

3-2006

Falling Short of the Mark: An International Study on the Treatment of Victims of Human Trafficking

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Benjamin Perrin, "Falling Short of the Mark: An International Study on the Treatment of Victims of Human Trafficking" (Calgary: The Future Group, March 2006).

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FALLING SHORT OF THE MARK: AN INTERNATIONAL STUDY ON THE TREATMENT OF HUMAN TRAFFICKING VICTIMS



Submitted to:

Governments of Australia, Canada, Germany, Italy, Norway, Sweden, United Kingdom and United States; U.S. State Department (Trafficking in Persons); INTERPOL; EUROPOL; U.N. Office on Drugs and Crime; U.N. Human Rights Committee; U.N. Committee on the Elimination of Discrimination against Women; U.N. High Commissioner for Refugees; Council of Europe

March 2006

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Falling Short of the Mark:
An International Study on the Treatment of Human Trafficking Victims

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Available through:

The Future Group – Publications Division
PO Box 61284 RPO Brentwood
Calgary, Alberta, T2L 2K6
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Internet: <http://www.thefuturegroup.org>

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EXECUTIVE SUMMARY

Victims of human trafficking live in a world of fear and despair. The treatment afforded to these victims when they finally emerge from the violent and brutal cycle of human trafficking tells us something about our own societies. This Study has been undertaken to evaluate the progress made by various developed countries towards implementing their international obligations to protect victims of human trafficking, and to assess the treatment given to these victims in comparison to international best practices.

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (“Trafficking Protocol”) was adopted on November 15, 2000, and came into force on December 25, 2003. With 117 signatories, it has widespread international support. One of its main objectives is to protect and assist trafficking victims.

Part I of this Study consists of country narratives that describe and analyze the law and practice of selected jurisdictions with respect to their compliance with Articles 6-8 of the Trafficking Protocol. This Study concludes that Australia, Germany, Italy, Norway, Sweden and the United States are generally complying with their international obligations under the Trafficking Protocol related to the protection of victims of human trafficking. However, the United Kingdom has failed to meet these international standards and is currently reviewing its policy in this area in light of its recent ratification of the Trafficking Protocol.

Canada has systematically failed to comply with its international obligations under the Trafficking Protocol related to the protection of victims of human trafficking. Canada’s record of dealing with trafficking victims is an international embarrassment and contrary to best practices. Since November 2004, The Future Group has been corresponding with the Government of Canada to attempt to obtain information on its compliance with Articles 6-8 of the Trafficking Protocol. In addition to extremely lengthy delays in responding to inquiries, former Liberal Cabinet Ministers passed the buck to each other, ignored the request for information, and failed to detail any steps that Canada has taken whatsoever to meet its international obligations in this regard. The new Conservative Government, under Prime Minister Stephen Harper, which took power in early February 2006, has not yet had an opportunity to announce its policy in this area.

Part II of this Study provides a comparative analysis of best practices in the jurisdictions that are under review. Those countries that are global leaders in best practices, as well as those which have fallen short of the mark for the treatment of trafficking victims may be identified. The overall grades awarded in this Study, which are described in further detail in this Study, are as follows:

United States	B+	Germany	B-
Australia	B	Italy	B-
Norway	B	United Kingdom	D
Sweden	B	Canada	F

RESEARCH QUESTIONS & METHODOLOGY

This Study concerns the treatment of victims of human trafficking in developed countries which have signed, and in most cases ratified, the Trafficking Protocol. The research questions that are the object of this Study are:

1. What steps have various developed countries taken to implement their international obligations under Articles 6 to 8 of the Trafficking Protocol related to the protection of victims of human trafficking?
2. How do the various countries compare with each other in terms of best practices for the protection of victims of human trafficking? Which countries have led and which have fallen behind in their treatment of victims, both in law and practice?

For the purposes of this Study, jurisdictions were selected from among developed countries that are signatories to the Trafficking Protocol, with a wide geographic distribution encompassing Europe, North America and Australia/Oceania. The selected jurisdictions are: Australia, Canada, Germany, Italy, Norway, Sweden, the United Kingdom and the United States.

The data sources to determine the legislation, policies and practices on the treatment of victims of human trafficking in these jurisdictions included: governmental documents and statements; inter-governmental, international, and non-governmental organization (“NGO”) reports; judicial decisions and immigration cases; as well as media accounts. For one country (i.e. Canada), since these sources were deemed insufficient, correspondence with government officials was undertaken, and several interviews were conducted with law enforcement officers and relevant NGOs for that jurisdiction.

There are two parts to the Study. First, the country narratives describe and analyze the activities of each jurisdiction with respect to three primary areas for the protection of victims of human trafficking, which correspond to various provisions in the Trafficking

Protocol, including: residence, support, and investigation, as described in greater detail below. Secondly, this narrative information is quantified, based on a comparative analysis of best practices in the jurisdictions which are under review. In this manner, those countries which are global leaders in best practices are identified, as are those countries which have fallen short of the mark set in the Trafficking Protocol and global best practices for the treatment of trafficking victims.

OVERVIEW OF THE TRAFFICKING PROTOCOL

The Trafficking Protocol was adopted by U.N. General Assembly Resolution 55/25 on November 15, 2000. It was opened for signature, ratification and accession beginning on December 12, 2000. On December 25, 2003, the Trafficking Protocol came into force.¹

One of the primary objectives of the Trafficking Protocol is “[t]o protect and assist the victims of such trafficking, with full respect for their human rights”.² This international treaty provides a comprehensive definition of the term ‘trafficking in persons’ and states that consent of the victim to be trafficked is irrelevant:

(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;

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

Articles 6 to 8 of the Trafficking Protocol, which are the subject of this Study, deal with ‘Protection of victims of trafficking in persons’ and are reproduced in the Appendix.

¹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. G.A. Res. 55/25, Annex II at 31-39, U.N. Doc. A/55/25 (15 November 2000), entered into force 25 December 2003, available online: UN <http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf> [Trafficking Protocol]; United Nations Office on Drugs and Crime, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, online: United Nations <http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html> [Trafficking Protocol Status].

² *Ibid.*, Trafficking Protocol, art. 2(b).

³ *Ibid.*, art. 3(a)-(b) [emphasis added].

These provisions impose various international obligations on States which have signed and ratified the Trafficking Protocol, and are discussed in greater detail below.

Today, with 117 signatories and 97 ratifications/acceptances/approvals/accessions,⁴ the Trafficking Protocol has received widespread international support. The signature and ratification dates for the countries that are included in the present Study are listed in the table below:⁵

TABLE 1

Signature and Ratification Status of Trafficking Protocol for States in Present Study

	Signature Date	Ratification Date
Australia	11 December 2002	14 September 2005
Canada	14 December 2000	13 May 2002
Germany	12 December 2000	Pending
Italy	12 December 2000	Pending
Norway	13 December 2000	23 September 2003
Sweden	12 December 2000	1 July 2004
United States	13 December 2000	3 November 2005
United Kingdom	14 December 2000	9 February 2006

⁴ Signing an international treaty is generally an executive act of a State; ratification / acceptance / approval / accession are terms which refer to the formal process that takes place afterwards to adopt the international treaty. This latter process is governed by the domestic law of the State concerned, and frequently requires similar rules to the passage of legislation in many democracies. See *Vienna Convention on the Law of Treaties*, 22 May 1969, arts. 11-16.

⁵ Data current to 22 February 2006, see Trafficking Protocol Status, *supra* note 1.

Further Regional Progress

On a regional basis, the Council of Europe recently adopted the *Convention on Action against Trafficking in Human Beings* on May 3, 2005 (“European Trafficking Convention”) which provides “a comprehensive framework for the protection and assistance of victims and witnesses”.⁶ This European Trafficking Convention has already been signed by dozens of countries including some in the present Study, namely Germany, Italy, Norway, and Sweden.⁷ The United Kingdom has not yet signed the European Trafficking Convention but is reportedly considering doing so in the near future. While Canada has signed Council of Europe Conventions dealing with human rights in the past, it has not yet opted to do so with respect to the European Trafficking Convention.⁸

This European Trafficking Convention involves significant steps towards implementing and, in many ways, exceeding the standards in the U.N. Trafficking Protocol. It is an excellent model of global best practices for the treatment of trafficking victims. Notably, the European Trafficking Convention mandates an automatic ‘reflection period’ for victims to remain in the country and obtain basic support services (Article 13); it also requires renewable residence permits be issued to victims who would be endangered on return to their home countries, as well as to those who opt to assist in prosecutions (Article 14).

⁶ *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report*, Council of Europe Treaty Series - No. 197, art. 1(1)(b), online: Council of Europe <http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf>.

⁷ Council of Europe, “Simplified Chart of Signatures and Ratifications – Treaties Coming from the Subject-Matter: Human Rights”, online: Council of Europe <<http://conventions.coe.int>>.

⁸ For example, Canada signed the Council of Europe’s *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, Council of Europe Treaty Series – No. 189, online: Council of Europe <<http://conventions.coe.int/Treaty/Commun/ListeTableauCourt.asp?MA=44&CM=16&CL=ENG>>.

PART I: COUNTRY NARRATIVES

Part I of this Study evaluates the level of compliance of eight developed countries, which are signatories to the Trafficking Protocol, with the provisions of this international treaty related to the protection of victims of human trafficking (i.e. Articles 6-8, reproduced in the Appendix). For the purposes of this Study, these obligations have been grouped into three categories:

- *Residence:*
 - Consider permitting victims to remain in the territory, temporarily or permanently, in appropriate cases, and consider humanitarian and compassionate factors: Article 7
 - Right of repatriation of victims: Article 8

- *Support:*
 - Consider implementing measures for physical, psychological and social recovery of victims, in particular: housing; counseling; information on their legal rights in a language they understand; medical, psychological and material assistance; employment, education and training: Article 6(3)
 - Provide means for victims to obtain compensation: Article 6(6)

- *Investigation:*
 - Protection of privacy and identity of victims: Article 6(1)
 - Provide information to victims on relevant proceedings, and enable them to present their views/concerns in proceedings against their traffickers: Article 6(2)
 - Provide for physical safety of victims: Article 6(5)

Australia

Australia is complying with its international obligations under the Trafficking Protocol related to the protection of victims of human trafficking. Since 2003, it has implemented a phased system of protection for victims of human trafficking with enhanced residency status being tied to enhanced support services, which are government funded. Specialized investigative teams have facilitated the unique needs of trafficking victims being promptly addressed.

Residence

In October 2003, the Australian government announced additional anti-trafficking measures with \$20 million funding, targeting sex trafficking in particular. The package included: new visa arrangements for trafficking victims; new victim support measures; and a new Australian Federal Police (“AFP”) unit: the Transnational Sexual Exploitation and Trafficking Team (“TSETT”). Prior to the adoption of these measures, a young trafficking victim died in a detention centre before deportation was to take place – reportedly this person was given no assistance for a heroin addiction.

The new Australian approach to residence of trafficking victims is three-phased. First, the “Bridging Visa F” lasts for 30 days while an investigation into trafficking claims are being made. Secondly, if the victim agrees to assist with the investigation, they are eligible for a “Criminal Justice Stay Visa” (“CJS Visa”) which is valid for the duration of criminal proceedings in the case they are assisting with. Thereafter, victims may apply for a “Witness Protection (Trafficking) Visa” enabling them to remain in Australia on a temporary or permanent basis, depending on individual circumstances.⁹

⁹ Parliament of Australia, *People Trafficking: Australia’s Response*, 16 November 2004 at 2, online: Parliament of Australia, Publications <<http://www.aph.gov.au/library/pubs/rn/2004-05/05rn20.pdf>> [People Trafficking: Australia’s Response].

Support

A Victim Support package comprising two phases was implemented in Australia, and has subsequently been adjusted. A bridging visa, once granted, entitles victims to access “Phase 1” victim support. This support scheme is delivered by a case manager with experience working with victims of sexual exploitation and other marginalized groups.¹⁰ The support under this phase is modeled on programs for humanitarian and asylum seekers, and aims to provide a flexible and tailored response driven by the assessment of the trafficking victim’s needs. Phase 1 victim support (30 days in length) consists of:

- One-time allowance to buy toiletries and clothing;
- Accommodations and a food and living allowance;
- Immediate availability of medical and pharmaceutical treatment and counseling;
- Access to various forms of training such as English language training; and,
- Up to three appointments with a legal practitioner.¹¹

“Phase 2” victim support depends on the victim’s involvement in prosecution of traffickers. Victims determined by police to be able and willing to aid in a criminal investigation are given social security benefits, housing, medical treatment, legal assistance, social support, and vocational training.¹² This support is linked to the visa regime and also includes:

- Special benefit and rent assistance (approximately AUS\$12,600 per year, an amount equal to unemployment benefit); and

¹⁰ “Australian Government Commits AUS\$20 million to Anti-Trafficking Initiatives”, online: Human Trafficking <http://www.humantrafficking.org/countries/eap/australia/govt/best_practices.html>.

¹¹ Parliamentary Joint Committee on the Australian Crime Commission, *Parliamentary Inquiry into the Trafficking of Women* (Canberra: Senate Printing Unit, 2004), online: Parliament of Australia Senate <http://www.aph.gov.au/Senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/report/report.pdf> [Australian Parliamentary Inquiry].

¹² U.S. Department of State, *Trafficking in Persons Report: Australia* (2005), online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2005/46616.htm>> [TIP Report – 2005: Australia].

- Continued access to medical, pharmaceutical, counseling and job training assistance.¹³

The Parliamentary Joint Committee on the Australian Crime Commission's *Inquiry into the Trafficking of Women for Sexual Servitude* recommended that the core of the government's response must be restorative, and that launching a criminal prosecution against traffickers is only *secondary* to helping the victim.¹⁴

Investigation

The AFP's TSETT, discussed above, and the Government of Australia have heightened efforts to identify victims of human trafficking and promptly involve the relevant immigration authorities.¹⁵ As noted, specialized case managers provide support from the early stages of investigation.

Evaluation

During 2004, Australian immigration authorities granted 29 bridging visas to trafficking victims,¹⁶ and issued 10 CJS Visas to trafficking victims, out of 22 applicants who applied (a 45% approval rate).¹⁷ Since the new visa arrangements available to trafficking victims are granted on the understanding that the victim will cooperate with the criminal justice system, it is feared that without these links to the justice system people might fraudulently claim to be trafficking victims in a bid to remain in the country.¹⁸ However, there is no evidence that this fear would materialize in practice and it is contrary to the approach taken in the European Trafficking Convention which enables residence for victims either in the case where there is danger to the victim if they are deported, *or* if they are willing to assist with criminal prosecutions.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ "Australia", online: Human Trafficking <<http://www.humantrafficking.org/countries/eap/australia/>>.

¹⁶ TIP Report – 2005: Australia, *supra* note 12.

¹⁷ People Trafficking: Australia's Response, *supra* note 9 at n. 11.

¹⁸ *Ibid.* at 2.

The CJS Visa enables trafficked women who are witnesses in criminal proceedings to remain legally in Australia pending the finalization of those proceedings. The *Parliamentary Inquiry into the Trafficking of Women* received evidence of women unable to return to their home countries for years while awaiting the end of court proceedings. The Inquiry recommended that the Minister of Immigration be given the discretion to permit these victims to return home to visit their families during this period.¹⁹

Canada

Canada has systematically failed to comply with its international obligations under the Trafficking Protocol for the protection of victims of human trafficking. There is no evidence it has considered providing for the protection of victims in the manner obliged under the Trafficking Protocol. Canada's record of dealing with trafficking victims is an international embarrassment and contrary to best practices. This is despite being the first jurisdiction in this Study to have ratified the Trafficking Protocol almost four years ago on May 13, 2002. Canada has ignored calls for reform and continues to re-traumatize trafficking victims, with few exceptions, by subjecting them to routine deportation and fails to provide even basic support services. In addition to extremely lengthy delays in responding to inquiries about Canada's treatment of trafficking victims, former Liberal Cabinet Ministers passed the buck to each other, ignored the request for information, and failed to detail any steps that Canada has taken whatsoever to meet its international obligations in this regard. Further research has revealed *ad hoc* cooperation between law enforcement and private charities, but without formal government support, funding or a legal framework.

Residence

With few exceptions, victims of human trafficking have been routinely detained as illegal migrants and frequently deported from Canada. This jurisdiction deals with victims of human trafficking on a case-by-case basis and there is no legal guidance offered on their

¹⁹ Australian Parliamentary Inquiry, *supra* note 11.

protection in domestic law – they are dealt with at the discretion of law enforcement and immigration officials. It has been reported that some trafficking victims have been treated as illegal migrants or prostitutes and have faced criminal charges, without necessarily being provided with support or assistance.²⁰

There are, however, several avenues that are not specifically designed to deal with trafficking victims through which they may seek temporary residence. Through the refugee determination process, trafficking victims may seek to remain in Canada, but are not eligible for refugee status simply based on their condition as a trafficking victim. Rather, they must meet general criteria for applying as a refugee. Another option is applying for residency based on ‘humanitarian and compassionate grounds’.²¹ However, the *Immigration and Refugee Protection Act* requires Ministerial approval for a trafficking victim to be exceptionally permitted to remain in Canada under this rare basis.²²

Support

Trafficking victims are not provided with any government funded medical, psychological or counseling support in Canada. The only possibility for trafficking victims to receive any such assistance is through private NGOs. In only some cases, it has been reported that Health Canada has supported undocumented migrants to receive support services. This inadequate situation has been brought to the attention of the Canadian Government on numerous occasions, most notably by the U.N. Committee on the Elimination of Discrimination against Women which found in 2003 that Canada “did not provide sufficient information on programs to assist victims of trafficking”.²³

²⁰ Jacqueline Oxman-Martinez & Jill Hanley, “A Follow-up Study of Canadian Policy on Human Trafficking: Impacts of the Immigration and Refugee Protection Act”, September 2004 at 10, online: Montreal Centre for Inter-university Research on Immigration, Integration and Urban Dynamics <http://im.metropolis.net/research-policy/research_content/doc/oxman-martinez%20trafic.pdf> [Oxman-Martinez & Hanley]; see also The Protection Project, *Human Rights Reports: Canada*, online: The Protection Project <<http://www.protectionproject.org/>> [Protection Project Report: Canada].

²¹ Oxman-Martinez & Hanley, *supra* note 20 at 11.

²² *Immigration and Refugee Protection Act* (Canada), S.C. 2001, c. 27, s. 25.

²³ Oxman-Martinez & Hanley, *supra* note 20 at 11; see also Protection Project Report: Canada, *supra* note 20.

The situation in Canada is so bad, with respect to a failure to provide basic support to trafficking victims, that individual law enforcement officers are attempting to approach local hospitals and NGOs to cobble together funding to provide the most basic medical assistance for these victims in major Canadian cities.²⁴

Investigation

Canadian law does not provide for formal protective measures specifically designed for the unique needs of trafficking victims.²⁵ General measures through the *Witness Protection Program Act* may be applicable to victims of human trafficking.²⁶ The Canadian government's response to date has focused on criminalizing trafficking with the first of such charges against traffickers being recently laid, and no mechanisms to specifically protect victims of trafficking during investigations or otherwise.²⁷

Evaluation

Since November 2004, The Future Group has been corresponding with the Government of Canada to attempt to obtain information concerning Canada's compliance with Articles 6-8 of the Trafficking Protocol.²⁸ In addition to extremely lengthy delays in responding to the inquiry, former Liberal Cabinet Ministers passed the buck to each other, sometimes ignoring the requests for information,²⁹ and failed to detail any steps that Canada has taken whatsoever to meet the country's international obligations in this regard. This correspondence involved then Minister of Foreign Affairs Pierre

²⁴ Discussions with Royal Canadian Mounted Police ("RCMP") officials during January 2006.

²⁵ Oxman-Martinez & Hanley, *supra* note 20 at 12.

²⁶ *Witness Protection Program Act* (Canada), S.C. 1996, c. 15.

²⁷ Canadian Council for Refugees, *Trafficking in Women and Girls*, online: Trafficking in Women and Girls <<http://www.trafficking.ca>>.

²⁸ Letter dated 22 November 2004 sent to then Minister of Justice Irwin Cotler and then Minister of Foreign Affairs Pierre Pettigrew.

²⁹ Then Minister of Justice Irwin Cotler failed to respond to the 22 November 2004 letter. Only after a further reminder was sent to him on 17 April 2005 did he finally respond in a letter dated 17 August 2005 – almost 9 months after the initial inquiry. His response failed to address in any detail the inquiries concerning Article 6-8 of the Trafficking Protocol, as specifically requested.

Pettigrew,³⁰ then Minister of Justice Irwin Cotler,³¹ and then Minister of Citizenship and Immigration Joe Volpe.³² The new Conservative Government under Prime Minister Stephen Harper, which took power in early February 2006, has not yet had the opportunity to announce its policy in this area.

The Federal Government has created an Interdepartmental Working Group on Trafficking in Persons (IWGTIP)³³ to develop a national strategy to combat human trafficking. Despite several years in existence, the IWGTIP has failed to announce a national strategy to improve the treatment of victims of human trafficking. Its only public accomplishments to date in this area have been producing a pamphlet, poster, and hosting a conference or two.³⁴ Consultations with leading Canadian NGOs that assist abused women in major Canadian cities found that none of them were aware of the work of the IWGTIP and none had any information from any level of government on programs or policies to help victims of human trafficking.³⁵

Canada's failure to enact laws to specifically provide for temporary residence, basic support, and investigative protection to victims of human trafficking has resulted in their routine deportation. A review of recent jurisprudence of the Canadian Immigration and Refugee Board of Canada, and the Federal Court of Canada has demonstrated that trafficking victims have been unsuccessful in seeking to remain in Canada as refugees. This is largely owing to the obligation of claimants to rebut a 'presumption of state

³⁰ Letter dated February 10, 2005 from then Minister of Foreign Affairs Pierre Pettigrew.

³¹ Reminder letter dated April 17, 2005 sent to then Minister of Justice Irwin Cotler; reply received in a letter dated August 17, 2005 from then Minister of Justice Irwin Cotler.

³² Letter dated 24 October 2005 to then Minister of Citizenship and Immigration Joe Volpe, whom then Minister of Justice Irwin Cotler indicated could provide the requested information. No response was received from then Minister Volpe, and the recent federal election ensued.

³³ Department of Justice, "Interdepartmental Working Group on Trafficking in Persons", online: Department of Justice <<http://canada.justice.gc.ca/en/fs/ht/iwgtip.html>>.

³⁴ *Ibid.*; see also U.S. Department of State, *Human Rights Report: Canada (2004)*, 28 February 2005, online: <<http://www.state.gov/g/drl/rls/hrrpt/2004/41752.htm>>.

³⁵ Telephone discussions with staff of Assaulted Women's Helpline (Toronto), YWCA Toronto, Nellie's Toronto, Interval House (Toronto), Ontario Association of Interval and Transition Houses, Victoria Women's Transition House, Hill House Transition House during December 2005 and January 2006.

protection’, namely that they took efforts to be protected in their home state before seeking to remain in Canada.³⁶ Based on these findings, we conclude that there has been a systematic failure in Canada’s implementation of its international obligations under the Trafficking Protocol. Furthermore, its approach to the treatment of victims of human trafficking falls short of every other country examined in this international Study.

Germany

Germany is generally complying with international standards under the Trafficking Protocol for the protection of victims of human trafficking, and it is a signatory to the European Trafficking Convention. In addition to providing victims with a ‘reflection period’ and the possibility of temporary residency, a network of government funded recovery centres has been implemented, together with provisions to address the unique needs of trafficking victims during investigations. However, Germany has yet to ratify the Trafficking Protocol and there are serious concerns that its recent legalization of prostitution will exacerbate the plight of victims of human trafficking.

Residence

Amendments to Germany’s immigration and victims’ rights legislation in 2004 grants a four-week ‘reflection period’ for victims of human trafficking, after which those who agree to testify against their traffickers may obtain a temporary residence permit.³⁷

Support

Twenty-five counseling and assistance centres for trafficking victims are funded by State governments in Germany. Many German States have formal agreements between law enforcement and NGOs for identifying and assisting victims of human trafficking.³⁸

³⁶ See, e.g., *Varga v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 765, 2005 FC 617 (Federal Court) affirming [2004] R.P.D.D. No. 523 (Immigration and Refugee Board of Canada); *Stankeviciute v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1931, 2005 FC 1558 (Federal Court).

³⁷ U.S. Department of State, *Trafficking in Persons Report: Germany* (2005), online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2005/46613.htm>>.

³⁸ *Ibid.*

Investigation

In 2004, the *Victims' Rights Reform Law* was enacted to enhance rights of victims of crime in criminal proceedings. Trafficking victims are entitled to an interpreter and a third party support person to attend police questioning with them.³⁹

Evaluation

In 2003, some 1,108 foreign victims of human trafficking obtained the 'reflection period' stay and received support. Additionally, 227 trafficking victims were given shelter and extended assistance beyond that period.⁴⁰ However, there is some evidence from NGOs that the requirement to cooperate with law enforcement may be excessive and fail to sufficiently account for victim concerns for their fear of reprisals. Furthermore, other States have expressed serious concerns at the E.U. Council of Ministers that Germany's policy of legalization of prostitution is fueling the sex trafficking of vulnerable women from Central and Eastern Europe.⁴¹ These concerns warrant further attention.

Italy

Italy is generally meeting international standards under the Trafficking Protocol for the protection of victims of human trafficking, and it is a signatory to the European Trafficking Convention. It provides for temporary residence for victims and combines government funded support with civil society initiatives to protect these vulnerable persons. There are, however, some troubling cases involving rapid deportations of victims originating from certain countries which warrant further attention.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ "The police transferred Lena to a shelter in Germany, where she spent several months as authorities pressed her to provide testimony against a network of traffickers and pimps. She was deported home after refusing to give evidence because she feared for her safety": Olha Shved, "From Withdrawal to Integration - A Long and Complex Process", (2004) 46 ECPAT International Newsletters, 1 January 2004, online: ECPAT <<http://www.ecpat.net>>; "Concern Over Prostitution at World Cup", February 2006, online: <<http://www.sr.se/>> [translated on DIGNITY list-serve].

Residence

Since 1998, Italian immigration law has provided foreign victims of human trafficking with a special residence permit for a 6-month period.⁴²

Support

Articles 11 and 13 of the 2003 Italian *Law on Measures Against Human Trafficking* provide victims of trafficking and slavery with protection under the witness protection program and to participate in special programs of assistance for victims.⁴³ Article 12 established the Fund for Anti-Trafficking Measures, which will finance programs of assistance through assets confiscated from those found guilty of crimes of slavery, practices similar to slavery and trafficking in persons. The government also provides funding to nearly 60 NGOs to assist in protecting and providing social assistance to victims of trafficking in Italy, especially women and children.⁴⁴ The law establishes social integration programs aimed at rehabilitating victims of human trafficking by offering them, for example, professional training and Italian-language lessons.⁴⁵ The *Code of Criminal Procedure* (Article 74ff) allows a victim of a crime to request civil damages.⁴⁶

The International Organization for Migration's (IOM) project entitled Assisted Voluntary Return and Reintegration of Victims of Trafficking from Italy ("VRTI") Phase II is aimed at facilitating the return and reintegration of victims of trafficking from Italy. Working with the Italian Government, IOM carried out VRTI Phase II within the

⁴² *Consolidation Act of the Provisions Concerning the Regulation of Immigration and Law Rules on the Condition of Foreigners* (Italy), 1998, art. 18.

⁴³ The Protection Project, "Human Rights Reports: Italy", online: The Protection Project <<http://www.protectionproject.org/>> [Protection Project Report: Italy].

⁴⁴ *Ibid.*

⁴⁵ *Rules for the Implementation of the Consolidation Act* (Italy), arts. 25 and 26.

⁴⁶ Protection Project Report: Italy, *supra* note 43.

framework of the Interministerial Committee for Protection and Assistance to Victims of Trafficking.⁴⁷

In terms of civil society involvement, IOM Rome ran a 12-month pilot project with the support of the U.S. Embassy designed to develop a set of training modules for a self-teaching guide in Italian and English. The program involves nuns taking 6-day training sessions, and addresses issues involving victim profiles; health care, prevention methods, empowerment of victims, counseling, and protecting careers from psychological burnout. Seventy nuns, all with experience in social work and human trafficking successfully completed their training and will pass on their knowledge to their congregations.⁴⁸

Investigation

As noted above, Articles 11 and 13 of the 2003 Italian *Law on Measures Against Human Trafficking* provide victims of trafficking and slavery with protection under the witness protection program and to participate in special programs of assistance for victims.⁴⁹

Evaluation

In 2004, the Italian government reportedly led Europe in the number of trafficking victims who received protection through special visas and state assistance programs. Some 1,940 victims, including 118 children, received assistance in social programs during that year.⁵⁰ However, some NGOs have expressed concern that deportations have taken place too rapidly in some cases, in particular with Nigerian human trafficking victims.⁵¹ Commendably, Italy has entered into agreements with source countries in the

⁴⁷ *Ibid.*

⁴⁸ Press Briefing Notes, *Italy – Counter Trafficking Training for Nuns* (Italy, May 18 2004), online: Press Briefing Notes <<http://www.iom.int/en/archive/PBN180504.shtml#item1>>.

⁴⁹ Protection Project Report: Italy, *supra* note 43.

⁵⁰ U.S. Department of State, *Trafficking in Persons Report: Italy (2005)*, online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2005/46616.htm>> [TIP Report – 2005: Italy].

⁵¹ U.S. Department of State, *Human Rights Report: Italy (2003)*, 25 February 2004, s. 6(f), online: <<http://www.state.gov/g/drl/rls/hrrpt/2003/27844.htm>>.

region (where human trafficking victims originate) to cooperate to curb human trafficking.⁵²

Norway

Norway is complying with its international obligations under the Trafficking Protocol for the protection of victims of human trafficking, and it is a signatory to the European Trafficking Convention. In February 2003, Norway launched a national action plan to combat trafficking in persons.⁵³ The action plan is being implemented from 2003 to 2005 and involves the Ministry of Children and Family Affairs, the Ministry of Justice, the Ministry of Local Government and Regional Development, the Ministry of Health and Social Affairs, and the Ministry of Foreign Affairs who each contribute to financing the plan and are responsible for implementing measures relevant to their respective spheres of competence. The Ministry of Defense and the Ministry of Trade and Industry are responsible for the practical implementation of some measures.⁵⁴ The Norwegian action plan provides measures to protect victims of trafficking, prevent trafficking in women and children, detect and prosecute traffickers, disseminate information, and promote cooperation with civil society towards fulfilling the action plan.⁵⁵

Residence

Regardless of whether they are willing to cooperate with investigators, trafficking victims in Norway may be granted a 45-day ‘reflection period’ or ‘grace period’ to obtain assistance and counseling before they may be subject to deportation.⁵⁶ In practice,

⁵² See, e.g., “Italy, Nigeria Take Action against Human Trafficking for Sexual Exploitation”, 21 January 2004, UNIS/CP/460, online: United Nations Information Service <<http://www.unis.unvienna.org/unis/pressrels/2004/uniscp460.html>>.

⁵³ Permanent Delegation of Norway to the Organization for Security and Cooperation in Europe, *Trafficking in Human Beings* (2003), online: Norway – Permanent Mission to the OSCE <<http://www.norway-osce.org/current/trafficking/trafficking.htm>>.

⁵⁴ Ministry of Justice and the Police, *Plan of Action for Combating Trafficking in Women and Children 2003–2005* (Oslo: Norwegian Ministry of Justice and the Police, 2003).

⁵⁵ The Protection Project, *Human Rights Reports: Norway*, online: The Protection Project <<http://www.protectionproject.org/>> [Protection Project Report: Norway].

⁵⁶ Ministry of Justice and the Police, “Norway Will Combat Trafficking in Women and Children: Summary of the Measures in the Action Plan”, (Oslo: Norwegian Ministry of Justice and the Police, 2003) online:

Norway has granted temporary residence permits to victims that are willing to cooperate in major trafficking cases, skipping the ‘reflection period’.⁵⁷ For victims that are repatriated, the Ministry of Foreign Affairs is supporting rehabilitation programs with local NGOs and countries of origin.⁵⁸

Support

Norway’s action plan calls for safe locations for victims of human trafficking to stay, where they can get access to the assistance they require. This was to be done through a dialogue and co-operation with public services, crisis centres and NGOs.⁵⁹ However, by January 2005, Norway officially launched the victim assistance program that primarily functions through a government-funded NGO that operates a 24-hour hotline and network of assistance centres, two of which are dedicated to providing follow-up support to victims.⁶⁰

Investigation

Norwegian law enforcement and immigration authorities receive specific training on identifying and assisting victims of human trafficking. By 2005, however, police were still working to develop witness protection guidelines for victims of human trafficking to cooperate in the prosecution of their traffickers.⁶¹

Evaluation

Police have offered the ‘reflection period’ program to at least 60 women, and the possibility of assistance providers being authorized to grant such status is being

Ministry of Justice and Police <odin.dep.no/filarkiv/170684/summary_of_the_measures_in_the_action_plan.do> [Norway Summary of Measures]; U.S. Department of State, *Trafficking in Persons Report: Norway* (2005), online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2005/46614.htm>> [TIP Report – 2005: Norway].

⁵⁷ *Ibid.*, TIP Report – 2005: Norway.

⁵⁸ Norway Summary of Measures, *supra* note 56.

⁵⁹ *Ibid.*

⁶⁰ TIP Report – 2005: Norway, *supra* note 56.

⁶¹ *Ibid.*

considered.⁶² However, there have been reports of victims being deported, including a sixteen year old Albanian girl, and in 2004 “25 Nigerian women were given 48 hours’ notice to leave Norway after they were discovered during a raid on a brothel in central Oslo.”⁶³ The creation of trafficking support centres and witness protection guidelines for trafficking victims are admirable, but have taken a substantial amount of time to implement and therefore warrant further attention.

Sweden

Sweden is complying with its international obligations under the Trafficking Protocol related to the protection of victims of human trafficking, and it is a signatory to the European Trafficking Convention. Since 2004, it has provided for temporary residency and the possibility of permanent residence for trafficking victims who assist with prosecutions of their traffickers. While there is government funding for health care and social services for victims, the civil society network is not sufficiently integrated and warrants attention to enhance accessibility for these victims. Special guidelines exist for law enforcement and immigration officials in dealing with trafficking victims.

Residence

In October 2004, Sweden amended the *Aliens Act* to enable prosecutors to obtain time-limited residence permits for trafficking victims who cooperate in the criminal investigation of traffickers. Police reported that a decrease in the number of deportations took place following the enactment of this legislation.⁶⁴

Depending on the complexity of the investigation or if the judgment is appealed, the time-limited residence may be extended upon application by the prosecutor.⁶⁵ Upon

⁶² *Ibid.*

⁶³ Norwegian Church Aid, “Call for Residency for Human Trafficking Victims”, 10 November 2004, online: Norwegian Church Aid <<http://english.nca.no/article/articleview/4307/1/449/>>.

⁶⁴ U.S. Department of State, *Trafficking in Persons Report: Sweden* (2005), online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2005/46616.htm>> [TIP Report – 2005: Sweden].

⁶⁵ Europol Public Information, *Legislation on Trafficking in Human Beings and Illegal Migrant Smuggling*, online: Europol Publications

expiry of the temporary permit, the trafficking victim may apply for a permanent residence permit.⁶⁶

Support

Procedures are also now in place for police to contact NGOs and shelters in order to assist victims. Under Swedish law, municipal authorities bear responsibility for providing victims with health care and social services, and may obtain reimbursement from the government. Municipalities operate women's shelters throughout the country that admit and care for trafficking victims.⁶⁷

Investigation

Swedish authorities recognize that the experiences of human trafficking victims may lead them to conceal what has happened from their families and officials. This has led to guidelines that women be interviewed separately and in surroundings that make it easier to talk about what they have been through. The official investigating their residence application is required to create an environment of trust and security.⁶⁸

In 2000, the Swedish Migration Board drew up special guidelines for investigating women's grounds for asylum. These guidelines give priority to cases bearing indications that gender-related persecution is involved. They provide for a woman's opportunity to choose the official to lead her investigation, her interpreter and her public counsel. She must be asked whether she wishes to have a woman or a man assist.⁶⁹

<<http://www.europol.eu.int/publications/Other/Reports%202005/Legislation%20on%20THB%20and%20II%20Public.pdf>> [EUROPOL Report].

⁶⁶ Barbro Holmberg, Minister for Migration and Asylum Policy, Address (Speech presented at the Världens kvinnor Conference, Växjö, Sweden, 24 January 2005), online: <<http://www.sweden.gov.se/sb/d/5263/a/38481>>.

⁶⁷ TIP Report – 2005: Sweden, *supra* note 64.

⁶⁸ Holmberg, *supra* note 66.

⁶⁹ *Ibid.*

Evaluation

During the 2005 reporting period, approximately twenty trafficking victims involved in legal investigations received government assistance through municipalities in Sweden.⁷⁰ However, the European Commission against Racism and Intolerance (“ECRI”) found that the material assistance and support provided to victims of human trafficking, especially as concerns shelter and rehabilitation, do not yet meet current levels of need. ECRI recommended that the Swedish authorities ensure residence permits are granted irrespective of the willingness of victims to co-operate with the authorities in investigations. Swedish authorities were encouraged to consider granting longer-term residence permits to those who co-operate with authorities. Further, the ECRI called for more material assistance and support to victims of trafficking, especially in the areas of shelter and rehabilitation.⁷¹ Conversely, in speaking about Swedish policy towards victims of human trafficking, the Minister for Migration and Asylum Policy, Barbro Holmberg, indicated that trafficking victims are entitled to the same health and medical care as residents of Sweden, as opposed to the level available to asylum seekers.⁷²

United Kingdom

The United Kingdom has failed to meet the international standards set in the Trafficking Protocol related to the protection of victims of human trafficking, and is currently reviewing its policy in this area in light of its recent ratification of the Trafficking Protocol. It is also considering becoming a signatory to the European Trafficking Convention. Trafficking victims are dealt with on a case-by-case basis and routinely deported. Only minimal support has been provided to victims in recent years, and only general laws exist for their protection during investigations.

⁷⁰ TIP Report – 2005: Sweden, *supra* note 64.

⁷¹ Council of Europe, European Commission against Racism and Intolerance, *Third Report on Sweden*, (June 2005), paras. 89-90, online: Council of Europe <http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Sweden/Sweden_CBC_3.asp#P485_73913>.

⁷² Holmberg, *supra* note 66.

Residence

The United Kingdom presently deals with all human trafficking victims on a case-by-case basis. Those who claim to be trafficked may seek to remain in the U.K., but there is no automatic right or clear-cut procedure to obtain short term residence if a victim assists in a prosecution or otherwise.⁷³

Support

In 2003, the U.K. launched a pilot project called the ‘Poppy Project’ to provide safe accommodation and support for adult female victims of trafficking. The support services included counseling, primary healthcare access, interpretation services, and access to legal advice. This project was designed to accommodate twenty-five victims at a time, as a short-term support for the period during which the victim decides whether or not to assist authorities. Longer-term assistance is provided to those willing to cooperate with law enforcement authorities.⁷⁴

Investigation

The United Kingdom has made some adjustments to its victim protection program, initiated in 2003, with respect to eligibility requirements and increased funding. As a matter of practice, trafficking victims are not prosecuted for violating immigration or prostitution laws, but are subject to deportation.⁷⁵

Evaluation

The United Kingdom is considering becoming a party to the European Trafficking Convention, as mentioned earlier. However, Home Office Minister Paul Goggins has stated that the British Government was worried about a potential loophole in such measures, stating: “People will claim to be victims of human trafficking when they’re not, they’ll use it as a way of extending time here”. The Home Office has launched

⁷³ EUROPOL Report, *supra* note 65.

⁷⁴ Scottish Executive, *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, 5 January 2006, online: Home Office <<http://www.homeoffice.gov.uk/documents/TacklingTrafficking.pdf>>.

⁷⁵ U.S. Department of State, *Country Reports on Human Rights Practices – 2004: United Kingdom*, 28 February 2005, online: U.S. Department of State <<http://www.state.gov/g/drl/rls/hrrpt/2004/41716.htm>>.

public consultations to determine views on the current case-by-case approach and possibility of creating an automatic reflection period.⁷⁶ It should be noted that those jurisdictions in this Study that enable victims to obtain temporary residence have procedures in place to prevent abuse of the system. There is no indication that these safeguards have failed, and to the contrary, every indication is that they are succeeding in ensuring only *bona fide* victims receive residence and support.

In terms of support, the U.K. pilot project may be criticized given that it failed to provide assistance directed towards child victims. Furthermore, victim protection services in the U.K. are difficult to access given that they are divided among Local Social Service authorities and several charities.⁷⁷

United States

The United States is complying with its international obligations under the Trafficking Protocol for the protection of victims of human trafficking. Increasing approval rates for victims seeking residency and support are encouraging signs that the system is working and not being abused. The integration of government and civil society support, which receives some government funding as well, has had encouraging results. There are some concerns about the needs of child victims which warrant attention, as well as the degree of pressure put on victims to cooperate with law enforcement officials.

Residence

Under the *Trafficking Victims Protection Act* (“TVPA”)⁷⁸ and *Trafficking Victims Protection Reauthorization Act* (“TVPRA”),⁷⁹ the U.S. Department of Homeland Security may issue “T-Visas” to allow victims of “severe forms of human trafficking” to remain in the country in order to provide assistance in federal investigations and

⁷⁶ BBC News, “Plans to Help Trafficking Victims”, 5 January 2006, online: BBC News <<http://news.bbc.co.uk/1/hi/uk/4580746.stm>>.

⁷⁷ *Human Rights Practices – 2004: United Kingdom*, *supra* note 75.

⁷⁸ *Trafficking Victims Protection Act of 2000* (U.S.), Pub. L. 106-386, 28 October 2000.

⁷⁹ *Trafficking Victims Protection Reauthorization Act of 2003* (U.S.), Pub. L. 108-193, December 19, 2003.

prosecutions of those responsible for the harm they have suffered. After three years of having T-Visa status, victims may apply for permanent residency. Victims may, in some cases, also apply for non-immigrant status for their spouses and children; or, in the case of victims under 21 years old, their parents.⁸⁰

Support

The Department of Health and Human Services (“HHS”) provides certification and eligibility letters for victims that allow them to access most benefits and services comparable to the assistance provided to refugees, including access to social service programs and immigration assistance. The TVPA mandates that cash assistance, medical care, food stamps, housing and some other basic needs, be provided for certain non-citizen trafficking victims through federally funded or administered benefits and services.⁸¹ HHS also operates a hotline for trafficking information and referrals to local organizations serving trafficking victims.⁸²

Under the TVPA, the Legal Services Corporation (“LSC”), a non-profit corporation established by Congress to fund legal aid programs must make legal assistance available to victims of human trafficking.⁸³

In 2004, the U.S. State Department’s Bureau of Population, Refugees, and Migration (“PRM”) launched a project to help reunify families of trafficking victims, if family

⁸⁰ U.S. Department of Justice, “Department of Justice Issues T Visa to Protect Women, Children and all Victims of Human Trafficking”, 24 January 2002, online: U.S. Department of Justice <http://www.usdoj.gov/opa/pr/2002/January/02_crt_038.htm>; U.S. Government, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004*, September 2005, online: U.S. Department of Justice <<http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf>> [U.S. Assessment Report – 2004].

⁸¹ U.S. Department of State, *Trafficking in Persons Report: United States* (2005), online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2005/46616.htm>> [TIP Report – 2005: US].

⁸² *Ibid.*

⁸³ U.S. Department of State, “Identifying and Helping Trafficking Victims”, online: U.S. Department of State <<http://www.state.gov/g/tip/c16508.htm>>

members are eligible to migrate to the U.S. This program also provides support to victims wishing to return and reintegrate to their countries of origin.⁸⁴

Investigation

Investigations of human trafficking victims are undertaken by the Federal Bureau of Investigation (“FBI”), but local success has been enhanced in some cases by involvement of local law enforcement as well.⁸⁵ The human trafficking hotline, discussed above, also provides advice on how to discern victims of trafficking. In April 2004, HHS launched its “Rescue and Restore Victims of Human Trafficking” public awareness campaign. The theme of the campaign is to encourage intermediaries such as social workers and health care professionals to “Look Beneath the Surface” by asking specific questions or noting certain behaviors of potential victims. The campaign is attempting to help protect more victims by increasing the number of victims identified. The intermediaries referred to include local law enforcement; social service providers; health care workers; faith-based organizations; migrant and labor outreach organizations; child and homeless youth advocates and caregivers; and ethnic organizations. The detailed program includes easily downloadable materials including flash-cards for use by front-line workers.⁸⁶

The U.S. has identified the following ‘best practices’ in protecting trafficking victims in the early course of investigations:

- Raids should be executed through legal means under the proper authority, keeping the rights of the victim paramount during the raid. Raids should be based on good planning and information gathering, at a location where it is established that there is a high probability trafficking victims are present.

⁸⁴ TIP Report – 2005: US, *supra* note 81.

⁸⁵ U.S. Assessment Report – 2004, *supra* note 80 at 13ff.

⁸⁶ See U.S. Department of Health and Social Services, “The Campaign to Rescue & Restore Victims of Human Trafficking”, online: U.S. HHS <<http://www.acf.hhs.gov/trafficking/>>.

- The State must move victims away from the site of their exploitation and take temporary custody of victims, preferably in a shelter of some sort. Victims are more likely to reveal their stories when they are away from the site of exploitation.
- When victims are recovered, a counseling period, between 2 days and a week, is recommended. Suspected victims of trafficking should be interviewed and counseled by police and social workers to learn their stories, in order to determine whether they are indeed victims of human trafficking.
- Long-term care should be provided to those who are confirmed victims of trafficking.
- Lastly, NGOs and the media are considered to be an aid in holding law enforcement to higher legal standards of victim care.⁸⁷

Evaluation

During the first year after the adoption of the T-Visa, 150 applications were made of which 23 resulted in the issuance of a T-Visa (a 15% approval rate).⁸⁸ In the most recently completed fiscal year report, 450 applications were made of which 136 T-Visas were issued (a 30% approval rate) and 484 extensions were made. These determinations were made by a specialized adjudication committee.⁸⁹ The maximum number of T-Visas that may be issued in one year is 5,000.⁹⁰

⁸⁷ U.S. Department of State, “Fact Sheet: Rescuing Victims of Modern-Day Slavery”, (Washington, D.C.: Office to Monitor and Combat Trafficking in Persons, September 22, 2005) online: U.S. Department of State <<http://www.state.gov/g/tip/rls/fs/2005/55233.htm>>

⁸⁸ U.S. Department of Justice, “Fact Sheet: Accomplishments in the Fight to Prevent Trafficking in Persons”, 25 February 2003, online: U.S. Department of Justice <http://www.usdoj.gov/opa/pr/2003/February/03_crt_110.htm>.

⁸⁹ U.S. Assessment Report – 2004, *supra* note 80 at 3.

⁹⁰ Jennifer M. Wetmore, “The New T Visa: Is the Higher Extreme Hardship Standard too High for Bona Fide Trafficking Victims?” (2002) 9:1 New Eng. J. Int’l & Comp. L. 159 at 167.

From 2001-early 2003, HHS certified 350 trafficking victims to receive federal and state services including employment authorization, housing and medical care.⁹¹ In the most recently completed fiscal year, HHS issued 163 certification and eligibility letters for access to such services. During this period, HSS also made US\$5.1 million in grants to domestic NGOs working to assist victims and US\$5.6 million to other victim service agencies.⁹² However, NGOs advocated for better tracking of child victims in the care of Social Services.⁹³

While the number of human trafficking investigations and prosecutions in the U.S. has been increasing, the government may be placing excessive emphasis on the need for trafficking victims to cooperate with investigators in order to obtain assistance.⁹⁴ NGOs indicated that the government's inability to provide long-term residency status for victims for some time has meant some victims have been forced to apply for asylum – a long process that may ultimately not be successful for many of them. Furthermore, while applying for asylum status, victims cannot work. NGOs have also advocated for the need to better track child victims in care of Social Services.⁹⁵

⁹¹ U.S. Department of Justice, *supra* note 88.

⁹² U.S. Assessment Report – 2004, *supra* note 80 at 3-4.

⁹³ TIP Report – 2005: US, *supra* note 81.

⁹⁴ See, e.g., U.S. Assessment Report – 2004, *supra* note 80 at 18.

⁹⁵ TIP Report – 2005: US, *supra* note 81.

PART II: REPORT CARD ON BEST PRACTICES

Based on the narrative reports and analysis above, the jurisdictions which are under review may be readily compared with each other based on their compliance with Articles 6-8 of the Trafficking Protocol, as well as their implementation of best practices for the protection of victims of human trafficking. As before, the three main metrics that facilitate comparison are residence, support and investigation.

With respect to best practices, it has been widely recognized that the “protection of victims is made nearly impossible if trafficked women first and foremost are punished as ‘illegal aliens.’”⁹⁶ This is reflected in Article 7 of the Trafficking Protocol that obliges parties to consider permitting victims to remain in the territory, temporarily or permanently, in appropriate cases, and consider humanitarian and compassionate factors.

Best practice States, such as those that have signed the European Trafficking Convention as well as Australia and the United States, have taken steps to ensure prompt and clear avenues for residence exist for trafficking victims. The best practice in this regard is the provision of an automatic 30-45 day period immediately after a trafficking victim is rescued during which they are legally entitled to remain in the country and receive basic support (i.e. medical, psychological, social and legal) without any obligation whatsoever to assist law enforcement. They also have a meaningful ability to choose to be repatriated to their country of origin, as codified in Article 8 of the Trafficking Convention.

Thereafter, best practices provide that victims may obtain temporary residence where they will either be endangered if they are deported, *or* if they are willing to cooperate with the prosecution of their traffickers – either ground is sufficient on its own. During this temporary residence period, lasting from 6 months to several years, the victim may benefit from the full range of support provided for in Article 6(3) of the Trafficking

⁹⁶ Janice G. Raymond & Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends* (2001) at 95.

Protocol, including measures for physical, psychological and social recovery of victims, in particular: housing; counseling; information on their legal rights in a language they understand; medical, psychological and material assistance; employment, education and training. National law in best practices countries also provides means for victims to obtain compensation, as recognized in Article 6(6) of the Trafficking Protocol.

Best practices in investigation include at a minimum, measures to protect the privacy and identity of victims, under Article 6(1) of the Trafficking Protocol; provide information to victims on relevant proceedings, and enable them to present their views/concerns in proceedings against their traffickers, under Article 6(2); and provide for physical safety of victims, under Article 6(5). Specialized training, guidelines and witness protection laws designed to address the unique concerns of trafficking victims are also important indicators of best practices.

Given the best practices described above, the eight jurisdictions in this Study may be graded with respect to their law and practice concerning the protection of trafficking victims. The grading system employed below may be summarized as follows:

- “A”: the country fully meets *all* best practices, described above, in law and practice;
- “B”: the country complies with *many* of the best practices in law and practice;
- “C”: the country complies with *some* of the best practices in law and practice;
- “D”: the country complies with *very few* of the best practices in law and practice;
- “F”: the country complies with *none* of the best practices in law and practice;

An average of the grades for each of the three categories of analysis (i.e. residence, support, and investigation) is provided to give an overall quantitative assessment.

Report Card on Best Practices for Treatment of Trafficking Victims

	Residence	Support	Investigation	Overall
United States	B+ : temporary permits for assisting prosecution; thereafter, permanent permits by application; specialized adjudication; record of increasing application and approval rates	B+ : funded access for health care and social services for victims on certification; grants to domestic NGOs and victim shelters; some concerns about child victims	B : involvement of civil society and specialized law enforcement; but insistence on victim cooperation with prosecution may be affecting care received by some trafficking victims	B+
Australia	B : three-phase residence process adopted in 2003; temporary and permanent residence tied to assistance with prosecution; modifications may be required to second visa phase	B+ : two-phases of detailed and clear victim support exist; government recognition that restoring victims is primary aim, and criminal prosecutions against traffickers is the secondary aim	B : recent creation of specialized investigation teams and prompt referral to immigration officials for immediate assistance	B
Norway	B- : 45-day 'reflection period' offered unevenly to victims; temporary residence is <i>ad hoc</i> and exceptional; some troubling cases involving immediate deportations	B+ : national trafficking hotline, network of victim assistance centres in place	B : law enforcement and immigration officials receive training in identifying and assisting victims; basic guidelines for witness protection have taken too long to develop	B
Sweden	B : temporary permits for assisting prosecution; thereafter, permanent permits by application adopted in 2004; too recent to determine implementation success/failure	B- : funding provided for health care and social services for victims; network of women's shelters and NGOs linked with police, but insufficient	B+ : basic guidelines exist for investigating officials and migration board to adapt procedures to unique needs of trafficking victims	B

Germany	B: 4 week 'reflection period' available and has been widely granted, after which a temporary residence permit may be available for those assisting with prosecutions	B- : network of state funded recovery centres; formal cooperation between law enforcement and civil society; but legalization of prostitution may be exacerbating plight of trafficking victims	B- : new law provides for translator and third party to attend police questioning; but insistence on victim cooperation with prosecution may be excessive	B-
Italy	B- : 6 month temporary residence permit for victims; many victims integrated successfully into society; some earlier troubling cases involving immediate deportations	B: government funding as well as 'proceeds of crime' funding for victim assistance; involvement of civil society in support efforts	B- : witness protection provided for; insufficient time between identification of victim and some deportations	B-
United Kingdom	E: case-by-case assessments, no 'reflection period' or temporary residence permits designed for trafficking victims; policy currently under review	D: small pilot projects launched to assist trafficking victims; mix of government and charity programs difficult to access	D: general laws exist for witness protection; victims of trafficking not prosecuted but deported	D
Canada	F: no 'reflection period' or temporary residence permits designed for trafficking victims; refugee process inadequately suited to needs of victims; government has failed to act on requests to ameliorate situation	F: no government funding for support of victims of human trafficking; law enforcement forced to seek out private charities or <i>ad hoc</i> hospital support for basic medical care for victims	F: witness protection has not been adjusted to provide for specific needs of trafficking victims	F

APPENDIX: TRAFFICKING PROTOCOL EXCERPTS

Source: *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. G.A. Res. 55/25, Annex II at 31-39, arts. 6-8, U.N. Doc. A/55/25 (15 November 2000), entered into force 25 December 2003, online: United Nations <http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf>.

II. Protection of victims of trafficking in persons*Article 6**Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

ACKNOWLEDGMENTS

The Future Group is grateful to Benjamin Perrin, Executive Director, who was the Study's main author; the *University of Toronto Faculty of Law Global Anti-Trafficking Working Group* for valuable research assistance; Treva Braun, Director, for corresponding with the Government of Canada; and, Shuvaloy Majumdar, Director and Chair, for providing feedback on earlier drafts.

ABOUT THE FUTURE GROUP

The Future Group is a Canadian-based NGO and federally registered charitable organization founded in 2000, which is dedicated to alleviating the suffering of victims of human trafficking and the child sex trade, bringing offenders to justice, and raising the issue to national and international attention. For four years, the organization implemented projects in Cambodia assisting victims, deterring and investigating offenders, and educating at-risk children about the dangers of this crisis. The organization is active today in Cameroon implementing human trafficking prevention projects directed towards at-risk women and girls in this impoverished country.

The objectives of The Future Group are:

- To provide assistance and education to persons in need including small business training, life management skills, counseling, and other support services to assist victims of abuse to become more independent in the community.
- To relieve poverty in developing nations by providing medical and other basic supplies to persons in need.
- To educate the public, professionals, and local businesses about prevention of and responses to abuse by offering courses, seminars, literature, conferences, and meetings and by collecting and disseminating information on that topic.
- To provide support for those affected by debilitating diseases, illness, and conditions by offering education and counseling and by establishing mutual support groups.

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The Future Group (Institute and International Task Force) is a federally registered charitable organization, #860521137RR0001.

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