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Introduction. Human trafficking¹ across the Canada—U.S. border is receiving more attention and concern, both in the media and by public officials. There are many assumptions about the state of trafficking, yet little data exists on who is trafficked, how many people are involved, or the origin and destination of trafficking flows. This lack of information makes it challenging to create evidence-based policies. Additionally, although some federal and regional networks of collaboration are well-established, there are key differences in how trafficking in persons (TIP) is legally defined in the U.S. and Canada, which inhibits accurate data collection and the effectiveness of cross-border collaboration against TIP. This Border Policy Brief highlights some of the challenges associated with the definitions and data on TIP, as well as the value of increasing cross-border collaboration against TIP.

Different Policy Frameworks. There are some key differences shaping the policies of the U.S. and Canada to combat TIP. Both Canada and the U.S. loosely base their definition of human trafficking on the Palermo Protocol,² but the definitions are not identical. As exemplified by the Northern Border Strategy, the U.S. considers TIP to be a security issue that interlocks with terrorism and drug trafficking, while Canada defines trafficking as an issue of safety and crime. In addition, Canada has rejected the notion that anyone can consent to their own exploitation, and defines all prostitution as exploitation, which means that prostitution itself has the potential to be categorized as trafficking.³ This contrasts strongly with U.S. laws, which consider sex workers to be fully responsible for their actions. Finally, the U.S. places a much heavier emphasis on labor trafficking while Canada has recently focused more on trafficking of Indigenous women. Because Canada and the U.S. have different definitions of human trafficking and different strategies for combating it, they report two disparate, myopic data sets, making it very difficult to compare the state of TIP between the two countries, as well as the true extent of cross-border TIP.

Data Challenges. Of the many barriers to creating effective policy to combat human trafficking, collecting accurate data presents the greatest challenge. This is due to a variety of factors, primarily related to the difficulty in identifying victims, assessing the extent of trafficking, as well as discrepancies in the reporting methods used.⁴ These elements and many others make collecting data difficult or impossible, and the data that does exist is often questionable. Problems extend even deeper than inter-country reporting: in 2014, the U.S. federal government identified a lack of consistency in the definition of trafficking within the U.S. itself, as individual states have different legislation.⁵ The Royal Canadian Mounted Police (RCMP) has also reported that estimates of human trafficking in Canada were unreliable and accidentally included smuggled persons.⁶ Non-governmental organizations (NGOs) may also have different definitions of TIP. This is compounded by the fact that NGOs have an incentive to inflate TIP numbers (to maintain funding), while governments have an incentive to deflate numbers (to show policy effectiveness). Because there is no universal standard, data collection methods vary substantially and statistics on human trafficking have little value, making it almost impossible to quantify the problem.

Once trafficking has been defined, it may still be difficult to distinguish it from other crimes. For example, while there are generally agreed upon distinctions between those who are trafficked and those who willingly engage in prostitution, both are advertised in the same places and are functionally part of the same market, indistinguishable to the consumer. Many cases of human trafficking in Canada deal with trafficker ‘boyfriends’ who use subtle techniques rather than outright force, making it difficult to prove if the victim feels unsafe or has

been coerced. Even if a prosecutor recognizes a case as human trafficking, they may opt for a related offense because ‘exploitation’ and ‘fear for one’s own safety’ are difficult to prove or measure.⁷ This is especially true in cases of cross-border trafficking because identifying victims is difficult unless they have already reached their final destination; while the victims are in transit there is little evidence of their exploitation.⁸

Statistics Canada’s data on TIP only includes information on cases where traffickers were prosecuted, omitting cases where a prosecutor opts for smuggling or prostitution instead. Additionally, these prosecutions rely heavily on testimony by the victims, yet victims are often too afraid to provide it. According to INTERPOL, less than 0.5% of victims worldwide agree to testify and most human trafficking tips given to police are insufficient for police to commit to a resource-intensive investigation, meaning many cases go uninvestigated, unprosecuted, and uncounted.⁹

In addition to these constraints, human trafficking is also inherently hidden as traffickers have strong financial incentives to conceal their actions and their victims. Once law enforcement becomes suspicious and investigates, traffickers will relocate to new platforms, or will otherwise alter their methods to escape detection. One recent development is a shift from thinly veiled trafficking enterprises like escort services and massage parlors to harder-to-detect microbrothels in apartment complexes.¹⁰ Another recent shift is the use of the internet in trafficking ventures. The human trafficking landscape is constantly evolving in these ways, deepening the challenge of evaluating the state of human trafficking in the U.S. and Canada.

Conclusion. Without stronger quantitative data it will be nearly impossible to gauge the extent or nature of TIP, which constrains policy responses. This is an issue recognized in both Canada and the U.S. The Canadian Centre to End Human Trafficking is pushing for a national data collection mechanism that reaches beyond prosecutions, while the Washington Statewide Coordinating Committee on the Commercial Sexual Exploitation of Children has prioritized improving data collection.¹¹ A bilaterally agreed upon means of improving the uniformity of data would not only facilitate cross-border collaboration, but would also aid domestic efforts by allowing more systematic and comparable research.

There is immense opportunity and potential for both Canada and the U.S. to learn from each other’s approaches to combating TIP and to strengthen both domestic and cross-border partnerships. For example, the U.S. can learn from Canada’s focus on Indigenous communities by working more closely with Tribes on human trafficking prevention. As Temporary Protected Status for Haitians and El Salvadorians expires in the U.S., irregular entries into Canada are likely to continue, expanding the potential for increased human trafficking across the Canada—U.S. border. Better alignment of anti-TIP policies will not only help each country prepare for such policy shifts, but will also help to combat the ‘leaky dike’ effect of trafficking flows shifting from one area to another, rather than disappearing.

Endnotes

1. While ‘human trafficking’ and ‘migrant smuggling’ are often used interchangeably, victims of trafficking are being exploited and are therefore victims of crime, whereas smuggled migrants have paid a smuggler to facilitate their illicit move across borders. Source: U.S. Department of State: <https://www.state.gov/j/tip/rls/fs/2017/272005.htm>.
2. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, otherwise known as the ‘Palermo Protocol,’ was the first legally binding international document to define or discuss trafficking in persons and is the basis of all international law on human trafficking. Source: United Nations Office on Drugs and Crime: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>
3. In 2014, Canada passed the Protection of Communities and Exploited Persons Act, which formalizes the paradigm that prostituted women are not complicit in their own exploitation and shifts punishment onto pimps and johns.
4. Source: Canada’s Standing Committee on the Status of Women’s report Turning Outrage into Action: <http://www.ourcommons.ca/DocumentViewer/en/39-1/FEWO/report-12>.
5. Source: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States (2014): <https://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>
6. Source: The Royal Canadian Mounted Police, ‘Human Trafficking in Canada’ (2010): http://hopeforthesold.com/wp-content/uploads/2011/04/SECLUSION_Unclassified_EN-Final-version.pdf.
7. The RCMP Operational Police Officer’s Handbook attempts to raise awareness of this, stating that collateral crimes like kidnapping, assault and extortion are more familiar to the courts and may be easier to prove than TIP.
8. Source: U.S. Department of State: <https://www.state.gov/j/tip/rls/fs/2017/272005.htm>.
9. See endnote 6.
10. Source: K5 News (9/2/2017): <https://www.king5.com/article/news/local/bellevue/over-100-arrested-in-bellevue-prostitution-sting/470230191>.
11. Source: Washington State Office of the Attorney General (2014): <http://www.atg.wa.gov/news/news-releases/statewide-committee-commercial-sexual-exploitation-children-sends-2014-report>.

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