *Inuit Women Are Being Trafficked Through Dating Sites*, *VICE NEWS*, Feb. 10, 2014, [https://www.vice.com/en\\_ca/article/zn8w95/inuit-women-are-being-trafficked-through-dating-sites](https://www.vice.com/en_ca/article/zn8w95/inuit-women-are-being-trafficked-through-dating-sites)

<sup>2</sup> ILO, *Statistics on forced labour, modern slavery and human trafficking*, <http://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang--en/index.htm> (last visited July 12, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> HEPBURN STEPHANIE & RITA J. SIMON, *HUMAN TRAFFICKING AROUND THE WORLD: HIDDEN IN PLAIN SIGHT* (2013).

<sup>5</sup> RCMP CRIMINAL INTELLIGENCE, *HUMAN TRAFFICKING IN CANADA* (2010).

<sup>6</sup> *See* Nathan Vanderklippe, *Canada’s North at Risk for Terrorism, Human Trafficking*, *GLOBE & MAIL* (Calgary) Nov. 15, 2010; David Murphy, *Nunavut Inuit Exposed to Human Trafficking, Child Exploitation: Report*, *Nunatsiaq News*, Feb. 4, 2014; Heather Roy, *Canada’s Inuit Face Human Trafficking Fears*, *Al Jazeera*, Mar. 14, 2014. *Human trafficking Still Happening in Nunavut, Researcher Says*, *CBC* (Jan. 4, 2016).

Association concluded that “indigenous women and girls are dangerously and drastically overrepresented among . . . trafficked individuals.”<sup>7</sup>

In a 2013-2014 comprehensive and controversial report on human trafficking in Northern Canada, entitled “Service and Capacity Review for Victims of Sexual Exploitation and Human Trafficking in Nunavut,”<sup>8</sup> researcher Heather Roos noted the cultural factors and vulnerabilities to exploitation that Northern indigenous people and other resident populations face.<sup>9</sup> The study, although disturbing, was primarily national in focus, noting that human trafficking in the North mainly occurs in urban centres across Canada.<sup>10</sup> Roos stated that, “vulnerable Inuit are already known targets for traffickers . . . internationally to the United States and potentially through Europe through Greenland.”<sup>11</sup> Instances of transnational human trafficking from the North have been reported.<sup>12</sup>

The movement of people across the Canada-U.S. border is further complicated by the presence of organized crime in First Nations territories situated by the border between the two countries.<sup>13</sup> Roose posits that indigenous woman in Canada are being trafficked across “international borders for the sex industry.” In support of her position, Roose points to the disproportionate number of missing and murdered indigenous women and girls in Canada, and the lack of visibility of the indigenous women, including Inuit women, in street sex work in Southern Ontario and in online escort advertisements.<sup>14</sup>

Human trafficking is readily documented in the northern state of Alaska. According to the report entitled the State of Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution and Sex Trafficking, between 2007 and 2012, twenty-seven charges of sex trafficking were laid, resulting in nineteen convictions.<sup>15</sup> A leading non-governmental organization combatting human trafficking, the Polaris Project, identified thirty-nine reported cases of both sex

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<sup>7</sup> ONT. NATIVE WOMEN’S ASS’N, SEX TRAFFICKING OF INDIGENOUS WOMEN IN ONTARIO (2016).

<sup>8</sup> ROOS, *supra* note 1.

<sup>9</sup> *Id.* at 39-48, 75.

<sup>10</sup> See *Inuit and Human Trafficking*, INUIT WOMEN OF CANADA, <http://pauktuutit.ca/abuse-prevention/inuit-and-human-trafficking/> (last visited Aug. 2, 2017) (In 2012, the organization Inuit Women of Canada was aware of some 40 Inuit women being trafficked through Ottawa); ROOS, *supra* note 1.

<sup>11</sup> ROOS, *supra* note 1 at 138.

<sup>12</sup> For example, an Inuit man was apprehended trying to transport a 16-year old Inuk girl across the border to New Jersey. The Canada Border Services Agency and the Sûreté du Québec stopped the pair. See Roos, *supra* note 1 at 158; see also, Dave Dean, *First Nations Women Are Being Sold into the Sex Trade On Ships Along Lake Superior*, VICE NEWS, Aug. 23, 2013, [https://www.vice.com/en\\_ca/article/gq8xnx/first-nations-women-are-being-sold-into-the-sex-trade-on-ships-along-lake-superior](https://www.vice.com/en_ca/article/gq8xnx/first-nations-women-are-being-sold-into-the-sex-trade-on-ships-along-lake-superior).

<sup>13</sup> ROOS, *supra* note 1 at 151. In addition to drugs and guns.

<sup>14</sup> *Id.*, but see ONT. NATIVE WOMEN’S ASS’N, *supra* note 7, noting that 70% of visible sex workers in Canada are indigenous women, and 90% in larger urban centers such as Vancouver. Roos, *supra* note 1 at 5.

<sup>15</sup> STATE OF ALASKA DEP’T OF LAW, STATE OF ALASKA TASK FORCE ON THE CRIMES OF HUMAN TRAFFICKING, PROMOTING PROSTITUTION AND SEX TRAFFICKING, at 15 (2013).

and labour trafficking in Alaska from 2012 to 2017.<sup>16</sup> Homeless youth in Anchorage, Alaska have been identified as being disproportionately vulnerable to trafficking. This finding is consistent with the conclusion that homelessness is a root cause of human trafficking in different regions, including in the North.

According to a recent 2017 study of ten cities in the United States and Canada, Anchorage has the highest prevalence of trafficked homeless youth in the United States.<sup>17</sup> The same study indicated that twenty-eight percent of the Anchorage youth surveyed met the definition of human trafficking. Additionally, the report indicated that twenty-seven percent of the city's homeless young women as well as seventeen percent of the young men interviewed had been trafficked for sex.<sup>18</sup>

In 2017, a young female, an alleged victim of human trafficking, was detected on an Air Alaska flight from Seattle to San Francisco.<sup>19</sup> Alaska residents recently held a march to raise awareness of human trafficking in their state.<sup>20</sup> But what is human trafficking?

## I. THE LAW

For centuries, abolishing slavery worldwide, through treaty-making, has been a stated goal of the international community.<sup>21</sup> The most recent instrument entitled the Protocol to Prevent, Suppress and Punish Trafficking in Persons

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<sup>16</sup> POLARIS PROJECT, *2016 Hotline Statistics* (Jan., 2017). <https://polarisproject.org/resources/2016-hotline-statistics>; Alaska, HUMAN TRAFFICKING NATIONAL HOTLINE, *Alaska*, <https://humantraffickinghotline.org/state/alaska> (last visited July 5, 2017) (based on number of individuals' contacts with the U.S. National Human Trafficking Resource Centre 2012-2017 that referenced Alaska).

<sup>17</sup> LAURA MURPHY, *LABOR AND SEX TRAFFICKING AMONG HOMELESS YOUTH 3* (2017). Cities surveyed in the source: Anchorage; Atlanta; Detroit; Fort Lauderdale; Los Angeles; New Orleans; Oakland; St. Louis; Toronto; and Vancouver.

<sup>18</sup> *Id.*

<sup>19</sup> May Bulman, *Flight Attendant Saves Teenage Girl from Human Trafficking After Seeing Secret Note*, THE INDEPENDENT (London), Feb. 6, 2017, <http://www.independent.co.uk/news/world/americas/flight-attendant-save-teenage-girl-human-trafficking-secret-note-sheila-frederick-alaska-airlines-a7564506.html>

<sup>20</sup> Tegan Hanlon, *Alaskans Walk Barefoot Through Anchorage to Raise Awareness About Human Trafficking*, ALASKA DISPATCH NEWS, May 20, 2017, <https://www.adn.com/alaska-news/2017/05/20/alaskans-walk-barefoot-through-anchorage-to-raise-awareness-about-human-trafficking/>.

<sup>21</sup> *See, e.g.*, Convention to Suppress the Slave Trade and Slavery, art. 2, Sep. 25, 1926, 60 L.N.T.S. 253; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1956, 226 U.N.T.S. 3; G.A. Res. 217 (III) A; Universal Declaration of Human Rights at 71 (Dec. 10, 1948) ("No one should be held in slavery or servitude, slavery in all of its forms should be eliminated"); G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights at 52 (Dec. 16, 1966) ("No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform force or compulsory labour").

Especially Women and Children (“Trafficking Protocol”),<sup>22</sup> was negotiated in 2002 as an addition to the United Nations Convention Against Transnational Organized Crime.<sup>23</sup> The Trafficking Protocol, now ratified by 170 countries, contains the current internationally accepted definition of human trafficking. Article 3(a) states:

“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.<sup>24</sup>

The Trafficking Protocol obligates the signatory states to criminalize human trafficking<sup>25</sup> within their domestic legal systems, provide assistance to victims,<sup>26</sup> and prevent trafficking of persons.<sup>27</sup> Article 11 of the Trafficking Protocol prescribes specific border control measures for each ratifying State:

1. . . . States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt . . . measures to prevent . . . means of transport operated by commercial carriers from being used in the commission of offences . . . of this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 12 goes further, mandating the security and control of travel documents:

Each State Party shall take such measures as may be necessary, within available means:

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<sup>22</sup> G.A. Res. 25, annex II, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, at 60 (Jan. 8, 2001) [hereinafter *Convention*].

<sup>23</sup> G.A. Res. 25, at 44 (Sept. 29, 2003).

<sup>24</sup> U.N. OFFICE ON DRUGS AND CRIME, Signatories to the United Nations Convention against Transnational Crime (Dec. 25, 2003), <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.

<sup>25</sup> *Convention*, *supra* note 22, art. 5.

<sup>26</sup> *Id.* art. 6.

<sup>27</sup> *Id.* art. 9.

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

In fulfilling their obligations under the Trafficking Protocol, Canada and the United States have outlawed human trafficking in their domestic criminal law.

#### A. Canada

Sub-section 279.01(1) of the Canadian *Criminal Code*<sup>28</sup> states:

Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence . . .

Earlier this year the government of Canada introduced legislation to strengthen the *Criminal Code* to give “law enforcement and prosecutors more tools to better fight human trafficking.”<sup>29</sup> Canada also proscribes human trafficking pursuant to its *Immigration and Refugee Protection Act*,<sup>30</sup> which states that:

No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.<sup>31</sup>

In addition, consistent with Article 12 of the Trafficking Protocol, anyone who tampers with or withholds travel or identification documents, including immigration status documents, is guilty of an indictable offence in Canada.<sup>32</sup>

#### B. United States

In the United State, sex and labour trafficking are defined and criminalized under the *Victims of Trafficking and Violence Protection Act of 2000*.<sup>33</sup> Incorporating the language of the Trafficking Protocol, the U.S. Act defines sex trafficking as:

<sup>28</sup> Criminal Code of Canada, R.S.C., 1985, c C-46 [hereinafter *Code*].

<sup>29</sup> DEP’T OF JUSTICE CANADA, *Strengthening Canada’s Criminal Law Response to Human Trafficking*, News Release, (Feb. 9, 2017), [https://www.canada.ca/en/department-justice/news/2017/02/government\\_of\\_canada\\_introduces\\_legislation\\_to\\_strengthen\\_human\\_traffi.html.ca](https://www.canada.ca/en/department-justice/news/2017/02/government_of_canada_introduces_legislation_to_strengthen_human_traffi.html.ca).

<sup>30</sup> Immigration and Refugee Protection Act, S.C. 2001, c 27.

<sup>31</sup> *Id.* § 118.

<sup>32</sup> *Code*, *supra* note 28, § 279.03(1).

<sup>33</sup> 22 U.S.C. §§ 7102-7114 (2000) [hereinafter *Trafficking Act*].

. . . the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age<sup>34</sup>

The Act goes on to define labour trafficking as:

. . . the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>35</sup>

Similar to Canadian immigration law, U.S. law prohibits entry into the United States, specifically of any non-U.S. citizen or non-U.S. national, who commits, or conspires to commit human trafficking whether inside or outside the United States pursuant to the *Trafficking Act*. The law further prohibits abetting traffickers, and it imposes liability on family member beneficiaries of human trafficking.<sup>36</sup> The U.S. law, following the standards set out in Trafficking Protocol, prohibits the forgery, alteration, use or supplying of altered U.S. passports.<sup>37</sup>

## II. POLICY FOUNDATIONS

Beyond changes to criminal and immigration law, Canada and the United States combat human trafficking through public policy implementations. These implementations align with each country's implementation of the Trafficking Protocol.

### A. Canada

Canada's human trafficking policy is laid out in its National Action Plan to Combat Human Trafficking ("Action Plan").<sup>38</sup> Adopted in 2012, the Action Plan contains commitments related to Canada's borders, primarily implicating the Canadian Border Services Agency ("CBSA"). Per Article 11 of the Trafficking Protocol these commitments include:

- establishing a dedicated investigative and enforcement team, led by the Royal Canadian Mounted Police (RCMP) and including CBSA, to conduct proactive human trafficking investigations;<sup>39</sup>

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<sup>34</sup> *Id.* § 103 8(a), (b).

<sup>35</sup> *Id.* § 7102 9(b).

<sup>36</sup> 8 U.S.C. § 1182 (2)(H)(i), (ii) (2008).

<sup>37</sup> 18 U.S.C. § 1543 (1994).

<sup>38</sup> DEP'T OF PUBLIC SAFETY, NATIONAL ACTION PLAN TO COMBAT HUMAN TRAFFICKING (2012).

<sup>39</sup> *Id.* at 18.

- enhancing partnerships between the CBSA, Passport Canada, Citizenship and Immigration Canada, and law enforcement at municipal, provincial, national and international levels to improve information and intelligence sharing;<sup>40</sup>
- drafting a comprehensive policy and procedure manual on human trafficking for border services officers (“BSOs”);<sup>41</sup>
- providing all new BSOs with human trafficking awareness training as part of completing the CBSA’s new recruitment program;<sup>42</sup>
- updating the CBSA’s human trafficking e-learning modules;<sup>43</sup>
- monitoring and sharing data on the use of Canadian passports and travel documents through networks of law enforcement and border control agencies, nationally and internationally to stop human traffickers’ mobility.<sup>44</sup>

The CBSA “fights human trafficking as part of its role in managing Canada’s borders and combatting cross-border crime.”<sup>45</sup> To fulfill this mandate, the CBSA’s functions to identify cross-border human trafficking, assist potential victims with referral to appropriate care and government services, and support investigating and prosecuting cases of alleged human trafficking. The CBSA collaborates with other federal partners to implement the National Action Plan through training, outreach, and intelligence activities.<sup>46</sup>

In addition to the CBSA’s anti-trafficking actions at the border, since 2008, the Royal Canadian Mountain Police (“RCMP”) has provided awareness sessions on human trafficking law and victim assistance to some 40,000 members of the public and government officials, including border management and immigration officers.<sup>47</sup> The RCMP has also provided gender and cultural training to Canada’s border management and immigration personnel focusing specifically on the unique dimensions and disproportionate impact of trafficking on indigenous and immigrant women.<sup>48</sup> The CBSA allocated a total of \$445,000 to BSO training and awareness of human trafficking in 2012 and 2013.<sup>49</sup> Additionally, the government of Canada has partnered with the International Organization for Migration and the United Nations Office on Drugs and Crime, with the specific aim of enhancing border management by enforcement officers to counter human

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 26.

<sup>42</sup> *Id.* at 33.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 40.

<sup>45</sup> CANADIAN BORDER SERVICES AGENCY, *Human Trafficking*, <http://www.cbsa-asfc.gc.ca/security-securite/ht-tp-eng.html> (last updated Sept. 24, 2014).

<sup>46</sup> *Id.*

<sup>47</sup> DEP’T OF PUBLIC SAFETY, *supra* note 37, at 17.

<sup>48</sup> *Id.* at 24.

<sup>49</sup> *Id.* at 10.

trafficking in Latin America.<sup>50</sup> The Prime Minister of Canada reaffirmed his government's commitment to combatting human trafficking earlier this year.<sup>51</sup>

### B. United States

Action to combat human trafficking is a priority at the highest levels of U.S. Government. In 2017, the President of the United States committed the “full force and weight” of the U.S. government to combatting the “epidemic” of human trafficking.<sup>52</sup> This executive directive affirms the main statement of the U.S. anti-trafficking policy: the National Strategy to Combat Human Trafficking (the “National Strategy”).<sup>53</sup>

Led by the U.S. Department of Justice, the National Strategy was developed to enhance the department's work against human trafficking. More action inventory than clear strategy, the document contains a discernable approach and identifies priorities for combating human trafficking in the United States. Stressing intra-agency and cross-sectoral collaboration, the National Strategy adopts a primarily prosecutorial, institutional approach<sup>54</sup> centered on conducting investigations, prosecuting cases, providing services to victims, and preventing human trafficking. It also provides funding to the initiatives aimed at building the capacities of state, local, tribal, and non-governmental organizations to combat human trafficking.<sup>55</sup> Other areas of focus of the U.S. National Strategy are increasing awareness and providing training to prosecutors and government officials regarding best practices to combat human trafficking, identify victims, and provide care to survivors.<sup>56</sup>

In relation to borders and the North, borders are included only tangentially in the National Strategy document and the North is not explicitly mentioned. The National Strategy primarily focuses on human trafficking across the U.S.-Mexico border,<sup>57</sup> and includes an action plan intended to expand the work of a

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<sup>50</sup> *Id.* at 21.

<sup>51</sup> OFFICE OF THE PRIME MINISTER, *Prime Minister underlines commitment to fight sex crimes and trafficking* (last visited Feb. 2, 2018), <https://pm.gc.ca/eng/news/2017/06/09/prime-minister-underlines-commitment-fight-sex-crimes-and-trafficking>.

<sup>52</sup> *Trump vows to fight 'epidemic' of human trafficking*, ASSOCIATED PRESS NEWS, (Feb. 23, 2017), <https://apnews.com/9517fb5ec44e4e93a275cc0722abd6a>; *but see*, Maurice I. Middleberg, *Trump Administration's talk on human trafficking must be matched by deeds*, CNN (July 1, 2017), <http://www.cnn.com/2017/07/01/opinions/trump-talk-anti-slavery/index.html.ca>

<sup>53</sup> U.S. DEP'T OF JUSTICE, NATIONAL STRATEGY TO COMBAT HUMAN TRAFFICKING (2017) (herein after NATIONAL STRATEGY).

<sup>54</sup> *Id.* The U.S. National Strategy focuses extensively on actions and approaches to combat human trafficking undertaken by its Human Trafficking Prosecution Unit, the U.S. Attorneys' Offices, the Federal Bureau of Investigation, Department of Justice.

<sup>55</sup> *Id.* at 1, 7.

<sup>56</sup> *See, e.g.*, U.S. DEP'T OF JUSTICE, *supra* note 53, at 10.

<sup>57</sup> *Id.* at 7. Since 2009, United States and Mexican law enforcement have collaborated to exchange leads, intelligence, and anti-trafficking expertise to develop high-impact investigations and prosecutions aimed at dismantling human trafficking networks operating across the U.S.-Mexico border, bringing traffickers to justice, reuniting trafficking victims with their children, and restoring the rights and dignity of trafficking victims and survivors.

collaborative Anti-Trafficking Coordination Team (“ACTeam”).<sup>58</sup> The ACTeam is primarily comprised of law enforcement agencies, including the Immigration and Customs Enforcement (ICE).<sup>59</sup> ACTeams “receive intensive advanced training, enhanced operational support, and strategic guidance from . . .” the ICE.<sup>60</sup> The locations of ACTeams were expanded in 2015 to include Seattle and Washington, the closest states to Alaska.<sup>61</sup> The National Strategy further reports that the U.S. Bureau of Justice Assistance has created more than fifty law enforcement-led human trafficking task forces. These newly created law enforcement positions include customs enforcement officers<sup>62</sup> across the United States and a joint state-city task force for Anchorage and Alaska.<sup>63</sup>

In addition to the action items outlined in the National Strategy, Customs and Border Security, a division of the Department of Homeland Security, undertakes to combat human trafficking at the U.S. borders. These measures include: partnering with other law enforcement agencies to identify and support potential victims at their attempted point of entry into the United States, raising awareness of trafficking in other countries where people seek to cross the border prior to their departure, providing expertise in the development of best practices for law enforcement efforts, and conducting training of frontline and local field office personnel to recognize human trafficking and take appropriate action.<sup>64</sup>

But what does such an “appropriate action” look like? What unique features of the Canada-U.S. border and the North, if any, impact border controls in the context of human trafficking? And does diligence at the border effectively combat human trafficking or does this ask too much of efforts at borders?

### III. BORDERS: GEOGRAPHIES, LANDSCAPES, HUMAN TRAFFICKING AND THE NORTH

The existence and routines of modern borders are a generally accepted, if not an intuitive concept to most. In this way, the unique aspects and power of borders are often overlooked. Exclusively human constructs, the physical and legal fictions of borders represent a “transactional crossroads”, expressing the

<sup>58</sup> NATIONAL STRATEGY, *supra* note 53.

<sup>59</sup> *Id.* at 9 (the ACTeam also includes the U.S. Department of Labor).

<sup>60</sup> *Id.* at 10 (some 27 U.S. Attorney’s Offices participate in anti-trafficking task forces).

<sup>61</sup> Press Release, Departments of Justice, Homeland Security and Labor Announce Selection of Phase II Anti-Trafficking Coordination Teams, Dep’t of Justice Office of Public Affairs (December 17, 2015) (on file with the Dep’t of Justice Office of Public Affairs) <https://www.justice.gov/opa/pr/departments-justice-homeland-security-and-labor-announce-selection-phase-ii-anti-trafficking>.

<sup>62</sup> NATIONAL STRATEGY, *supra* note 53, at 14, 15 (there are more than 100 human trafficking task forces and working groups across the United States when those not lead by law enforcement are counted).

<sup>63</sup> Devin Kelly, *Anchorage, State to Form Human Trafficking Task Force*, ALASKA DISPATCH NEWS (Sept. 28, 2016), <https://www.adn.com/alaska-news/article/anchorage-state-form-human-trafficking-task-force/2015/09/23/>.

<sup>64</sup> U.S. DEP’T OF HOMELAND SECURITY, HUMAN TRAFFICKING (2015), *available at* <https://www.cbp.gov/border-security/human-trafficking>.

territorial and subjugation powers of the nation-state while administering individual rights. Moreover, borders may be seen as “dynamic, relational and embodied processes through which governments impose... meanings on migrants’ bodies” and create and reproduce identities,<sup>65</sup> such as citizen, Northerner, migrant, criminal, victim and trafficker. Borders are also “thought of as a hazy land at the margins of the state, attracting a range of illicit activities.”<sup>66</sup>

In ways both real and imagined, borders are heavily policed, if not militarized, and the ways individuals act and are acted upon raise important questions about state sovereignty, security, and human rights.<sup>67</sup> Bearing these weighty considerations in mind, examined in the next section of this chapter, the physical characteristics of borders are not to be forgotten. Their geographies and landscapes also impact human trafficking, especially in the North.

#### A. Trafficking and Geography

Natural geography directly influences border enforcement. Vast swaths of territory, such as those comprising Canada and the United States, can render borders difficult, if not impossible to enforce.<sup>68</sup> States’ capabilities to enforce long borders are especially impacted by climate, and burdened by factors such as the infamous Northern winter. Geographic relief, including forested areas, mountain ranges, coastal waters, and internal waterways<sup>69</sup> can facilitate the trafficking of human beings without detection by the state. The scale of the border enforcement project in Canada and the United States is instructive in assessing the border as a locus of anti-trafficking action.

The United States Customs and Border Enforcement is responsible for approximately 7,000 miles of land border with 328 ports of entry, including official crossings by land, air, and sea, and employs some 42,000 frontline officers and Border Patrol agents.<sup>70</sup>

The Canadian border with the United States is 3,978 miles long, and consists mainly of rural lands. The Canada-Alaska border comprises 1,933 miles of

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<sup>65</sup> Sharron A. FitzGerald, *Vulnerable Geographies: Human Trafficking, Immigration and Border Control in the UK and Beyond*, 23 HUM. GENDER, PLACE AND CULTURE 181, 181-197 (2016); Sverre Molland, *Editorial: Human Rights at the Border*, 2 ANTI-TRAFFICKING REV. 3, 5 (2013); *See also*, Dan Rabinowitz, *Identity, the State and Borderline Disorder*, in A COMPANION TO BORDER STUDIES 301 (Thomas M. Wilson & Hastings Donnan. eds., 2012).

<sup>66</sup> Molland, *supra* note 65, at 2.

<sup>67</sup> *Id.*

<sup>68</sup> Conversely, rugged, mountainous terrain, for example, may deter traffickers from crossing borders at unattended locations given the increased time, energy and expense of moving people. Human trafficking is an enterprise of opportunism, and risks of geography may make cross at an established border location traffickers’ preferred location of entry.

<sup>69</sup> *See, e.g.*, Efeakpor Michael, *Environmental Impacts of Trafficking in Nigeria* (2014) (unpublished L.L.M. thesis, University of Benin) (on file with author); U.N. ENVIRONMENT PROGRAMME, *WOMEN AT THE FRONTLINE OF CLIMATE CHANGE: GENDER RISKS AND HOPES, A RAPID RESPONSE ASSESSMENT* (Christian Nellemann et al.eds., 2011).

<sup>70</sup> U.S. DEP’T OF HOMELAND SECURITY *supra* note 64.

this border.<sup>71</sup> With more than 6,500 uniformed officers, the CBSA provides services at 39 international locations, managing 117 land-border crossing sites, 13 international airports and 27 rail sites nationwide.<sup>72</sup>

Given the sheer size and nature of their boundaries, legitimate concerns arise as to whether focusing on borders in Canada and the United States can ever be a realistic strategy in combating human trafficking, or whether much of the resources dedicated to border control are better deployed elsewhere. It has been suggested that there can never be full enforcement of borders.<sup>73</sup> The realities of earth's geography present obstacles which are difficult to overcome. Furthermore, there is an ever increasing upward trend in the movement of people across the borders, facilitated by forces of globalization, and the expansion of technology which makes the falsification of documents and the movement of people ever easier.

Beyond the effectiveness of border control, given the contemporary travel and the physical features of borders, there is yet another essential question. While intuitively, national borders are virtually intrinsic to human trafficking, are border control efforts, given their social, legal and economic complexity, a legitimate *loci* for addressing human trafficking?

#### IV. THE TROUBLE WITH BORDERS

Do . . . border control[s] contribute to the protection of migrants, or are borders part of the problem?<sup>74</sup>

Despite challenges of geography, borders have been identified as a site of a unique opportunity to identify and protect victims of human trafficking.<sup>75</sup> However, many commentators, including Rebecca Miller and Sebastian Baumeister, note that this strategy does not work. "Most state border controls . . . worldwide fail to prevent and detect trafficking in persons."<sup>76</sup> Statism, temporality, and the realities of frontline work challenge, if not contradict, the dominant narrative of the primacy of borders in combatting human trafficking in the North and elsewhere. At a fundamental level, the legitimacy of focusing on borders may be questioned. More specifically, it is important to ask whether resource allocation and engagement at the border make trafficking worse.

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<sup>71</sup> Janice Beaver, CONG. RESEARCH SERV., RS21729 INTERNATIONAL BORDERS: BRIEF FACTS (2016).

<sup>72</sup> CAN. BORDER SERV. AGENCY [CBSA], *About The CBSA: What We Do* <http://www.cbsa-asfc.gc.ca/agency-agence/what-quoi-eng.html> (Nov. 29, 2016).

<sup>73</sup> Rebecca Miller and Sebastian Baumeister, *Managing Migration: Is border Control Fundamental to Anti-Trafficking and Anti- Smuggling Interventions?*; 2 ANTI-TRAFFICKING REV. 15, 20 (2013) citing Melissa Lane, *Myths about Migration: Historical and Philosophical Perspectives*, 2006 HIST. & POL'Y.

<sup>74</sup> Molland, *supra* note 65, at 6.

<sup>75</sup> Jennifer Lynch & Katerina Hadjimatheou, *Acting in Isolation: Safeguarding and anti-trafficking officers' evidence and intelligence practices at the border*, 8 ANTI-TRAFFICKING REV. 70 (2017).

<sup>76</sup> Miller & Baumeister, *supra* note 73, at 24.

## A. Security and/or Rights

Anytime there is a motive to illegally penetrate the borders of a country, national security questions are raised.<sup>77</sup>

Borders are contemporary constructs, built and existing primarily in neo-liberal, capitalist, post-colonial democracies. Accompanied by legal powers and political implications in an age of unparalleled security concerns, borders are an inherently statist model of territorial hegemony, with secondary, if not tertiary regard for the needs and interests of individuals. Accordingly, focusing on borders, rather than human rights or human security paradigms to address human trafficking risks engaging an exclusively law enforcement and prosecution-based model, and the limits, if not dangers, contained therein.<sup>78</sup>

Indeed, the debate about whether the paradigm guiding action to combat human trafficking should be a people-oriented, rights-based approach on the one hand, or border focused, sovereignty, security and law-enforcement approach on the other, has endured since before the advent of Trafficking Protocol.<sup>79</sup> Concerns have been raised that border control is fundamentally incompatible with the protection of human rights, that human rights at the border is an “oxymoron.”<sup>80</sup>

Contextualizing human trafficking within a border paradigm assigns human trafficking the status of a threat, bringing with it the lens of state control. This approach privileges sovereignty, security discourses and actions, such as enhanced border security, swift deportations and charges<sup>81</sup> over human, person-centered considerations. Indeed, human trafficking is predominantly acted upon as a threat to security,<sup>82</sup> using mainly disruption tactics, investigations and

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<sup>77</sup> Arthur Rizer & Sheri Glaser, *Breach: The National Security Implications of Human Trafficking*, 17 WIDENER L. REV. 69 at 82 (2011).

<sup>78</sup> Including the internationally recognized and protected human rights to personal autonomy, healthy working conditions, just remuneration, physical health, as well as the right to freedom from physical violence and slavery. Universal Declaration of Human Rights, *supra* note 21, arts. 12, 23, 25, 3 and 4; for further analysis of a rights-based approach to border controls *see*, Marika McAdam, *Who's Who at the Border? A rights-based approach to identifying human trafficking at international borders* 2 *Anti-Trafficking Rev.* 33 (2013).

<sup>79</sup> *See, e.g.*, Sarah Krieg, *Trafficking in Human Beings: The EU Approach between Border Control, Law Enforcement and Human Rights*, 16(6) *EUR. L. J.* 775, 776 (2009).

<sup>80</sup> Molland, *supra* note 65, at 6.

<sup>81</sup> *See, e.g.*, Jennifer Lobasz, *Beyond Border Security: Feminist Approaches to Human Trafficking*, 18(2) *SECURITY STUDIES* 319 (2009).

<sup>82</sup> *See, e.g.*, Rizer & Glaser, *supra* note 77 (human trafficking is especially susceptible to being regarded as a security threat given the criteria that define “national security” as articulated by Rizer and Glaser: national instability, economic, and diplomatic levels); *id.*, at 76-82 (“The crime of trafficking in persons has recently been added to the list of crimes that are being studied for possible national security implications”); *id.* at 69-70; *see also*, *U.S. National Security Presidential Directive 22: Trafficking in Persons*. Washington, D.C.: White House Office, 2002 (linking human trafficking to, inter alia, terrorism). The Royal Canadian Mounted Police’s 2010 report on human trafficking in Canada was known within government as the trafficking ‘threat assessment’ at the time. However, Canada can be seen as taking a less national security approach to human trafficking than

prosecutions at borders. As Jennifer Lobasz notes, trafficking has been directly linked to U.S. policy as “threats to the homeland”;<sup>83</sup> a perspective which inherently implicates borders and situates them in a traditional security and enforcement regulatory orthodoxy in relation to human trafficking.

Conceptualized in this manner, borders tend to criminalize, or regulate race and sexuality<sup>84</sup> rather than conceptualize people arriving at their gates as victims. Borders become more state functionaries keeping ‘undesirable’ people out rather than protecting people in conditions of vulnerabilities who transit them.<sup>85</sup> Accordingly, “there is a predisposition to view all as smuggled migrants resulting in deportation.”<sup>86</sup> As professors and researchers Smith and Marmo note, going so far as to implement X-ray technology at borders demonstrates the predominant, state-oriented security and enforcement culture of “disbelief and refuse.”<sup>87</sup>

As the statist critiques point out, trafficked women’s experiences, for example, can be co-opted to serve governments’ political objectives.<sup>88</sup> This may occur through the detrimental labeling, adjudicating, and often conflating of the ambiguous and amorphous contexts impacting women’s identities at borders to further a vision of immigration and migration policy based on forced “prostitution,” sex work, traffickers, and trafficking victims.<sup>89</sup> Border trafficking imagery, including characterization of women’s endangerment, vulnerability, and the need for control, and largely unsubstantiated border statistics,<sup>90</sup> can also

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the United States. While the Canadian approach includes protecting communities and businesses within its conceptualization of national security, its priorities focus on the traditional national security aspects of counter terrorism and weapons proliferation, protection of critical infrastructure and cyber security. DEP. PUBLIC SAFETY CANADA, *National Security* (last visited August 27, 2017).

<sup>83</sup> See, U.S. GOV’T ACCOUNTABILITY OFF., GAO-07-915, A STRATEGIC FRAMEWORK COULD HELP ENHANCE THE INTERAGENCY COLLABORATION NEEDED TO EFFECTIVELY COMBAT TRAFFICKING CRIMES (2007) as cited in *supra* note 81, at 326.

<sup>84</sup> For more, see, Matthew Coleman, *US Immigration Law and its Geographies of Social*

*Control: Lessons from Homosexual Exclusion During the Cold War*, 26(8) ENVIRONMENT AND PLANNING D: SOCIETY AND SPACE 1096 (2008); see also EITHNE LUIBHEID, ENTRY DENIED (2002), as cited in FitzGerald, *supra* note 65, at 182).

<sup>85</sup> E. Smith & Marinella Marmo, *Examining the Body through Technology: Age Disputes and the UK Border System* 3 ANTI-TRAFFICKING REVIEW 67 (2013).

<sup>86</sup> Miller & Baumeister, *supra* note 73, at 26-7.

<sup>87</sup> Smith & Marmo, *supra* note 85, at 68.

<sup>88</sup> FitzGerald, *supra* note 65, at 182.

<sup>89</sup> See Krieg *supra* note 79, at 777, Innocent victim and criminal trafficker as a fictional binary); FitzGerald, *supra* note 65, at 184-85.

<sup>90</sup> See, Kara C. Ryf, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT’L L. 45 (2002); see also FRANCIS T. MIKO, CONG. RESEARCH SERV., RL30545, TRAFFICKING IN PERSONS: THE U.S. AND INTERNATIONAL RESPONSE, (2006); see also U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS, (2005) (in 2006, the U.S. Department of State estimated that 800,000 people were trafficked across international borders annually); see also, 22 U.S.C. § 7101(b)(1) (2000) (in 2000, the figure was 700,000 of which 50,000 were trafficked into the United States); STEPHANIE HEPBURN & RITA J. SIMON, HUMAN TRAFFICKING AROUND THE WORLD: HIDDEN IN PLAIN SIGHT (2013); see also, John A. Ferguson, *International Human*

be used by the state to advance a moralist project legislating sex-related work proscriptively with potentially negative impacts on women's freedom, bodies, and health.<sup>91</sup> Similarly, development aid to combat human trafficking can be used as leverage to further often neo-liberal political agendas,<sup>92</sup> such as economic empowerment, market-based, and anti-trafficking initiatives overlooking the interests and needs of predominantly women and other victims on the ground.

In a stark illustration of the possibly deleterious impact borders hold for victims, work in the United Kingdom indicates that "sex workers believe that it is . . . law, policy and policing of immigration, prostitution and trafficking and not sex work that makes them vulnerable to exploitation and violence."<sup>93</sup> The Supreme Court of Canada recently affirmed this claim, striking down anti-sex work laws which were found to compromise women's safety.<sup>94</sup> Similarly, border conceptualizations of human trafficking relating to organized crime may engender racial stereotyping,<sup>95</sup> affecting trafficking victims and innocent border crossers alike, especially indigenous residents in the North.<sup>96</sup>

The reality at borders is that certain groups are subject to increased scrutiny based on their gender, sexuality, and race.<sup>97</sup> This approach can have significant impact in the North as racial stereotypes can result in over-management of indigenous people, and violation of their specific mobility rights to cross the

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*Trafficking in Canada: Why so few prosecutions?* (June 11, 2012) (unpublished Ph.D. dissertation, University of British Columbia) (on file with the Open Collections, University of British Columbia). The RCMP first estimated in 2003 that 800 people were trafficked into Canada and an additional 1,200 through Canada into the United States; *see also RCMP to Reassess Human Trafficking Numbers*, CTV NEWS, Apr. 13, 2008 (however, in 2008 officially acknowledged difficulty assessing an accurate number, committing to reassessing this estimate.); In 2010, non-governmental organizations estimated that 2,000 persons were trafficked into Canada each year, while the RCMP estimated 600–800 with 1,500–2,200 more trafficked through Canada into the United States. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR. *Country Reports on Human Rights Practices Report*, Washington, D.C.: U.S. Department of State, 2010.

<sup>91</sup> *See generally* FitzGerald, *supra* note 65, at 187.

<sup>92</sup> *Id.* at 192.

<sup>93</sup> *Id.* at 188, citing Nick Mai, IN WHOSE NAME? MIGRATION AND TRAFFICKING IN THE UK SEX INDUSTRY: DELIVERING SOCIAL INTERVENTIONS BETWEEN MYTHS AND REALITY, Institute for the Study of European Transformations, Faculty of Social Science and Humanities. London: London Metropolitan University, 2011; *see also* Lucy Platt et al., *Risk of sexually transmitted infections and violence among indoor-working female sex workers in London: the effect of migration from Eastern Europe*, 87 SEXUALLY TRANSMITTED INFECTIONS 377 (2011).

<sup>94</sup> *Canada (Att'y Gen.) v. Bedford*, [2013] 3 S.C.R. 1101 (upholding the Ontario court's finding that laws impacting prostitution violated women's rights to life, liberty and security of the person as guaranteed under s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, c 11 (U.K.)).

<sup>95</sup> *See* Julie Ham, Marie Segrave & Sharon Pickering, *In the Eyes of the Beholder: Border enforcement, suspect travellers and trafficking victims*, 2 ANTI-TRAFFICKING REVIEW 51 (2013) (more on the impact of gender and racial stereotypes on migration policy and their implications on mobility).

<sup>96</sup> *See* Krieg, *supra* note 79, at 777.

<sup>97</sup> Ham et al., *supra* note 95, at 65.

Canada-U.S. border unimpeded under the Treaty of Amity, Commerce and Navigation, Between His Britannic Majesty and The United States of America.<sup>98</sup> Disproportionate and gratuitous questioning, seizures, and crossing refusals of local, indigenous residents by Canadian customs officials when crossing the border for potlatches with family at the Canada-U.S. Whitehorse-Skagway in the Yukon and Alaska is an example of this phenomena.<sup>99</sup> These realities may endanger, rather than protect victims, especially women<sup>100</sup> and indigenous peoples in the North, and limit their transnational options to escape and elude their traffickers.

The ‘protection’ approach to security, including protecting borders from threats, are inherently patriarchal and may actually compromise the security of transnationally trafficked victims who are predominantly women.<sup>101</sup> As Jennifer Lobasz notes, exclusively state and traditional security concerns engendered by border-centric considerations can undermine the utility of approaches to human trafficking. ‘Protection’ approaches also fail to take into account the possible state imposed threats on trafficking victims and their well-being in the form of unintentionally detrimental consequential laws, regulations, policies, and the potential power of abusive or insensitive conduct of border control agents and law enforcement officials in the border crossing process. Lobasz cites Anne Gallagher’s claim that human trafficking border strategies are not driven by person-centered concerns; instead, these efforts are driven by the state’s need to protect borders from the perceived threat to the economy and rule of law by the undocumented migrants’ unauthorized border crossings.<sup>102</sup> In addition to these largely conceptual concerns which may have tangible consequences, focusing on borders to combat human trafficking may not be ideal because of the practical limitations of time, space, and the unknown, which can result in real implications for the North.

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<sup>98</sup> Treaty of Amity, Commerce and Navigation, U.S.-U.K. Nov. 19, 1794, 8 Stat. 116 at art. III (“It is agreed, that it shall at all times be free to His Majesty’s subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass, by land or inland navigation into the respective territories and countries of the two parties on the continent of America”) [hereinafter *Jay Treaty*].

<sup>99</sup> See, e.g., Phillippe Morin, *White River First Nation united despite being split by Yukon-Alaska border. Former chief tells Whitehorse conference that border still affects hunting, potlatch ceremonies*, CBC NEWS (June 20, 2015, 5:00 AM) <http://www.cbc.ca/news/canada/north/white-river-first-nation-united-despite-being-split-by-yukon-alaska-border-1.3120897>.

<sup>100</sup> U.S. GOV’T ACCOUNTABILITY OFF., see *supra* note 83, at 15 cited *supra* note 81, at 339 (for example, gendered differences occur in women being trafficked seen as victims whereas men are “migrant workers”).

<sup>101</sup> Lobasz, *supra* note 81, at 344 citing J. TICKNER, *GENDERING WORLD POLITICS* (2001).

<sup>102</sup> *Id.* at 326, citing Ann Gallagher, *Trafficking, Smuggling and Human Rights: Tricks and Treaties*, 12 FORCED MIGRATION REVIEW 25 (2002); see generally, Ana Avendano & Charlie Fanning, *Immigration Policy Reform in the United States: Reframing the Enforcement Discourse to Fight Human Trafficking and Promote Shared Prosperity*, 2 ANTI-TRAFFICKING REVIEW 97 (2013) (challenging the criminalization of migration in favour of rights-based immigration policies).

### B. Off the Radar

For the victims of trafficking who possess legitimate travel documentation, migrate frequently, and express no particular concern, “the reality is that border officials may be powerless to intervene.”<sup>103</sup> In 2010, for example, a de-classified RCMP intelligence report cited the agency’s suspicion that Eastern European criminal networks had access to high quality fraudulent identification and travel documents to travel across borders without detection.<sup>104</sup>

Where victims of trafficking are present at borders with legitimate (or high quality forged) identity documents their detection is extremely difficult,<sup>105</sup> if not impossible. In 2008, for example, eleven legally recruited, validly-documented Filipino workers cleared customs at Pearson International Airport in Toronto, only to be picked up by human traffickers who had paid off the recruitment company to misrepresent the date of their arrival to their good faith, sponsoring employer.<sup>106</sup>

Border-centred anti-trafficking measures also tend to focus on sex trafficking at the expense of trafficking for forced labor. For example, since 2012, trafficking for sex work accounted for close to twenty percent of human trafficking cases reported in Alaska.<sup>107</sup> Labor trafficking may be a more prevalent form of transnational trafficking as general laborers, domestic caregivers, ‘pickers,’ and construction workers moving across borders may be especially prone to human trafficking. Further weakening the popular political notion that resourcing borders combats human trafficking is the stark paucity of evidence.

### C. Lack of Evidence

Just as enhancements of border controls are not typically based on empirical evidence,<sup>108</sup> there is a lack of data on the correlation between border controls and human trafficking.<sup>109</sup> There has been very little anti-trafficking research on

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<sup>103</sup> McAdam, *supra* note 78, at 47.

<sup>104</sup> RCMP CRIMINAL INTELLIGENCE, *supra* note 5, at 1.

<sup>105</sup> McAdam, *supra* note 78, at 38.

<sup>106</sup> Dale Brazao, *Exploited workers Canada’s ‘Slave Trade,’* TORONTO STAR, (August 30, 2008) (the men were held in an isolated and abandoned farmhouse in Elmvale, Ontario. Their passports were taken away, they had limited access to food and were threatened with deportation. The workers received little to no pay for their manual labor at a local machine and bottle company).

<sup>107</sup> POLARIS PROJECT, *see supra* note 16.

<sup>108</sup> Miller & Beaumeister, *supra* note 73, at 31, citing GRAEME HUGO, PAUL CALLISTER & JUTHIKA BADKAR, *Demographic Change and Labour Mobility in the Asia-Pacific – Implications for business and regional economic integration: Synthesis*, in LABOUR MOBILITY IN THE ASIA-PACIFIC REGION (Graeme Huges & Soogil Young eds., 2008).

<sup>109</sup> Molland, *supra* note 65, at 3 (citing the need for better quality and higher standards of research and analysis of human trafficking); *see also*, Sallie Yea, *The Politics of Evidence, Data and Research in Anti-Trafficking Work*, 8 ANTI-TRAFFICKING REVIEW, 1 at 1 (2017) (citing concerns since the mid-2000s regarding the paucity of evidence regarding human trafficking and the difficulty in obtaining data “Guesstimates prevail.”); Hayli Millar, Tamara O’Doherty & Katie Roots, *A Formidable Task: Reflections on obtaining legal empirical evidence on human trafficking in Canada*, 8 ANTI-TRAFFICKING REVIEW, 34 at 34 (2017) (research on human trafficking has been called a “rigour free zone.”)

identifying sex workers at borders, for example.<sup>110</sup> Critiques have also pointed out the lack of sufficient legislative powers, resource capacity of control and enforcement agents to collect and collaboratively share meaningful intelligence, data, and evidence of human trafficking at the borders.<sup>111</sup>

#### *D. Too 'Up Stream'?*

Borders may be far removed temporally and spatially to be effective points of effort against human trafficking. The 'exploitative phase' of trafficking may not occur until after the victim has crossed the border, often with legitimate paperwork. In addition, the oft-touted merit of focusing on borders to combat human trafficking, which uses a 'victim identification' approach, may be disproportionate as to its efficacy. Victims of trafficking may not be aware that they are being trafficked. They may believe they are being smuggled or that they are traveling with valid papers to unknowingly bogus employment<sup>112</sup> and "many entering the country may not be aware that they will be exploited once they arrive at their destination."<sup>113</sup>

The focus on borders to combat human trafficking by identifying victims as they are in transit may, in effect, be looking too far 'upstream.' There are also practical challenges in attempting to identify victims of trafficking at the border.

#### *E. Identifying Victims*

Despite an abundance of commendable, border-specific resources to identify victims of trafficking, including the proliferation of screening tools, guidelines and manuals,<sup>114</sup> profound difficulties exist in identifying victims. Victim identification requires imposing additional, complex duties on border guards charged with managing flows of people and goods both into and out of the country. Such duties would include discerning victims of human trafficking from the already numerous nuanced distinctions of irregular migrants, and countering

<sup>110</sup> Ham et al., *supra* note 95, at 65.

<sup>111</sup> Lynch & Hadjimatheou, *supra* note 75.

<sup>112</sup> McAdam, *supra* note 78, at 39.

<sup>113</sup> RCMP Criminal Intelligence, *supra* note 5, at 28.

<sup>114</sup> See, e.g., INT'L ASS'N OF CHIEFS OF POLICE [IACP], *The Crime of Human Trafficking. A Law Enforcement Guide to Identification and Investigation*; see also INT'L CTR FOR CRIM MIGRATION POL'Y, *Anti-Trafficking Training for Frontline Law Enforcement Officers; Training Guide*, (2006); VERA INST. OF JUSTICE & NAT'L INST. OF JUSTICE, *A SCREENING TOOL FOR IDENTIFYING TRAFFICKING VICTIMS*, Doc. No. 246713 (2014); ORG. FOR SEC. COOPERATION IN EUR. *Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach*, 10 SPMU Publication Series (2011); U.N. OFFICE ON DRUGS AND CRIME, *TOOLKIT TO COMBAT TRAFFICKING IN PERSONS* U.N. Sales No. E.08.V.14 (2008); see also VERA INSTITUTE OF JUSTICE & NAT'L INST. OF JUSTICE, *OUT OF THE SHADOWS*; see also *A TOOL FOR THE IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING* (the elements of victim identification include when a person lacks identification documents or travel documents, seems restricted from speaking independently, seems to have been deprived of basic life necessities, such as food, water, sleep or medical care, shows signs of abuse or physical assault, e.g. bruising, branding/tattooing, seems submissive or fearful, seems not to control his or her schedule, seems to lack concrete short or long-term itinerary, seems to lack knowledge about destination or source, travelling with much older, dominant or controlling adult).

an ingrained institutional culture of “disbelief and refusal.”<sup>115</sup> Rather than being a place of victim identification and protection, victims that are detected at the border are more likely to be deported or incarcerated.<sup>116</sup> Decker and Scott indicate that there is a tendency to focus more on identifying sex trafficking at the border,<sup>117</sup> over human trafficking for other purposes such as forced manual labour.

The real impact of inadequate or deleterious identification realities on peoples’ lives cannot be overstated. People identified as victims of trafficking, as opposed to other types of migration, may be entitled to stay in the host country and receive benefits that may include access to housing, medical care, counseling, legal assistance, reintegration programs and compensation.<sup>118</sup>

Additionally, an important opportunity cost of focusing on borders is that it blurs the vision in addressing the root causes of human trafficking. This can result in overlooking the most important part of combatting trafficking: prevention.

#### F. Beyond Borders

Borders are only one aspect of human trafficking. For the reasons explored in this article, combatting human trafficking requires looking at its root causes. This includes looking beyond migration, and considering factors like vulnerability and exploitation. Additionally, the label ‘trafficking’ itself is inadequate, if not counter-productive. This is because the word ‘trafficking’ connotes movement, transportation and transnationality.<sup>119</sup> As such, the term is inattentive to and thereby distracting from the root causes of trafficking.<sup>120</sup> The overwhelming majority of human trafficking occurs within countries, never crossing international borders.<sup>121</sup>

A frequent critique of the focus on borders as a strategy to combat human trafficking is that the resources allocated to border controls take much needed focus and action away from identifying and addressing the root causes of human trafficking.<sup>122</sup> Borders do not cause human trafficking.<sup>123</sup> What factors, then,

<sup>115</sup> Smith & Marmo, *supra* note 85, at 68.

<sup>116</sup> See Miller & Baumeister, *supra* note 73, at 26.

<sup>117</sup> See Decker & Scott, *Human Trafficking: Contexts and Connections to Conventional Crime*, 38(3) JOURNAL OF CRIME AND JUSTICE 291 (2016).

<sup>118</sup> See McAdam, *supra* note 78, at 35. For further discussion of the creation of this “deserving” versus “undeserving” binary of victimization see Biao Xiang, *Who Are the “Us” and Who Are the “Them” Book Review*, 2 ANTI-TRAFFICKING REVIEW 156 (2013) reviewing BRIDGET ANDERSON, *US AND THEM? THE DANGEROUS POLITICS OF IMMIGRATION CONTROL*, 2013.

<sup>119</sup> The only universally-accepted definition of human trafficking also includes active words including “transportation,” “transfer,” and “receipt.” *Supra* note 22, at Art. X3(a).

<sup>120</sup> See, e.g., Boyer, Yvonne and Peggy Kampouris, *TRAFFICKING OF ABORIGINAL WOMEN AND GIRLS*. Research and Analysis Division, Community Safety and Countering Crime Branch, Public Safety Canada: Ottawa, 2014.

<sup>121</sup> RCMP CRIMINAL INTELLIGENCE, *supra* note 5, at 20.

<sup>122</sup> See calls to address the root causes of human trafficking: Avra Gordis, *Ending Human Trafficking: We Must Address the Root Causes of Trafficking*, JWFNYBlog

cause the arrival of trafficked victims at the borders? How can these causal factors be addressed to prevent, if not end human trafficking? The literature consistently identifies the following as the root causes of human trafficking:

- poverty;
- consumerism and demand for cheap goods;
- demand for commercial sex
- racial and gender inequality and stereotypes;
- restrictive immigration policies;
- political instability;
- corruption;
- armed conflict;
- natural disasters;
- lack of border control(s); and
- lack of awareness.<sup>124</sup>

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(blog), Jewish Women's Foundation of New York (Jan. 29, 2017); Hannah Brockhaus, *To Stop Human Trafficking, Look to Root Causes, Survivor Says*, CATHOLIC NEWS AGENCY, Oct. 27, 2016; *Address Root Cause of Conflict to Curb Human Trafficking: Pakistan*, DAILY TIMES, Mar. 17, 2017; and U.N. News Centre, *U.N. Chief Emphasizes Need to Tackle Root Causes of Human Trafficking*, YOUTUBE (December 2016), <http://www.youtube.com/watch?v=Qr4bpIIhIvw>.

<sup>123</sup> Although it is argued that restrictive immigration policies and onerous border control contribute to irregular migration which can result in human trafficking.

<sup>124</sup> See, e.g., ALEXIS ARONOWITZ, HUMAN TRAFFICKING: A REFERENCE HANDBOOK 23-53 (2017); see also Lt. Diana Betz, *Human Trafficking in Southeast Asia: Causes and Policy Implications* (2004) (unpublished M.A. thesis, Naval Postgraduate School); see also Ying Lee, *Human Trafficking Across Borders and the Need for a Global Response* at 28-29 (2012) (unpublished M.A. thesis, City University of New York); Noriega, Ambassador Roger, *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States* at 28, Statement before the Committee on Homeland Security and Governmental Affairs United States Senate (March 25, 2015), American Enterprise Institute for Public Policy Research; Sasa Poucki, *The Quest for Root Causes of Human Trafficking: A Study on the Experience of Marginalized Groups, with a Focus on the Republic of Serbia* (2012) (unpublished Ph.D. thesis, Rutgers, The State University of New Jersey); see also Gabriel Temesgen, *Root Causes and Solutions to Human Trafficking in Ethiopia*, Geneva: Global Initiative Against Transnational Organized Crime, 2010; see also Toolkit *supra* note 24 UNODC, Ch. 9.2; U.N. EDUCATION, SCIENTIFIC AND CULTURAL ORGANIZATION, *Human Trafficking in Nigeria: Root Causes and Recommendations*, Policy Paper 14.2(E). Paris; see also UNESCO, 2006; U.N. INTERNATIONAL CHILDREN'S EMERGENCY FUND, *Trafficking in Human Beings in South Eastern Europe – 2005: Focus on Prevention*, New York: UNICEF, 2005 (concluding roots causes not being addressed; U.S. CATHOLIC SISTERS AGAINST HUMAN

A common feature of the majority of these root causes is forced or unexpected migration which in turn creates vulnerability. This vulnerability is what human trafficking relies upon. Actions focused on border controls do not address human vulnerability or the underlying reasons for the migration that result in the arrival of individuals at the borders.

Further, similar to criminalization, ‘rescue,’ and, to some extent, trafficking per se, the focus on state security leads to a focus on borders; an approach that privileges border efforts and prevents a discussion of the role of neo-liberal capital and restrictive migration regimes as causes of human trafficking.<sup>125</sup> A focus on borders diverts public attention from the larger problem: the monetization of vulnerability and exploitation. This approach has the effect of reproducing the neo-liberal Western state, perpetuating a security predisposition whilst undertaking ostensible action against human trafficking.

## V. CONCLUSION

“To target the crime [of human trafficking] only within Canada’s borders will serve to disrupt criminal activity, but will not effectively address the *borderless* nature of this crime.”<sup>126</sup>

In combatting human trafficking, borders have become an intuitive preoccupation of elected officials and policy makers. In July and August 2017, more than 7,000 people illegally crossed the border from the United States into the province of Québec alone.<sup>127</sup> A recent poll found that eight percent of respondents in Canada would focus available border resources exclusively or mainly on monitoring and security. More than eighty percent of Canadians surveyed prioritized assigning police, immigration officers, and technology (e.g. drones) to unguarded areas of the border over getting new arrivals safely into Canada and providing them with medical, housing and other assistance.<sup>128</sup> This statistic is challenging for human trafficking activism given the inherent limitations, if not detrimental effects of focusing on borders to address trafficking.

This border-focused phenomenon demonstrates the attention-diverting role that public sovereignty, security, and migration discourses can play in preventing human trafficking by addressing not borders, but its root causes. “While human trafficking is often associated with foreign victims crossing international borders,

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TRAFFICKING, *Root Causes of Human Trafficking*, Philadelphia: USCSAHT, 2017; Vimal Vidushy, *Human Trafficking in India: An Analysis*, 2(6) INTERNATIONAL JOURNAL OF APPLIED RESEARCH 168 (2016).

<sup>125</sup> Hanna Lewis & Loïse Wait, *Asylum, Immigration Restrictions and Exploitation: Hyper-precarity as a lens for understanding and tackling forced labour*, 5 ANTI-TRAFFICKING REVIEW 1, 9 (2015).

<sup>126</sup> RCMP CRIMINAL INTELLIGENCE, *supra* note 5, at 41 (emphasis added).

<sup>127</sup> *Half of Canadians say their country is ‘too generous’ toward illegal border crossers*, ANGUS REID INSTITUTE (Sept. 2, 2017), <http://angusreid.org/asylum-seekers-quebec-refugees/>.

<sup>128</sup> *Id.*

recent convictions may indicate that trafficking is as likely to occur in Canada”<sup>129</sup> as across this country’s borders. Counter-intuitively, migrants apprehended while trying to enter the United States from Canada are rarely found to be trafficked.<sup>130</sup> As Molland affirms, “although human trafficking may not always involve cross-border mobility, there is no doubt that international borders are central to how trafficking is conceptualized and acted upon.”<sup>131</sup>

Despite their limitations, detriments and how little is empirically known, human trafficking is not a borderless crime. Victims of human trafficking are transited across borders illegally or with illegal intent. Border controls are widely agreed to have a role in combatting human trafficking.<sup>132</sup> Reforms, both attitudinal and concrete, can be implemented to enhance and improve the capacity of borders to become more effective against human trafficking.

Foremost, to ensure the best results, border controls and human trafficking require a questions-approach discourse of empirical and analytical consideration, not an intuitive, ‘polemical’ engagement centered on a false threat and security binary. Legal and public policy formulations and considerations must begin to transcend traditional state security hegemonies toward prioritizing human rights protection and human security approaches. Contemporary, Western liberal border controls must balance the inherent continuous tension between the interests of the state, and the rights and wellbeing of migrants. Practically speaking, the essentialist border control processes must transform from status-based determinations into identifications and assessments of vulnerability.<sup>133</sup>

At a more pragmatic level, capacity for, and commitment to collecting accurate data regarding cross-border human trafficking victims must be increased.<sup>134</sup> More information is needed on victim identifiers, origins of trafficking, destinations, and the nature of their recruitment. Further research is required not only into the facts of human trafficking at borders to better craft anti-trafficking responses, but also into the nature and causes of vulnerability, and the structural, socioeconomic causes of human trafficking which can lead towards the eradication of trafficking through prevention.

At the same time, improved capacity to identify victims of trafficking at borders is urgently needed. The requirements imposed on border officials to grapple with and apply complex and imprecise concepts in order to identify potential trafficked victims are challenging, if not daunting.<sup>135</sup> Continued and enhanced resources and specialized training are required. Additional resources must be dedicated to extensive and appropriate after care for victims of human trafficking who are identified at borders. Increased and enhanced training must build the core competencies of border officials to uphold the rights and dignity of

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<sup>129</sup> RCMP CRIMINAL INTELLIGENCE, *supra* note 5, at 20. Emphasis added.

<sup>130</sup> *Id.* at 28. This reporting may also indicate weak capacities for victim identification and/or data collection.

<sup>131</sup> Molland, *supra* note 65, at 4.

<sup>132</sup> *See, e.g.*, Miller & Baumeister, *supra* note 73, at 30.

<sup>133</sup> *Id.* at 46-7.

<sup>134</sup> *Id.* at 31.

<sup>135</sup> McAdam, *supra* note 78, at 36.

all migrants and ensure they have access to the protection and assistance services they need, regardless of their migration or victim status.<sup>136</sup>

While distinct in its geographic splendor and richness in culture, the North is not unique in having extensive borders and the resulting challenges in effectively combatting human trafficking. The North and Northern indigenous perspectives are not needed in determining and implementing anti-trafficking measures at borders, but such initiatives must be designed and evaluated through a Northern lens.

The approximately 5,000 Canadian Rangers of the Canadian Armed Forces living in more than 200 communities and speaking more than 26 languages and dialects, many indigenous,<sup>137</sup> need to be tasked with an increased role in combatting human trafficking. The Rangers' long-standing patrols can include incorporating identifying victims consistent with their historic capacity as *Vigilans*: "The Watchers."<sup>138</sup>

Research into the root causes of human trafficking in the North must include precursors and features of vulnerability that have been specifically identified in the North. Some of the identified root causes, which may require further research are: familial violence, childhood sexual abuse, exploitative teenage relationships, homelessness, attitudes toward gender roles and sex, and Internet access.<sup>139</sup> Enhanced resources and training are also required not simply on increased awareness and sensitivity to indigenous rights and culture, but on the accurate recognition of indigenous peoples' bilateral Jay Treaty rights, and the disproportionate impact of human trafficking on indigenous peoples, especially indigenous women and girls.<sup>140</sup>

In all of these ways, focusing on borders, particularly in the North, can become a more effective means of combatting human trafficking, albeit the tip of the iceberg.

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<sup>136</sup> *Id.* at 43-4.

<sup>137</sup> *Canadian Rangers*, CANADIAN ARMY (Sept. 2, 2017), <http://www.army-armee.forces.gc.ca/en/canadian-rangers/index.page>.

<sup>138</sup> *Id.*

<sup>139</sup> ROOS, *supra* note 1.

<sup>140</sup> *Jay Treaty*, *supra* note 98.