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**CANADIAN COUNCIL FOR REFUGEES  
CONSEIL CANADIEN POUR LES RÉFUGIÉS**

# **TRAFFICKING IN WOMEN AND GIRLS**

**REPORT OF MEETINGS, FALL 2003**

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**Canadian Council for Refugees  
Trafficking in Women and Girls**

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To assist the project, a Steering Committee was set up, whose members were Norrie De Valencia (chair), Sharryn Aiken, Amy Casipullai, Janet Dench, Deborah Isaacs, Helene Moussa, Connie Nakatsu, Janis Nickel, Loly Rico, Nandita Sharma and Noulmook Sutdhibhasilp. The lively and challenging discussions of the Steering Committee significantly clarified and strengthened the direction of the project. Input was also received from members of the project's Advisory Committee.

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Invited speakers at the meetings contributed to the discussions their knowledge and experience, in many cases travelling some distance in order to participate.

The project was designed to rely on the input of all participants at the meetings. Without their contributions, there would have been no report.

Afsaneh Hojabri was the able coordinator of the project. Sara Deck, intern at the CCR, provided crucial additional assistance. Janet Dench supervised the project.

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## **1. Introduction**

In 2003, the Canadian Council for Refugees launched a project with the goal of developing the capacity among Canadian NGOs, including refugee-serving NGOs, to respond appropriately to the needs of trafficked persons in Canada, especially women and girls, and to work towards the eradication of forced labour in Canada.

The issue of trafficking in women is one that the Canadian Council for Refugees, through its Gender Issues Core Group, has been following for several years. A number of workshops have been held at CCR national consultations. In December 2001, CCR adopted a resolution acknowledging the needs of trafficked women in Canada and the fact that NGOs are not necessarily sensitized and responsive to their needs (the text of the resolution is included at Appendix B, page 25).

The main activity of the project was the organization of several regional meetings, followed by a national meeting. This document is a report on the main outcomes from those meetings.

The CCR also established a website at [trafficking.ca](http://trafficking.ca) to provide background information about various aspects of trafficking issues and to list relevant resources and links.

Participants at the meetings were confronted with a disturbing picture of the situation of displaced and migrating persons. Restrictive immigration policies prevent many of these migrants from ever acquiring “status” in the countries they choose as their destinations. Some are using the words “a new apartheid” to describe the global situation where huge numbers of human beings remain without documents, without legal access to labour markets or any basic services such as health care, and without most of the human rights that people in Canada take for granted. Women, children and people of colour are overwhelmingly those targeted for exploitation. The vulnerability of these people cannot be underestimated.

While there is no doubt that trafficking issues trigger deep concern, our meetings raised more questions than answers. Participants emphasized the need to grapple with questions such as, “What conditions are triggering the existing large international migrations?” “What labour options are there for migrants?” “What makes undocumented migrants vulnerable?” “How are government policies and enforcement practices implicated in trafficking?” “What are the effects of those policies and practices on migrants?” While we did not reach conclusive answers to these questions, it was clear that we need to go beyond framing trafficking in persons as a criminal activity and developing enforcement-type responses, which has been the pattern to date.

A common thread through the meetings was a sense of the urgent need to pursue the discussions and begin to implement the recommendations. Many participants made a commitment to meet again. This report is intended to provide a basis for the very necessary next steps.

## 2. Overview of meetings

Ten regional meetings took place in September and October in the following cities:

- Halifax
- Saint John
- Montreal
- Ottawa
- Toronto
- London
- Windsor
- Winnipeg
- Edmonton
- Vancouver

These meetings were designed to bring together interested players (NGOs and non-NGOs, and to the extent possible, women who have an experience of being trafficked). The meetings focused on:

- exploring the needs
- analyzing the barriers to protection
- reviewing local situations of forced labour
- identifying the resources
- creating links
- agreeing on follow up actions locally, including recommendations to government and other relevant institutions.

The regional meetings were followed by a national meeting held on November 19th, 2003 in Winnipeg, with the participation of 74 representatives from various sectors (refugee and immigrant serving organizations, women's groups, government and inter-government, lawyers, academics, etc.) from across Canada. There was also some participation from outside Canada.



### **3. Summary of themes and recommendations from regional meetings**

This summary attempts to identify and organize themes and recommendations coming out of the various regional meetings. There will of course be other and perhaps better ways of analyzing and categorizing the information. We apologize for any key points made that were misinterpreted or omitted.

#### **A. THEMES IN ANALYZING THE ISSUE**

##### **1. Human rights/protection**

A central concern is to advance the human rights of those who are trafficked. The Palermo Protocol does not contain strong language promoting protection.

##### **2. Criminalization**

While criminal prosecution of the traffickers is seen by many as desirable, the criminalization of trafficking (and of the sex trade) appears to increase the vulnerability of the victims, rather than help to protect them. Criminalization stigmatizes those who are trafficked and makes it harder for them to access protection. We need to be aware of how responses to trafficking may re-victimize those who are trafficked.

##### **3. Interconnections**

Trafficking is a complex phenomenon involving many interconnected factors (supply and demand, distribution networks, individual choice, laws and their enforcement). Trafficking is also at the extreme end of a continuum in which humans have varying degrees of choice in their lives and are in relationships that may involve degrees of coercion and exploitation. The “trafficking” label imposes a compartmentalization, forcing people into boxes. Is this box useful or should we set it aside and focus on relationships of coercion and exploitation?

##### **4. Choice**

Definitions of trafficking usually refer to the absence of consent, but what people will consent to depends on the choices available to them. Deplorable conditions may be better than what one left behind (or that one faces if returned to one’s home country).

##### **5. Coercion/exploitation**

If trafficking is at the extreme end of a continuum of coercion and exploitation, programs such as live-in caregivers, family sponsorship and temporary agricultural workers can be seen as part of the same continuum, in that they can increase people’s vulnerability to exploitation.

##### **4. Root causes**

Trafficking is caused variously by the neo-liberal economy, economic inequalities, gender inequalities and immigration processes. The body and especially women’s bodies are made into objects to be bought and sold.

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### 5. **Vulnerabilities by age and gender**

Children are particularly vulnerable by age and women by gender. However, we should not neglect that men can be victimized (and may be particularly vulnerable e.g. due to a disability).

### 6. **Public opinion**

There is a widespread lack of knowledge about issues relating to trafficking, but worse a predisposal towards moral panic. The role of the media is of concern.

## B. **BARRIERS TO PROTECTION**

### 1. **Lack of awareness and concern**

- C Invisibility of problem.
- C Lack of leadership for change.
- C Lack of public outcry/empathy.
- C Lack of dedicated crown counsel and police.
- C Lack of commitment to fight violence against women.
- C Failure to sign Convention on the Rights of Migrant Workers and their Families.
- C Organizations mostly don't have internal policies or positions on trafficking.

### 2. **Systemic discrimination**

- C Race and racism.
- C Cultural stereotypes.
- C Class.
- C Poverty.

### 3. **Laws**

- C Lack of legislation to protect trafficked women.
- C *Immigration and Refugee Protection Act* and immigration processes.

### 4. **Social and economic policies increasing people's vulnerability**

- C Restrictions on access to legal aid.
- C Government complicity/responsibility for the framework that makes women vulnerable and isolated.
- C Low welfare rates, barriers to social assistance.
- C Policies allowing industry to self-regulate.

### 5. **Lack of coordination**

- C Inadequate communication and interaction between government levels, departments, agencies, NGOs.
- C Jurisdictional issues (federal, provincial, municipal).
- C Lack of coordination between sectors offering assistance.
- C Lack of continuity of service

6. **Lack of program support**

- C Inadequate funding for NGOs (or anyone) to develop programs (for victims of violence generally).
- C Lack of support from community groups.
- C Cuts to women's centres, advocacy groups.
- C Lack of support for youth run-aways.

7. **Stigmatization**

- C Shame and fear/stigma (sex trade, being "illegal").
- C Perception of "illegal" immigrants as criminals.
- C Lack of distinction between traffickers and victims.
- C Criminalization.

8. **Isolation of those trafficked**

- C In addition to the isolation caused by stigmatization, those trafficked may face language and cultural barriers, have limited marketable skills or formal education and lack literacy.
- C Access to information may be difficult.
- C Distrust of state officials.
- C Psychological threats.

9. **Lack of options for those trafficked**

- C Lack of options for regularization.
- C Systemic threats (penalty for enforcing rights).
- C Fear of cooperating with government because of lack of protection for victims/threat of deportation (NGOs).
- C Family responsibilities and expectations.

10. **Ineffective enforcement**

- C Complaint driven policing.
- C Onus on individual to make complaints.
- C Lack of enforcement against traffickers.

**C. GAPS IN INFORMATION**

There is a need for more information about all aspects:

- C who is at risk, who is being trafficking, how they are recruited, where they are in Canada, what conditions they live under, how many are affected.
- C how many children are without guardians.
- C who the traffickers are.
- C who the consumers are.
- C who benefits from trafficking.

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- C who the intermediary players are that make the trafficking systems work
- C how many prosecutions against trafficking there have been and with what results.
- C what the responses are to trafficking in Canada and in other countries.

### D. NATIONAL RECOMMENDATIONS

The recommendations proposed range from the general to the specific.

#### 1. POLICY RECOMMENDATIONS

##### Addressing the factors making people vulnerable to exploitation

1. Assess economic and social policies (trade policies, international development projects) with a view to assessing their impact on trafficking (in order to attack the problem at source: poverty in home countries). Address economic rights of the individual, objectification and marginalization of women, feminization of poverty, globalization issues.
2. Provide opportunities for safe migration. Review immigration restrictions/border controls as supportive of trafficking. Enlarge regular migration channels. Allow opportunities for regularization for those on temporary visa schemes. Expand immigration categories to recognize all types of worker needed. Consider lottery system.
3. Review the Live-in caregiver program (cancel the program or eliminate the requirement for living in)
4. Undertake gender, class and race analysis for all immigration programs/categories.
5. Review provisions in the *Immigration and Refugee Protection Act* that promote trafficking (e.g. exotic dancers).
6. Encourage the government to sign on to the UN Convention on the Rights of All Migrant Workers and their Families.
7. Provide access to adequate levels of social assistance and legal aid.

##### Addressing the factors that create a demand for exploitation

8. Create a national, accessible and affordable home care system.

##### Protection for trafficked persons

9. Have governments and police recognize that priority must go to protecting victims.
10. Adopt legislation dealing specifically with the protection of trafficked persons/provide for legal protection. Develop Citizenship and Immigration Canada guidelines and protocols to stay removal of trafficked persons while an application for humanitarian and compassionate consideration (H&C) is being made.
11. Amend the *Immigration and Refugee Protection Act* so that trafficked persons are not penalized for immigration violations (similar to the exceptions for refugees).
12. Ensure protection for trafficked persons who are intercepted.
13. Offer trafficked persons viable alternatives.

14. Adapt the Look out program of Customs to identify and refer trafficked persons (this is only viable if there is a program to protect trafficked persons.)
15. Ensure that reports to social services/police do not lead to reports to Citizenship and Immigration Canada of undocumented persons.
16. Provide compensation for women who have been trafficked
17. Develop system for identifying trafficked persons
18. Increase access to schools, employment retraining, English/French as a second language, education

### **Protection for children**

19. Harmonize age for child protection across Canada. Extend age to all youth under 18.
20. Ensure that child welfare workers are responsible for all children accompanied by an adult who is not a parent (whether or not they have status).
21. Develop safe return mechanisms, especially for children.

### **Reinforce labour protection**

22. Improve the working conditions of trafficked persons. Provide legal support for labour laws regardless of the immigration status of the worker. Inspect workplaces for work conditions (without threat of detention for undocumented). Improve labour laws to protect trafficked workers and sex trade workers. Amend labour laws to take account of fact that there is more casual, part-time, contract and piece work.
23. Legislate against forced labour products.
24. Regulate and monitor recruitment agencies (escort agencies, immigration consultants).
25. Call for a commission on domestic work.

### **Enforcement**

The recommendations relating to enforcement go in two directions: some emphasize the danger of criminalizing trafficked persons, while others call for increased prosecution of traffickers.

26. Don't require testimony to protect. Protection measures for all will encourage more to come forward and testify.
27. Decriminalize sex trade.
28. Increase the business risk for traffickers as a deterrent by imposing higher penalties.
29. Criminalize the purchasing of trafficked services.
30. Include those involved in trafficking for sexual purposes on the sex-offender registry and limit their ability to leave Canada.
31. Legislate to target sex tourism and sex trade.

### **Mechanisms for addressing issues**

32. Call for UN Women's Conferences every 2-3 years (not 10 years)
33. Support calls for a new Commission on the Status of Women.
34. Expand the Citizenship and Immigration Canada working group on separated children.
35. Create a task force to study trafficking with respect to the recommendations in Palermo protocol. (cf structure created to study phenomenon of immigration consultants).
36. Create an ombudsperson.

## **2. PROGRAM RECOMMENDATIONS**

### **Education**

1. Educate the public, politicians, Customs officers, Citizenship and Immigration Canada officers, law enforcement officers and judiciary on trafficking issues.
2. Educate the public on labour market issues.

### **Information**

3. Create a solid mechanism for distributing information between all sectors in all subject areas (prevention, protection, judicial, enforcement, legislation). Ensure that information on health and immigration goes to front-line workers (shelters, street workers, sex trade advocates).
4. Create a website with information about laws and rights in different countries.
5. Make information about human rights legislation accessible to trafficked persons.
6. Have Citizenship and Immigration Canada/provincial immigration departments provide information packages to women/all newcomers (places to go for help, phone numbers, their rights, immigration and employment rights). Supply information in the country of origin. Set up “First Contact” type programs (including lawyers).
7. Provide domestic workers with better information about their rights and monitor the program better. People who have been domestic workers should give advice and support while prospective caregivers are still in their home country.

### **Networking and outreach**

8. Create a national multi-sectoral network (senior level government, NGO and other stakeholders) to develop consistent policies and protocols.
9. Network with other Canadian women’s groups, US women’s groups, police, government enforcement, politicians, labour groups, LEAF, legal community, UN bodies, KAIROS, Court Challenges Program, faith communities.
10. Lobby government (municipal, provincial and federal) and interest groups to be active in this issue.
11. Ensure national networking between local groups. CCR to coordinate future interventions and follow up with women’s groups. Seek funding for national follow up.
12. Involve faith communities to create safe places for victims.
13. Approach politicians.

### **Research**

14. Undertake studies to review local situations and develop methodologies for identifying trafficked women and children.
15. Look at institutionalized exploitation of labour with respect to immigration and labour policies (e.g. domestic, migrant workers).

### **Guidelines**

16. Provide Customs and Citizenship and Immigration Canada officers with understanding of the issue and guidelines on how to react.
17. Encourage NGOs to develop internal policies and protocols.

**Programs**

18. Governments to allocate specific budgets to departments and NGOs to respond to trafficking.
19. Develop programs for legal and support services for trafficked persons, ensuring privacy and physical, psychological and social recovery.
20. Make translation services accessible to trafficked persons. The translators should have strong cultural sensitivity and an understanding of the trafficking situation.
21. Implement a pilot program for a model of cooperation between government, NGOs and local community groups.
22. Improve the prosecution of traffickers.
23. Increase funding for sustainable development and peace issues to address root causes.
24. Create more programs to empower girls.
25. Establish a complaint process that is safe and effective and safe from the immigration authorities.
26. Expand 211 services and train 211 operators to give support and referrals to women and children who have been trafficked (and to keep this data safe from Citizenship and Immigration Canada) – OCASI can do this through settlement.org (NB this is an Ontario recommendation).
27. Establish a national helpline (through family violence agencies).

**E. LOCAL RECOMMENDATIONS**

The following are some of the recommendations for local follow up:

**Information exchange/networking**

1. Establish a pilot project to develop a network (with government, NGOs, community groups, enforcement agencies and others) to better understand situation, develop action plans and interface with national organizations to ensure a consistent and united attack on trafficking.
2. Establish a listserv for the dissemination of information.
3. Create a local network.
4. Hold a follow up meeting in February.
5. Circulate reports from other cities and future actions of CCR.
6. Create a local NGO to address trafficking questions.
7. Follow up re. national conference on Harm Reduction in the Sex Trade (in October).
8. Circulate the resources where those interested can access more information. Collate and make available information in an accessible and central location. (Eg. Videos, websites, articles, books, reports, personal stories.)
9. Organize another session with the local immigration lawyer.
10. Identify an organization with capacity to support and maintain a network on trafficking.

**Education**

11. Educate service providers on how to help persons who have been trafficked.
12. Do public education. Use already active organizations to develop educational material.
13. Show complete film of *Anonymously Yours*.
14. Provide information to educational institutions, various service providers, work places, immigrant serving agencies, professionals, health care providers, lawyers, community

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organizations, media, faith groups, airlines and particularly to those who have been trafficked. The Internet is a good vehicle for providing information.

15. Hold seminars, create newsletters.

### **Outreach and advocacy**

16. Do more relationship-building with those who are directly affected before advocating for policies and programs.
17. Involve sex workers/those who are trafficked in discussions.
18. Sensitize newly hired Family Violence Outreach Worker to the issues of trafficking.
19. Make a presentation to the Coalition for Transition Houses.
20. Develop good relationship with law enforcement.
21. Get police and government involved (there is some question about how to do this without risking the security of those involved).
22. Join new forces already developing Community Harm Reduction Day.
23. Promote access to mobile health clinics, shelter and alternative housing services, social services and social assistance.
24. Start dialogue with government about the Convention on the Rights of Migrant Workers and their Families to build awareness and understanding of the convention. (Use the Council of Churches primer.)
25. Address the issue of trafficking as a women's issue with the Status of Women.
26. Do outreach to others in the community who did not or could not attend to share workshop feedback: local organization supporting Sex Trade Workers, local labor unions, local M.P.s, entertainment industry.

### **Programs**

27. Encourage organizations to initiate internal programs to raise awareness of trafficking and start developing internal policies.
28. Provide support groups for women and children to go to.
29. Develop a network and Action Response Plan ready to respond if there is a trafficked person identified.
30. Have information about resources at ports of entry.
31. Create an underground shelter system so trafficked victims can be put in an undisclosed location.

### **Research**

32. Explore possibilities for initiating research on trafficking.

### **Specific issues/approaches**

33. Deal with root causes of the problem, for example, explore and address the reasons for joining the sex trade.
34. Explore attitudes to morality and links made to sexuality while doing outreach and creating network.
35. Address stereotypes, stigmatization.
36. Address the Live-in Caregiver Program.
37. Look at Provincial Nominee programs (do gender analysis?). Why can a welder (male profession) apply under the provincial nominee program and arrive with permanent



residence and no job restrictions when a care-giver (women's work) for which this is an equally, or greater, demand must apply under the Live-in Caregiver Program with all its restrictions and potential for abuse?

## **4. Barriers to protection identified at national meeting**

### **Lack of awareness**

- C Within government: trafficking issues are not given a high priority.
- C Among general public: unless there is public pressure, government policy will not change.
- C Among service providers, who sometimes do not recognize trafficking and do not understand the contexts which put people into a trafficking situation.
- C Among trafficked persons, some of whom are not educated and have little understanding of what is happening to them.

### **Lack of information**

- C For possible victims (e.g. on services available, safe sex, HIV/AIDS).
- C For NGOs (on nature of problem, what to do, where to go for help and information).
- C For lawyers.
- C For all sectors, including police, women's groups, public, and media.
- C Especially for women and children who are put in detention and criminalized.

### **Lack of services**

- C Lack of access to health services.
- C Insufficient legal aid coverage.
- C Lack of resources for NGOs, particularly for NGOs who work specifically in this area.
- C Lack of support for trafficked (monetary, program, specialized services).

### **Attitudes**

- C Of mainstream media, public.
- C Stigmatization of sex work, of being trafficked exacerbates vulnerability..
- C Trafficking issues attract moral judgments.
- C Criminalization of "victim".
- C Marginalization of trafficked persons, in part because of race, culture and language, in part because of the shame associated with their status.
- C Lack of sensitivity.

### **Fear/Lack of trust**

- C Trafficked persons' fear of traffickers, of authorities, of letting their situation be known.
- C Trafficked persons' lack of trust of system, of counsel, of NGOs.
- C Front-line workers' fear of dealing with trafficked persons.

### **Lack of national coordination**

- C Lack of national policy.
- C Lack of a centralized information source (e.g. hotline).
- C Lack of focal points, regionally and nationally.
- C Lack of national advocacy efforts.
- C Lack of NGO coordination.
- C Fragmentation of issues.

**Lack of partnership**

- C In some areas between government and NGOs.
- C With law enforcement.
- C With legal aid and pro bono.

**Absences from discussion**

- C Persons affected by trafficked.
- C Private sector.
- C Men.
- C Youth.
- C Labour.
- C Those who benefit from trafficking.

**Lack of options for trafficked persons**

- C Lack of specific policy offering protection to trafficked persons. On the contrary, the law criminalizes trafficked persons.
- C NGOs have little to offer because the law does not protect trafficked persons.
- C Applications for humanitarian and compassionate consideration are usually ineffective.
- C Trafficking is not recognized in the Immigration and Refugee Board gender guidelines.
- C Canadian law is focused on protecting Canada's borders, not people.
- C Where Canadian law offers protection to people, protection is limited to the legal (e.g. rights to remain) and the physical (e.g. from abuse), excluding other aspects such as civil and other abuses (e.g. exploitation, other human rights abuses).
- C Lack of a complaint mechanism.

**Inadequate child protection**

- C No standard legislation for dealing with these issues, especially children's issues.
- C Gaps in child protection legislation (e.g. in Alberta, Child Welfare can only get involved if a child is in physical danger, or in Ontario where youth protection stops at age 16).

**Categories and definitions**

- C Current categories for protection in Canada under immigration legislation are not appropriate for survivors of trafficking.
- C Creating a category for trafficked persons creates problems, because of where the line is drawn. Many victims won't fit in, because they won't have suffered enough or have been exploited enough to meet the definition.
- C The trafficking definition in the Palermo protocol is not very helpful (perhaps white Eastern European women fit better than Asian women). The definition is based on a model of criminalization, rather than offering protection (or anything) for the victim.
- C There is ideological conflict between groups vis à vis the definition.

**Gender issues**

- C Lack of gender analysis.
- C Lack of recognition for women's own voices.
- C Lack of analysis of various sectors of women's labour, particularly in private sectors.
- C Lack of respect for the strategies used by women to help themselves.

**Global aspects of the problem**

- C Borders are closing, yet people are moving. Options for many are dead end jobs (or no jobs) versus migration.
- C Poverty is a cause of migration
- C The economies of many countries rely heavily on remittances.

**Racism**

- C Globalization and racism are interlinked, and linked to the sex-trade. These connections need to be drawn out, but there is an unwillingness to examine racism when discussing the sex trade.
- C Westernized methodologies create barriers of racism and homophobia. Work should be integrated and inclusive.
- C Framing issues from a Northern, cultural framework risks further victimizing (i.e. “we, the civilized North, are going to save these poor victims”). We need to bring an anti-racist analysis.

**Economic issues**

- C The basic rule of supply and demand applies to trafficking. Traffickers identify and respond to a demand for cheap labour.
- C The state is in some ways complicit in the demand for the work.
- C The economic drivers rely on racial and gender exploitation to provide cheap labour.

**Denial of complicity of states**

- C There is a strong resistance to admitting the ways in which states in the North contribute to trafficking by creating the situations that make trafficking possible.
- C Lack of analysis of existing immigration programs.
- C In the face of denial, it is difficult to advocate for changes in government policy.

**Forces strengthening the trafficking business**

- C Trafficking is a big business. Individual trafficker are only part of larger systems, involving sometimes the government, businesses, diplomatic circles, etc.
- C Trafficked persons have interests in staying with the traffickers: they often have contracts and feel an obligation to live up to them; they may benefit because the situation allows them to send money home; they share traffickers’ interest in invisibility because the alternative is to be caught and sent home.
- C The traffickers are very familiar with Canadian laws and systems and can exploit the ignorance of the women and children they traffic.
- C Canadian laws and systems tend to protect the abusers, not the persons abused.

## 5. Recommendations from national meeting

The following recommendations were brought forward by participants at the meeting. Although attention was paid during the meeting to identifying common themes and prioritizing recommendations, there was not time to develop a consensus. The recommendations below therefore should not be considered to have been endorsed by all participants, and some of the suggestions may be more or less inconsistent with each other.

### GUIDING PRINCIPLES

The meeting agreed that any recommendations should respect the following principles:

- C **Non-punitive:** Measures must not penalize trafficked persons.
- C **Human rights:** Measures must be guided by and respectful of the human rights of trafficked persons.
- C **Economic rights:** Measures must be guided by and respectful of the economic rights of trafficked persons.
- C **Supportive services:** There is a need for supportive services for trafficked persons.
- C **Gender and race analysis:** A gender and race analysis should be brought to any consideration of trafficking issues.
- C **Inclusive of trafficked persons:** Discussions about trafficked persons should include trafficked persons themselves.

### RECOMMENDATIONS

#### I. PROTECTION

1. **Focus policy responses on protecting trafficked persons and persons vulnerable to trafficking (i.e. not just on criminalizing and prosecuting traffickers).**
2. **Provide opportunities for trafficked persons in Canada to regularize their status, as a measure of protection.**

*Suggestions:*

- a) Include “trafficked persons” in the *Immigration and Refugee Protection Act* definition of “person in need of protection”.
- b) Create a regulatory class allowing trafficked persons in Canada to apply for permanent residence.
- c) Include reference to situation as a trafficked person as one of the factors to be considered by immigration officers deciding on applications for humanitarian and compassionate (H&C) consideration.

*Note:* Trafficked persons would receive greatest protection through a measure in the Act, somewhat less through a regulatory measure, and least through H&C, which is a discretionary process.

**3. Provide immediate, short-term measures of protection to trafficked persons, in order to give them an opportunity to make longer-term decisions in security and as a bridge to any permanent protection.**

*Suggestions:*

- a) Create a temporary visa for trafficked persons in Canada.
- b) Provide to applicants to any of the measures listed in Recommendation 2 a stay of removal, access to the Interim Federal Health Program, a work permit and access to settlement services.
- c) Create safe houses/safe spaces where trafficked persons can go and authorities will agree not to arrest people. NGOs should run them and offer support for women while they figure out what to do with their lives and have time to articulate their desires. (Cf. Safe injection sites).

**4. Offer potential relocation/protection of identity.**

**5. Ensure that all separated children arriving in Canada or identified within Canada are assigned a guardian who would be responsible for advocating for their best interests.**

*Suggestion:*

- a) Advocate for the national standard of the age of protection to be a minimum of 18 years and 21 years for exceptional cases.

**6. Make available information that will help trafficked persons to protect their rights.**

*Suggestions:*

- a) Include information about health, labour rights and immigration laws.
- b) Develop fact sheets on immigration and employment rights (e.g. CLEO - Community Legal Education of Ontario - fact sheets).
- c) Make the information available in relevant languages.
- d) Have a hotline to give information.

**7. Strengthen measures to protect rights of all irrespective of status in Canada.**

*Suggestions:*

- a) Provide a complaints process that is non-conditional and penalty-free, through which persons could complain about labour or other forms of exploitation, without fear of the complaint exposing them to enforcement measures.
- b) Provide access to services (health, education, social services) for all.
- c) Increase protections of privacy (e.g. stopping school boards handing over data about students.)

- d) Increase access to legal aid.
- e) Encourage government to sign the Convention on the Rights of Migrant Workers and their Families.
- f) Decriminalize sex trade (NB this recommendation was controversial and there was no consensus. More acceptable to all was the suggestion that laws should not criminalize the prostitutes).

**8. Review and amend existing immigration programs to reduce vulnerabilities of temporary workers to exploitation.**

*Suggestions:*

- a) Review live-in caregiver program.
- b) Eliminate two-tiered immigration categories.
- c) Expand the rights of temporary or seasonal workers.

**II. RESEARCH, DATA COLLECTION, TRAINING**

**1. Conduct research on trafficking issues.**

*Suggestions:*

- a) Analyze current legislation with a view to identifying barriers to the protection of trafficked persons.
- b) Research different types of direct services designed specifically for trafficking in persons with a view to identifying best practices.
- c) Use quantitative and qualitative research approaches.
- d) Have national NGOs conduct research with universities and other relevant agencies.
- e) Build up local groups' capacity to do research on trafficking issues in their area (assisted by research guidelines).
- f) Have research grow out of network.
- g) Involve frontline workers and survivors.
- h) Federal or other agencies or foundations to put out a "Request For Proposals" on researching trafficking issues.
- i) Monitor economic interventions by Canadian interests that lead to displacement.

**2. Collect data on scope and scale of problem of trafficking in Canada.**

*Suggestions:*

- a) Initiate local and community based research in order to get a national picture.
- b) Involve NGOs and academics.
- c) Establish a national resource group that can pool available information in order to build a database on statistics on trafficking and in order to share and disseminate general and specific information to NGOs and front-line workers.

**3. Provide training on trafficking issues**

*Suggestions:*

- a) Develop a training model.
- b) Provide ongoing training to immigration and law enforcement officials, Foreign Affairs civil servants, customs officers, Foreign Embassy staff, etc.
- c) Use tools that already exist (IOM, UNHCR, Brussels Declaration).
- d) Ensure that training integrates a race, gender and labour/economic analysis.
- e) Ensure that training is designed and delivered with a significant contribution from NGOs and trafficked persons.
- f) Provide training for frontline workers (e.g. GAATW guidelines).

### **III. NETWORKING**

#### **1. Create a national network**

*Suggestions:*

- a) Assign the network the objectives of monitoring, advocacy, information-sharing, awareness-building and research.
- b) Focus the network on people without status (with trafficked persons considered within that framework).
- c) Limit membership of the network to NGOs, but liaise through the network with government.
- d) Ensure that the network is multi-sectorial. Include in the network regional groups, other groups and international organizations (e.g. labour groups, women's organizations, Justice, Citizenship and Immigration Canada, Foreign Affairs, faith groups, child protection groups)
- e) Learn from national network on homelessness.
- f) Build the network out of "working groups" at the city level, with city representatives reporting to the national body.
- g) Create a listserv.
- h) Create a website.

#### **2. Maintain ongoing collaboration with the federal interdepartmental working group on trafficking.**

*Suggestions:*

- a) Exchange information.
- b) Work together to recommend and effect changes to the Criminal Code on the issue of trafficking (with the goal of protecting rights of trafficked persons rather than criminalizing them).

#### **3. Open dialogue with private sector.**

*Suggestions:*



- a) Establish a group to discuss the parameters and opportunities leading to a dialogue with the private sector and enterprise.
- b) Focus the dialogue on the issue of trafficking as it relates to international and Canadian labour and trade standards, as well as human rights obligations.

**4. Hold another national meeting next year to launch a national strategy and to build on the national network.**

**IV. AWARENESS-RAISING AND ADVOCACY**

**1. Raise public awareness on the issue of trafficking.**

*Suggestions:*

- a) Develop a national campaign, involving a cross-sectorial range of partners.
- b) CCR to broadly and strategically circulate the report on this conference nationally and within CCR member organizations.
- c) Work with universities and educational institutions that have programmes of social studies and human development to include in their curriculum the issue of trafficking.

**2. Increase government attention to the issue of trafficking**

*Suggestions:*

- a) Promote engagement of various levels of government on the issue of trafficking.
- b) Advocate that trafficking be on the agenda of inter-governmental forums.
- c) Encourage local and provincial governments to acknowledge the issue and the effect of trafficking, and to make available the support services trafficked persons currently lack and require.
- d) Encourage the federal government to assume a leadership role by collaborating with the provincial and local levels of government.
- e) Create a federal/provincial/local taskforce to work with NGOs in order to organize and identify and allocate resources for each of the specific forums where trafficking issues intersect and impact on trafficked persons: law reform, social services, economic, health, education, immigration.

**3. That the CCR adopt a national statement on trafficking.**

**V. FUNDING**

**1. Provide funding for grassroots NGOs providing services**

## **APPENDIX A**

### **AN INTRODUCTION TO TRAFFICKING**

The following information was prepared by the Canadian Council for Refugees for our website at [www.trafficking.ca](http://www.trafficking.ca) and was distributed to participants at the local and national meetings of the trafficking project. Useful links and further information on trafficking can be found at [www.trafficking.ca](http://www.trafficking.ca).

### **ABOUT TRAFFICKING**

In recent years there has been a significant increase worldwide in discussion about the problem of trafficking. The abuses of the basic human rights of trafficked persons, who are mainly women and girls, arouse great concern. NGOs, governments, the United Nations and others have attempted to respond to the problem. However, there are many different opinions about what trafficking is, how widespread trafficking is, how to understand the problem and what needs to be done to respond to it and to address the growing restrictions against legal and safe migration that people around the world are facing.

### **WHAT IS TRAFFICKING**

“Trafficking” has been defined in various ways over the years and by different groups. Since 2000, a widely used definition is that of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (also known as the Palermo Protocol). According to this document, trafficking in persons is 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.

#### *Trafficking vs. Smuggling*

It is useful to distinguish between trafficking in persons and people smuggling. A person who is trafficked is kept under the control of the traffickers, whereas a migrant smuggler simply facilitates clandestine entry into a country.

#### *Some key elements of a definition of trafficking*

*Consent:* Trafficking is usually defined as requiring that those trafficked be unwilling, i.e. that they have been deceived or abducted by force. This is contrasted with smuggled persons, who are assumed to want entry into the other country. This distinction, however, is not a simple one, since many if not most migrants experience varying degrees of coercion and deception. Also individuals may knowingly accept a situation of exploitation, because it is the best option available to them, or may start by agreeing with a proposal and later become unwilling when they learn of the real situation. The issue of consent on its own therefore does not tell us whether a person has been trafficked or not.

*Forced labour:* Most definitions of trafficking include reference to some kind of forced labour. The traffickers’ purpose is to exploit the labour or services of those who are trafficked. According to the Palermo Protocol, exploitation includes “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.” Some groups consider any form of prostitution to be by definition exploitative, with the result that they consider large numbers of women to be trafficked. Others reject such an approach on the basis that it denies the limited agency available to migrant (and other) sex workers and assumes that other forms of labour exploitation are less abhorrent to women. There is often significant focus on sexual exploitation in discussions of trafficking, but trafficking might also include such things as sweatshop labour, domestic labour or selling drugs, work in restaurants, farms, or factories, etc.

*Migration:* While some definitions of trafficking include situations where the trafficked persons are still in their home community, the term “trafficking” is most often used to apply to persons who have moved or are forced from their homes. As the UN Special Rapporteur on Violence Against Women has pointed out “[t]he movement or transport of women is such as to place the victim in unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases trafficked women’s marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination by both traffickers, police officials, the courts, immigration officials, etc.”(*Report on trafficking in women, women’s migration and violence against women*, submitted in accordance with the Commission on Human Rights by Ms. Radhika Coomaraswamy, the Special Rapporteur on violence against women, its causes and consequences, 29 Feb 2000: p. 7)

## UNDERSTANDING THE CONTEXT OF THE PROBLEM

Clearly, there are serious human rights abuses occurring in any situation where women, children or men are forced or tricked into travelling to a place where they are coerced into an exploitative labour relationship. How the situation is understood will affect the solutions that seem most appropriate to address the human rights abuses.

### *Numbers of trafficked persons*

One question that comes up repeatedly in discussions of trafficking concerns the extent of trafficking. Estimates of the number of trafficked persons vary widely. The variation can be explained partly by the fact that, since trafficking involves numerous illegal activities, there are no official statistics available. However, the variation is also the consequence of widely differing interpretations of what it means to be trafficked. For example, those who consider all women who are brought to another country to work as prostitutes to be trafficked clearly come up with much larger numbers of trafficked persons than those accept that a woman can consent to work as a prostitute.

### *Global inequalities*

International migration, including “trafficking”, occurs in a context of global economic inequalities and a systematic failure to respect the basic human rights of a large part of the world’s population. Large numbers of people find themselves unable to protect and provide for themselves and their families in their own homes. At the same time, efforts by governments to restrict migration prevent most of the world (and especially women) from migrating legally. While migration controls are enforced, there remains in the countries of destination a demand for exploitable labour. Women and girls are particularly vulnerable to being caught in the middle of these conflicting pressures, because of gendered social, economic, cultural and

political systems.

This context leads to widespread human rights abuses of many of those people who seek to leave home or who live and work in situations of varying degrees of exploitation. This abuse and exploitation is, therefore, shaped not just by those people labelled as ‘traffickers’ but also by governments, employers and those within ‘receiving’ countries who accept discrimination against people on the basis of their nationality and immigration status.

### *Different interpretations of trafficking*

Some groups use trafficking as a framework to view the situation of poor migrants very broadly. This approach emphasizes the widely shared experiences of deception, coercion and exploitation (although they may be experienced in different degrees).

Others use trafficking to cover the situation of the much smaller group of migrants who do not consent to the exploitative situation they are in but who are forced to remain in it, usually by violence or threat of violence. This approach recognizes that some migrants are experiencing extreme forms of coercion.

Still others question whether it is useful to use the trafficking framework at all, on the grounds that it does not correspond to migrants’ own experiences and does not address the problems faced by the vast majority of undocumented migrants. They are concerned that by presenting migrants as victims of trafficking, the role of women as active agents is obscured and attention is not paid to the forces that make the migrants vulnerable to exploitation.

## **RESPONDING TO THE PROBLEM**

Measures chosen to respond to trafficking obviously depend on one’s analysis of the problem.

### *Law enforcement approach and its shortcomings*

Governments involved in negotiating the Palermo Protocol showed that they analyzed the problem as one of international crime and their solution was one of law enforcement (it is a Protocol to Convention against Transnational Organized Crime). Although the Protocol does include measures to protect trafficked persons, these are not made strict requirements and the focus is rather on criminalizing the traffickers.

People who traffic in human beings deserve to be brought to justice. However, an approach focusing on punitive measures against traffickers leaves aside the role other parties play in the violations of migrants’ rights. This includes the role of the state and its officials in restricting women’s movement across borders through restrictive and discriminatory immigration policies and the role of employers and those who accept the discrimination faced by migrants.

Another criticism of the law enforcement approach is that it functions as an extension of states’ efforts to curb migration. This view seems to be supported by the emphasis laid on measures of repression, while the rights of those trafficked are given a lower priority. In many anti-trafficking programs, the trafficked persons are sent home, even though the women often had compelling reasons to leave in the first place. Combating trafficking without addressing the need for women to be able to migrate in safety does not get to the root of the problem.

*Programs offering status to trafficked persons*

An alternative approach is to allow trafficked persons to regularize their status in the country to which they have been trafficked. Some countries, including the US, have such programs. However, where testifying against their traffickers is a condition of receiving status, trafficked persons may be unwilling because they fear that this would put themselves or their families at risk.

**THE PALERMO PROTOCOL**

The United Nations Convention Against Transnational Organized Crime and its two supplementary Protocols were signed by 120 states of 148 present in Palermo, Italy in December 2000. Over 80 countries signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Trafficking Protocol recognizes the need for a combined approach that integrates effective prevention of trafficking with the prosecution of traffickers and the protection of human rights and assistance to victims of trafficking.

This Protocol is the first international instrument that mentions the “buyers” who create the demand for prostitution. However, the definition of trafficking is controversial.

Over 140 NGOs participated in the negotiations leading to the event in Palermo. The NGO coalition worked to ensure that the Convention and its Protocols were consistent with the human rights principles expressed various international instruments such as the U.N. Refugee Convention, the Convention on the Rights of the Child, and the Convention on the Elimination of all forms of Discrimination Against Women.

Many NGOs have been highly critical of the protocol, notably because it addresses trafficking within the context of organized crime, rather than within the framework of migrants’ rights. The Protocol does not acknowledge the responsibility of states for creating the conditions within which trafficking flourishes. It frames anti-trafficking measures as migration control measures.

**THE PROBLEM IN CANADA**

Information about the problem of trafficking is inherently difficult to obtain. The situation of being trafficked makes trafficked persons particularly marginalized. Many people know a little about the reality of trafficked women and girls in Canada, but no one has a good idea of the extent of the problem.

When police or immigration officials uncover a situation of trafficking, the trafficked persons are not necessarily identified as victims of trafficking or offered protection. Instead, they may well be treated as criminals or “illegal immigrants”: arrested, detained and deported.

There is an urgent need to develop and put in place a legal, policy and administrative framework so that the rights and dignity of trafficked women and girls in Canada are respected.

*The US government's 2003 report on Trafficking in Persons: Canada.*

The US government's 2003 report on Trafficking in Persons (TIP) placed Canada in Tier two.<sup>1</sup> It means that, in the view of the US government, the Canadian government does not fully comply with the Act's minimum standards about prevention of trafficking but is making significant efforts to bring themselves into compliance with those standards.<sup>2</sup>

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<sup>1</sup> See the report at <http://www.state.gov/g/tip/rls/tiprpt/2003/>. The Department placed each of the countries included on the 2003 TIP Report into one of the three lists, described here as tiers, mandated by the Act. This placement is based on governments' efforts to combat trafficking. The Department first evaluated whether governments fully comply with the Act's minimum standards for the elimination of trafficking. Governments that do so were placed in Tier 1. For other governments, the Department reviewed whether their governments made significant efforts to bring themselves into compliance. Those countries making significant efforts were placed in Tier 2. Finally, those countries whose governments do not fully comply with the minimum standards and are not making significant efforts to bring themselves into compliance were placed in Tier 3.

<sup>2</sup> The "minimum standards for the elimination of trafficking" are summarized as follows. Governments should: Prohibit trafficking and punish acts of trafficking; prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, involving rape or kidnapping, or that causes a death); prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offense's heinous nature for the knowing commission of any act of trafficking; make serious and sustained efforts to eliminate trafficking.

## **APPENDIX B**

### **Resolution 1, Dec. 2001. TRAFFICKING IN WOMEN**

- WHEREAS: 1. Victims of trafficking in Canada are in need of services including advocacy;
2. CCR member organizations are not necessarily sensitized and responsive to these needs;

THEREFORE BE IT RESOLVED THAT the CCR call on its members to sensitize themselves to trafficking issues and consider adapting their services or their mandates, as appropriate, to respond to the needs of those who have been trafficked.

### **Resolution 4, Nov. 2003. CONTINUED WORK ON TRAFFICKING**

- WHEREAS: 1. CCR passed Resolution 24 in December 2001 and subsequently has held regional workshops and a national conference to explore the issues domestically;
2. The Conference identified data collection, education and awareness-raising as key priorities;

THEREFORE BE IT RESOLVED that the CCR:

1. Urge Canadian Heritage/Status of Women Canada to support the implementation and the recommendations from the National Conference on Trafficked Women and Children.
2. Urge to the Federal Inter-Departmental Working Group to include CCR in the discussions on trafficked persons.

### **Resolution 19, Nov. 2003. TRAFFICKING IN PERSONS – ACCESS TO LEGAL STATUS**

- WHEREAS: 1. Canada is a party to the Palermo Protocol;
2. CCR passed Resolution 24 in December 2001 and subsequently has held regional workshops and a national conference to explore the issues domestically;
3. It was identified that a serious barrier exists for trafficked persons, in particular women and children, seeking assistance due to lack of access to legal status in Canada;

## **APPENDIX B: CCR RESOLUTIONS**

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THEREFORE BE IT RESOLVED that the CCR:

1. Call on the Government of Canada to expand the definition of protected persons to include trafficked persons.
2. Call on the Minister of Citizenship and Immigration to urgently develop a regulatory class.
3. Call on CIC to give trafficked persons special consideration under H&C, and to accompany this with a regulatory stay.
4. Insist that these measures not be tied to providing testimony and not be punitive.
5. Call on CIC to give trafficked persons access to Interim Federal Health (IFH) benefits, work permits and legal aid.
6. Call on the IRB to address the special circumstances of trafficked persons in the gender guidelines.
7. Call on the federal and provincial governments to ensure that separated children have guardians assigned to them.

Resolution 20, Nov. 2003.     **TRAFFICKING IN WOMEN AND CHILDREN – URGENT PROTECTION**

- WHEREAS: 1.           The CCR passed Resolution 24 in December 2001 and subsequently has held regional workshops and a national conference to explore the issues domestically;
2.           The Conference identified urgent protection for trafficked women and children as a key priority;

THEREFORE BE IT RESOLVED that the CCR:

1. Request CIC to develop an immediate protection mechanism leading to permanent residence in Canada to protect trafficked women and children and that the necessary resources and support structures be put in place to sustain the program;
2. Urge that the Urgent Protection Program be expanded to include trafficked persons and that their immediate family grouping be kept intact since family members left behind may be at risk.



## APPENDIX C

The following presentations were made at the national meeting, 19 November 2003, in Winnipeg.

### **Mike Gray, IOM Regional Representative, New York office**

Good morning. As you may know, I'm Mike Gray from the International Organization for Migration. Since September, I'm the Chief of Mission at IOM New York in charge of refugee operations but trafficking in women and girls is an issue close to my heart. During my previous assignment in Vietnam, we undertook a number of counter-trafficking projects both in Vietnam and in the Mekong subregion and we helped the Vietnam Womens Union develop their National Plan of Action Against Trafficking of Women and Children. It was often challenging, confusing and yet rewarding trying to come to grips with the causes and consequences of trafficking and I thank the Canadian Council for Refugees for allowing me once again to grapple with the complexities of trafficking in persons.

#### **175 million migrants worldwide**

- Asylum seekers
- Economic migrants
- Refugees
- Irregular migrants
- Migrant workers, etc....

In today's globalized world, literally tens of millions of people are on the move. Some (UN Population Division in 2002) have estimated that there are over 175 international migrants or about one in every 35 persons alive today. I understand that this figure includes refugees and displaced persons but does not capture irregular migrants and so may not reflect completely the dimensions and scale of contemporary migration. Nonetheless, I offer this number simply to illustrate that a great many people are moving, as asylum seekers, economic migrants, refugees, migrant workers, irregular migrants, etc...Some persons move by choice while others are forced to move. Some movements are legal while others are illegal. And within and among these various flows of persons, there may be victims of trafficking.

So the challenge is, how do we better identify trafficked and smuggled persons from among these various groups of mobile populations?

First we need to differentiate between two phenomena: smuggling and trafficking.

Let's look at smuggling first because conceptually it is easier to define, although in practice it is just as challenging to address.

Smuggling is viewed as a crime against the State. It occurs when someone seeks help from a facilitator to cross a border. The movement is illegal in that the migrant crosses the border without complying with the necessary requirements for legal entry into the receiving state. Common notions of smuggling are that the migrant chooses to be smuggled, pays the smuggler

up front to facilitate the illegal entry and the relationship between the smuggler and the smugglee ends at the border crossing. Smuggled migrants, particularly those who have paid in advance, may be extremely vulnerable to abuse or harm, as the smuggler may not have any vested interest in the health, safety or even actual arrival of those who choose to use their services.

So, putting smuggling aside, how do we recognize / identify a trafficking victim from among all of the various categories of migrants on our earlier slide? And more importantly who identifies them?

### **Three perspectives**

The law

The criminal

The victim

When we think about identifying a trafficked person, we can look at the issue from three perspectives. The Law, The Criminal, or the Victim.

First, it is important to have a good understanding of international law, and how international law defines trafficking. I am going to use the definition of trafficking from the UN Convention Against Transnational Organized Crime as its trafficking definition is the international benchmark, and when I say this I mean it sets the floor of standards not the ceiling.

### **Trafficking Defined**

3(A) '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.

3(B) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph 3A of this article shall be irrelevant where any of the means set forth in subparagraph 3A have been used.

3(C) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (A) of this article.

3(D) 'Child' shall mean any person under the age of eighteen years.

We have already talked about smuggling being viewed as a crime against the State. Trafficking, on the other hand, is a crime against a person. While there are similarities between the two

crimes, there are distinct differences which comprise part of the control mechanism over a trafficked victim. For example, trafficked victims are usually elaborately recruited and accompanied during their movement and payment for their movement is usually arranged for after the movement rather than upfront.

Three core elements to keep in mind when trying to identify a trafficked person are: 1) that there is some kind of movement and that this movement can be either within or across borders, 2) that some form of coercion or deception is involved, 3) and that these factors lead the person into a situation of exploitation or abuse from which they cannot remove themselves. I want to stress boiling the definition down into these very simple terms when you reach out to communities and partners as you will see with this next slide – that all 18 lines of the protocol definition, not only make one want to fall asleep, but add to that the challenges of translating the concept to victims and counterparts.

That said, it is important to know and be aware of the actual definition. Note the three inter-related, inter-dependent component parts to the definition. These parts are activity, means and purpose. Keep in mind that no one is ever charged with breaching the protocol. The protocol only acts as a guide or model for States as they draft or re-draft their national legislation. And different states adopt the protocol model to differing degrees.

**Common elements to trafficking**

- movement
- coercion or deception
- exploitation, servile conditions, abuse

Again, just to recap, on what trafficking is and what to look for when working with staff, networks, health partners like gynecologists, clergy in parishes and others who may be part of your identifying network. Keep things simple – keep them looking for common elements: movement, coercion or deception, and exploitation or abuse.

**Three perspectives**

- The law
- The criminal
- The victim

Now, when we move from the theoretical definition of the protocol to the practical task of trying to identify trafficking victims, one method that may be helpful to distinguish between a trafficker and a smuggler is to consider the crime from the perspective of the criminal and pose the question, “What does the criminal intend to do with the victim?”

Law enforcement officials are in a unique position to ask questions that can contribute to the identification of trafficking victims by looking at the intentions of the criminal or criminal network. Sometimes this can be done by investigating money laundering. For while trafficking may be “underground,” the financial benefits derived from the exploitation of trafficked victims are often more visible. Trafficking is about massive profits, and it is a crime which generates

## APPENDIX C: PRESENTATIONS

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cash on a daily basis. So law enforcement has other concrete angles from which they can approach the issue, outside of or in addition to, an abuse of human rights framework.

It is also important to note, in some countries, law enforcement has moved toward the use of specialists or special squads to deal with trafficking (Ukraine), and one recommendation coming from the law enforcement community itself is the need for a multi-disciplinary task force approach which combines the police, the financial investigators, the prosecutor and, as a case is being worked, front-line assistance communities into one group.

However, often the best way of identifying and working with trafficking victims is through NGOs or organizations with a victim-centered approach such as social service groups, faith-based organizations and medical specialists who work among communities and may have contact with trafficked victims. I say this because victims often have acute immediate needs and problems. They may have been physically and psychologically abused and often feel distrust and hostility. They need immediate specialist support, treatment and independent legal counselling. While the mental trauma is rarely discussed, victims often suffer from post-traumatic stress disorder, and this can affect their initial interaction with enforcement authorities and others following their removal from a trafficked situation. IOM feels that the best model for identifying and assisting trafficking victims is a joint law enforcement-NGO approach and partnership, in which NGO psychologists are employed from the very first moments of contact to help both the victim and the persons providing assistance.

I can't stress this partnership aspect enough because law enforcement has the legal power to facilitate the rescue of trafficking victims.

It is important to realize that common reactions of abused persons may not appear as normal behaviour. Victims may clam up and be stoic, they may have difficulty paying attention, they can have flashbacks that are set off by color or smell, and it is important for all involved to know and understand this. Interviewing trafficking victims is a long process for all parties, not just the shelter provider. Identifying the victim cannot be done with one or two pieces of information, a holistic approach looking at several factors is needed. Keep in mind that many victims do not see or identify themselves as victims. Also, the language we use to describe trafficking is not necessarily the language the victim will use in telling us what happened. Many victims will be trying to hold onto their last shred of dignity and will not see themselves as victims immediately or they may be trying to protect other persons.

Who can be a trafficking victim? It varies from region to region. Note that while the protocol title specifically mentions women and children the protocol language itself is gender neutral. There is a tendency to think that trafficking victims are predominantly young females, but this is a result of investigations and media reports on trafficking into the sex industry. While true for many flows, this is a dangerous stereotype, as because of it, we tend to overlook victims in other industries. It is clear that women are often the primary targets for certain types of trafficking. But, for example in Thailand, a country most would associate with trafficking of women and children into sex work or begging, there is also evidence that boys are trafficked into the Thai fishing industry. Burmese young men are often used on Thai fishing boats, and there is evidence to show they have been trafficked there. When they collapse from exhaustion

or become weak, they are shot and shoved overboard. This was a flow not recognized initially, but bodies kept washing up on shore, and so investigators took a closer look. So when you hear people make broad sweeping statements about trafficking, including myself, take care. Trafficking into sex work is highly visible because the trafficker must reach a large client base. There are flows of trafficking into other industries such as mining, textile and clothing factories, canning and assembly plants or technical equipment assembly factories which may go unnoticed if we limit our attention to trafficking for the sex trade.

What does IOM do? IOM takes a multi-pronged approach to the subject. This programming falls into a globally repeated mantra known to trafficking advocates as the 3Ps: prevention, protection (and integration) and prosecution.

At the end of the day; however, what we are really discussing is not about law or conventions or particular methodologies, we are talking about vulnerable persons who are subject to abuse and exploitation. We need to do all we can to prevent trafficking, protect those who have fallen victim to it and prosecute those responsible for what is a reprehensible crime. I wish you good luck with your work. Thanks.

**“Limitations of Recent Anti-Trafficking Policies and Initiatives”**

**Dr. Annalee Lepp, University of Victoria (Women’s Studies), co-founder of Global Alliance Against Trafficking in Women GAATW (Canada)**

First, I wish to thank the CCR organizing committee for inviting me to speak at this important national meeting. From the summary that emerged from the regional meetings, it is clear that there continues to be much work to be done in Canada, in terms of policymaking and education at all levels.

What I wish to highlight today is **some** of the concerns that have been raised in various quarters internationally and those that emerged from GAATW Canada’s research and crisis intervention work beginning in 1997 about recent policy initiatives designed to address trafficking in persons especially in women. I will also consider what implications these initiatives have had on transnational migration - whether the persons involved in cross-border movements are classified as trafficked, smuggled, or illegal. While not denying that coercion, deception, forced labour practices, and other human rights violations occur in cross-border movements and in various labour sites, from the standpoint of those affected, anti-trafficking policies and strategies appear to be doing more harm than good.

A growing number of international studies have shown that transnational migration is a complex phenomenon involving multiple patterns, causes, and experiences. However, particularly since the late 1990s, discourses and policies on transnational migration and especially women’s labour migration have focused largely on the concept of trafficking in persons.

Within this context, various anti-trafficking policies have been initiated at the international, regional, and national levels. The most relevant to the Canadian context are: a) the UN Trafficking Protocol

signed by Canada in 2000; and b) the criminal sanctions and other provisions pertaining to smuggling and trafficking in persons included in Canada's *Immigration and Refugee Protection Act*.

As I and others have argued elsewhere, there are some fairly serious limitations to these policies, many of which may be familiar to you.

### a) **The UN Trafficking Protocol**

With respect to the UN Trafficking Protocol, there were two key areas of contention during the two years of negotiation of this international treaty. These had significant consequences for how the issue of trafficking in persons and responses to it were framed.

First, when it came to formulating the first international definition of trafficking in persons, one focus of protracted debate (a year, in fact) revolved around whether “all adult prostitution, whether voluntary or forced” should be classified as trafficking. This position, strongly held by some national delegates (such as Belgium, the Philippines, the Vatican) and NGOs, is premised on the notion that “trafficking and sexual exploitation are intrinsically linked” and that “the system of prostitution itself is the abuse” and a “violation of women’s human rights.”<sup>3</sup>

In the end, a compromise was reached, but if read carefully, the definition does foreground prostitution and sexual exploitation among the sites of trafficking. This has led to the concern that, as under previous conventions, there is the tendency to conflate trafficking and prostitution. As a consequence, trafficking into other labour sites – such as the agricultural sector, factory work, domestic service, begging, etc. - is often ignored. In addition, targeting trafficking for prostitution has become the principal agenda of anti-trafficking laws, policies, and campaigns, when in fact, not all trafficked women are sex workers and not all sex workers have been trafficked.

The second area of contention that emerged – this time between government delegates and human rights activists – is that, despite the apparent equitable attention to the aims of prevention, prosecution, and protection, the UN Trafficking Protocol is primarily a law enforcement tool designed to combat organized crime and to control national borders, reflecting the concerns of destination countries and especially those of the North. In other words, it contains strong law enforcement measures [in such areas as criminalization (Article 5), “border measures” (Article 11), “security and control of documents” (Article 12), and “information exchange and training” (Article 10)], which are all defined as mandatory state obligations.

The articles pertaining to the protection and assistance of those classified as trafficked persons, however, use discretionary language and they largely apply to those persons who are willing to act as witnesses in criminal proceedings against traffickers. Here, government delegates were virtually unanimous in their opposition to the adoption of mandatory language in these articles. In this sense, the Protocol cannot be understood as a human rights instrument; the lives, needs, and interests of those who fall under the definition of trafficked persons are clearly secondary.

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<sup>3</sup> Janice G. Raymond, “Guide to the New UN Trafficking Protocol,” and CATW, “Victory in Vienna,” <http://www.uri.edu/artsci/wms/hughes/catw/tovcv.htm>

Although Ann Jordan, from the Human Rights Law Group, is more optimistic about states assuming responsibilities for ‘trafficked persons’,<sup>4</sup> it does appear that there is nothing to prevent signatory governments, like Canada, from continuing its previous practices of arresting, detaining, and/or deporting those identified as trafficked persons, or to oblige them to implement policies extending protection, assistance, and right to asylum.

**b) Canada’s *Immigration and Refugee Protection Act***

As a country of destination and transit, Canada has thus far not developed a comprehensive policy on trafficking similar to, for example, the US’s *Victims of Trafficking and Violence Protection Act of 2000*.

Its main policy initiative, in keeping with its obligations under the UN Trafficking Protocol, has been the introduction of criminal sanctions and other provisions pertaining to trafficking and smuggling in the *Immigration and Refugee Protection Act*, which went into effect in 2002. This legislation too has raised a number of concerns.

In effect, the Act not only contains provisions for restricting permanent immigration, it also includes measures for more vigilant border surveillance, harsh penalties for punishing smugglers and traffickers (up to a fine of \$1 million and/or life imprisonment) as well as extended grounds for and enhanced powers of detention and deportation. Thus, in an effort to protect Canadian borders against organized crime and uncontrolled migration (recall the nationalistic and racist hysteria that erupted in response to the arrival of about 600 Chinese nationals on the shores of B.C. in the summer of 1999), the Act criminalizes all forms of illegal entry into the country.

In addition, while the protection of those classified as trafficked persons and their right to permanent residency, refugee status, or stay of deportation proceedings are presumably addressed under other sections of the Act (such as those pertaining to Humanitarian and Compassionate Considerations, Convention Refugee Status, Pre-Removal Risk Assessment, as well as the Gender Persecution Guidelines produced by the Immigration and Refugee Board in 1996), these provisions are highly discretionary. Otherwise, the Act contains no specific mention of or specific provisions for extending protection and assistance to trafficked persons.

Informal conversations earlier this year with various departments involved in the Interdepartmental Working Group on Trafficking in Women, which was established to coordinate national efforts in dealing with the issue and which since the fall of 2002 is being chaired by DFAIT’s International Crime and Terrorism Division, indicated that the development of further trafficking legislation is not on the immediate agenda.

**c) General Issues**

Beyond the limitations of these specific policy initiatives, what are some of the more general problems identified with respect to the anti-trafficking framework, especially as it relates to the broader phenomenon of transnational migration?

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<sup>4</sup> Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (Washington: International Human Rights Law Group, 2002).

## APPENDIX C: PRESENTATIONS

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According to the IOM, in the year 2000, over 150 million people were involved in international migration and it is expected that this figure will double by the end of the decade.

Studies have also emphasized that a number of factors contribute to the cross-border movement of people and the feminization of migration, especially from countries of the South, Russia, and Eastern Europe to countries of the North. These include, first and foremost, the accelerating and highly destructive processes of globalization (with migration being described as the ‘other’ side of globalization and an integral aspect of it) and the displacement caused by civil and military conflicts in various areas of the world.

In addition, given the unprecedented demand for the cheap labor of ‘Third World’ women, they have come to assume a central role in their families as wage earners. Given the demand for their sexual, reproductive, and domestic services in informal and invisible sectors of the economy in countries of the North, like Canada, women are seeking work or marriage abroad in growing numbers.

In interviews conducted with Thai migrant sex workers in Toronto and with women who migrated from Russia for the purposes of marriage in 1999-2000,<sup>5</sup> economic factors were identified as the **primary reason** for their decision to migrate. These included the desire to mitigate situations of poverty and family indebtedness, secure elevated earnings and long-term financial security, as well as send money home to support and better the lives of their families.

Although the right of all persons, including women, to freedom of movement and mobility is a fundamental one as is their right to earn a livelihood, the governments of some ‘sending’ countries, such as Nepal, have responded to the issue of trafficking by implementing strategies to curb women’s migration in the name of protecting them from potential abuse and exploitation. Such a conflation of trafficking with migration, as some critics have pointed out, reinforces the notion that women need to stay within their own national borders and preferably under the constant protection of their male guardians and the state.

In Thailand, as GAATW research indicates, the Department of Public Welfare has attempted to discourage female (but not male) migration, by warning women and providing information about potential abuses. This policy is based on the assumption that the problem of trafficking in women will be solved by reducing or stopping the flow of female migration, without considering the root causes of migration, such as the absence of viable employment and the need to earn an income for their families. It also does not take into account that controlling or hindering women’s right to migrate does not prevent or curb the reliance on third-parties and illicit channels to facilitate migration, but merely drives these activities further underground.

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<sup>5</sup> See Noulmook Sutdhibhasilp and Kara Gillies, “Migrant Workers and Human Rights Violations,” and Annalee Lepp and Narda Nelson, “Migration and the International Marriage Market,” in GAATW Canada, *Transnational Migration, Trafficking in Women, and Human Rights: The Canadian Dimension* (Victoria, 2002).



In countries of the North, on the other hand, and despite the reliance of certain sectors of the economy on the labour of undocumented migrants (the recent Wal-Mart scandal raised this very question in the United States), the closing of safe, accessible, and legitimate forms of migration and the imposition of stricter border controls have a similar effect. Under globalization, capital can move freely; people cannot. Hence the reliance on illicit channels.

For instance, the migrant sex workers interviewed in Toronto indicated that women who wish to or need to migrate rely on various parties, including family, acquaintances, or returnees to facilitate their search for work overseas or some respond to advertisements for jobs abroad published in local newspapers. In the process, they are often put into contact with or are approached by agents who arrange for transportation, necessary travel documents, and employment in cities like Toronto and Vancouver.

Based on the information supplied by agents, some women were aware of the kind of work they are undertaking and the conditions of their verbal contracts (eg. the amount of their debt); others had knowledge of the type of work, but were not given accurate information about the conditions (hours, type of lodging available, amount of their debt, and the assessment of their pay during the debt repayment period); none of the women were deceived outright, but other Canadian studies suggest that this is the experience of some migrant sex workers and exotic dancers.

However, because of their status as undocumented workers and the criminalization of sex work, coupled with language barriers and the absence of documents, the women had limited access to medical services and, given these factors and the desire to send money home to their families, they did not consider pursuing legal action against employers for contract violations or abusive labour practices.

Thus, even though the Canadian media often promotes the image of the quintessential ‘trafficking victim’ as ‘a young Asian woman’ sold by family members to organized crime gangs or lured by them, transported forcibly across national borders, and sold into ‘sexual slavery’, our research and other studies indicate that this picture does not capture the complexities of women’s own migratory agendas or their experiences.

In fact, given that the reality of migrant sex workers’ experiences, for example, does not match representations of either complete coercion or freedom of choice,<sup>6</sup> prevalent conceptions of who constitutes a ‘trafficking victim’ have often been used against migrant workers. Any form of agency in the labour migration process is interpreted as complicity, thereby justifying their criminalization by state authorities.

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<sup>6</sup> See Deborah Brock, Kara Gillies, and Mook Sutdhibhasilp, “Migrant Sex Work: A Roundtable Analysis,” *Canadian Woman Studies* 20, 2 (Summer 2000): 88.

## APPENDIX C: PRESENTATIONS

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It is mainly for this reason that there have been calls for eliminating the trafficking framework and developing strategies, which focus on addressing the human rights violations and abuses perpetuated against all economic migrants and on the promotion of their social and labour rights.<sup>7</sup>

Finally, it is in the criminalization of migrant sex workers in particular and often in the name of protecting women, that the limitations of anti-trafficking discourses and policies become most evident.

Beginning in September 1997, various enforcement agencies, including police and immigration, have conducted raids on massage parlours, strip clubs, and apartment-style brothel establishments in Toronto and Vancouver (earlier this month, similar raids were conducted in Calgary).

Generating considerable media attention, police identified the operations they were shutting down in Toronto and Vancouver as examples of the trafficking of Russian, East European, and especially Asian women into Canada. In the media, there has been a strong racialized focus on the involvement of Asian crime gangs in what has been described as the “international trade in women” by “sex slavery rings.” As Noulmook Sutdhibhasilp and Kara Gillies have noted, the “subtext of such news articles is that ‘sex slavery’ is an insidious Third World problem, threatening the perceived law, order and moral conventions of mainstream Canada.”<sup>8</sup>

The police generally justified the raids on the grounds that they were fighting organized crime’s involvement in illegal migration and ‘rescuing’ the women from ‘forced sexual servitude’. What was excluded from the reports, however, was an adequate explanation for why the women were arrested, charged with prostitution and immigration offences, and in some cases, deported, despite their depiction as ‘victims’ of organized crime.

Thanks to the rigorous efforts of Canadian law enforcement agencies who reportedly “conducted over 700 arrests for trafficking-related crimes” in Toronto alone in 2000 and despite the absence of specific anti-trafficking legislation at the time, Canada was rewarded tier one status in the U.S. State Department’s “Trafficking in Persons Report, 2001.” What was unclear in the above statement was who precisely was arrested. Were Toronto police actually able to apprehend 700 ‘traffickers’ within the span of one year? Unless the prosecution of these hundreds of ‘traffickers’ was conducted without media attention or public knowledge, this appears to be highly unlikely.

What is known is that, according to media statistics, the actual success of law enforcement in prosecuting the so-called ringleaders has been limited. Between 1997 and 2002, police raids of various establishments in Toronto and Vancouver lead to over 1,100 arrests and to 14 convictions; the vast majority of those arrested have been the women themselves.

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<sup>7</sup> See, for example, Brock, Gillies and Sutdhibhasilp, “Migrant Sex Work,” and Nandita Sharma, “Travel Agency: A Critique of Anti-Trafficking Campaigns” (July 2003), [www.Globalhawaii.org/PDF/traffickpapers/Sharma.pdf](http://www.Globalhawaii.org/PDF/traffickpapers/Sharma.pdf)

<sup>8</sup> Sutdhibhasilp and Gillies, “Migrant Workers and Human Rights Violations.”

As was documented by the Toronto Network Against Trafficking in Women and GAATW Canada crisis intervention workers, the Thai migrant sex workers arrested in Toronto in 1997 and 1998 underwent fairly protracted legal processes after being charged with prostitution and immigration violations. Many of the women were detained for several months until their identities and nationalities could be officially verified and/or they could borrow the necessary bail and bond money. In fact, the women indicated that during this process, the small network of employers, co-workers, and clients constituted the only support system they had in Canada.<sup>9</sup>

The more recent arrest of 11 Malaysian women in Vancouver in October 2001 seemed to signal a desire on the part of state authorities to bypass potentially lengthy and costly legal proceedings and the possible interference of NGOs, unless the women directly served state interests. In this case, the women were arrested and deported within 72 hours when the ringleaders disappeared and the women expressed an unwillingness to assist in their arrest and prosecution.

Under the discretionary human rights provisions of the UN Trafficking Protocol and under the ‘tough’ measures encoded in Canada’s Immigration Act, there is nothing to prevent Canadian officials from arresting and summarily deporting those women identified as trafficked. In fact, Canada maintained its tier one status in the US’s 2002 trafficking report. It was only in the 2003 ranking that Canada dropped to tier two, the rationale being that Canadian officials had failed to secure convictions “due in part to the deportation of witnesses” and had made “no specific efforts to work with and rehabilitate trafficking victims” as “often they are deported.”<sup>10</sup> It will be interesting to see what the fate of the migrant sex workers recently arrested in Calgary will be.

In the final analysis, despite their lack of success in identifying and prosecuting so-called traffickers, law enforcement and immigration officials continue to maintain that restrictive immigration policies and border controls, and more extensive police investigations and raids will curb, control or deter trafficking, by fighting organized crime’s involvement in illegal migration.

The evidence to the contrary is substantial – making borders more impermeable does not reduce trafficking, smuggling, or migration, but merely drives these processes further underground, forces women to rely on illicit channels and live illegal lives, intensifies the potential violence and abuse to which women are subjected, and increases the profits that can be derived from facilitating cross-border movement and forced labour and other exploitative practices.

In other words, while ‘sending countries’ are generally blamed for producing smugglers, traffickers, and ‘illegal’ migrants, it is the state policies and practices in destination countries like Canada (including immigration policies and the government’s enthusiastic support for globalization and trade liberalization) that are deeply implicated in creating and fueling dangerous and illicit cross-

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<sup>9</sup> Toronto Network Against Trafficking in Women, et. al., *Trafficking in Women Including Thai Migrant Sex Workers in Canada* (Status of Women Canada, 2000); Sutdhibasilp and Gillies, “Migrant Workers and Human Rights Violations.”

<sup>10</sup> See US Department of State, “Trafficking in Persons Report, June 2002” and “Trafficking in Persons Report, June 2003.”

border movements. There is also little sense of responsibility for the human consequences of such migratory regimes.

In addition to their tough law and order stance, criminal justice and immigration authorities also invoke the language of benevolence and protection when justifying the arrest, detention, and deportation of migrant sex workers. They maintain that at the very least they have ‘rescued’ the women from their captors – whether or not the women regard returning to their home countries as a desired outcome. What such arguments overlook is that the socio-economic, political, and/or familial conditions that may have precipitated the initial decision to migrate will not have changed upon the women’s return. It also does not take into account the possible repercussions against those women who continue to owe debts. As GAATW research on returnees in Thailand suggests, many women may find themselves in a position in which they are propelled or forced to reenter the migratory process.

In the end, then, cast simultaneously as victims of organized crime, as criminals in violation of immigration and prostitution laws, and as potential but often uncooperative pawns of the criminal justice system, it is evident that migrant sex workers are one main group that is bearing the brunt of the Canadian government’s protectionist, anti-immigration, and law and order agenda.

At this point, it doesn’t seem to matter if the women are classified as trafficked, smuggled or illegal migrants, as victims or as criminals, their fate is largely the same. It is for this very reason that meetings such as this one and the development of national strategies particularly at the NGO level are so important.



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