

**VICTIMS OF HUMAN TRAFFICKING: ARE THEY
ADEQUATELY PROTECTED IN THE UNITED STATES?**

Sasha L. Nel

“Trafficking is nothing less than a modern form of slavery, an unspeakable and unforgivable crime against the most vulnerable members of the global society.”¹

Throughout the world, women, children, and men are trafficked into the international sex trade.² Women in developing countries are lured by promises of transportation to the United States or other “wealthy” countries, and are promised employment as shopkeepers, waitresses or nannies. Upon their arrival in the destination country, their travel documents are seized and they are forced into prostitution, where they work indefinitely to repay the enormous debts they incurred by being brought to the destination country. They may suffer brutal beatings if they complain. The victims of human trafficking generally have little or no money, do not speak English, and are not familiar with American culture. Since they are in the United States illegally, they believe they have no legal rights, and thus avoid seeking help from authorities for fear of deportation.

Trafficking in human beings has become a vast and uncontrollable problem in the United States and globally. Worldwide, it has reached a magnitude comparable to the

¹ President George W. Bush, Oct. 2, 2002, Assessment of U.S. Activities to Combat Trafficking in Persons, Aug. 2003, p. 1, [hereinafter Assessment] at <http://www.state.gov/g/tip/rls/rpt/23495.htm> (last visited Aug. 15, 2004).

² U.S. Dept. of State, Trafficking in Persons Report, June 2003, p. 6, [hereinafter Trafficking Report] at <http://www.state.gov/g/tip/rls/tiprpt/2003> (last visited Aug. 15, 2004).

illicit drugs and arms trades.³ Human beings are exploited as easily as other tangible resources. Human trafficking is one of the greatest human rights challenges currently facing the world. However, the public is largely unaware of this growing problem. Since 2000, when the United Nations enacted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, public awareness has increased only slightly. However, states will need to do more than merely enact legislation that attempts to prosecute traffickers. Because of the gross human rights violations involved in human trafficking, states will need to enact additional protection for human trafficking victims.

This article will discuss the problem of human trafficking and how additional measures need to be taken to protect human trafficking victims. Part I will address how trafficking victims arrive in the United States. Part II will discuss the problem of human trafficking generally and the problems associated with an international consensus on its definition. Part III will discuss the development of international laws prohibiting human trafficking. Part IV will discuss United States legislation that has been enacted to counter human trafficking. Part V will discuss what protections are provided for victims of human trafficking in the United States. Finally, Part VI suggests what additional measures should be taken to provide human trafficking victims with the protection they need.

I. How do trafficking victims arrive in the United States?

³ Deutsche Gesellschaft für Technische Zusammenarbeit (GZT), Project Against Trafficking in Women, at <http://www.gtz.de/traffickinginwomen/english/index.html> (last visited Aug. 15, 2004).

Every country is susceptible to trafficking. The United States Government estimates that approximately 800,000 to 900,000 people annually are trafficked across international borders worldwide.⁴ Between 18,000 and 20,000 of those victims are trafficked into the United States.⁵ Internationally, the main human trafficking pipelines stretch from Asia, across Europe, through Central America and the Caribbean, to the United States.⁶ The largest influx of humans trafficked to the U.S. come from less developed countries. The most popular transit route for Chinese, South Americans, and South Asians is through Central America and Mexico.⁷ However, traffickers are increasingly using the U.S.-Canadian border to enter the United States.⁸ The southwest border of the U.S. continues to serve as the biggest point of illegal entry into the U.S. because of the ease of transporting people across the border without any formal documents.⁹ Countries in transition, particularly in conflict or post-conflict stages, are easy targets for traffickers.¹⁰ Such countries are usually rampant with internally displaced people, who are highly vulnerable to exploitation and trafficking.¹¹

Traffickers rely on their victims' vulnerability and desire for a better life.¹² In countries where unemployment and poverty levels are high, traffickers find it particularly easy to promise their victims higher wages and better lifestyles in richer countries.¹³ Even if women have jobs in their home countries, they may still be lured by the promise

⁴ Trafficking Report, *supra* note 2, at 7.

⁵ *Id.*

⁶ *Id.*

⁷ James O. Finckenauer and Jennifer Schrock, Nat'l Inst. of Justice, *Human Trafficking: A Growing Criminal Market in the U.S.*, at <http://www.ojp.usdoj.gov/nij/international/ht.html> (last visited Aug. 15, 2004).

⁸ *Id.*

⁹ *Id.*

¹⁰ Trafficking Report, *supra* note 2, at 8.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

of making more money in the destination country.¹⁴ Such promises are especially enticing because these women expect that by earning more money in the destination country, they will be able to provide for their families by sending their earnings back to them.¹⁵

Most families and victims are unaware of the dangers of trafficking because of the “success stories,” displays of wealth, or remittances back to villages from relatives working abroad that provide powerful incentives for others to migrate for work.¹⁶ The negative consequences of trafficking seldom trickle back to the areas that are rampant with at-risk populations; trafficking victims are often ashamed to return home if they have not made good money, have contracted a sexually transmitted disease, or have lost social status.¹⁷

Trafficking is often facilitated by greed and the widespread repression of women.¹⁸ Poor countries are inundated with media portrayals of wealth abroad that send powerful messages to residents, enticing them to seek work abroad. In some societies, women and children have little or no social status, and their lives are not valued as highly as those of men or boys. Thus, they are easily trapped in trafficking schemes. Ethnic minorities or lower class groups are also more susceptible to becoming trafficking victims.¹⁹

Traffickers include individual entrepreneurs, small “mom-and-pop” operations, and sophisticated organized trafficking rings.²⁰ Human trafficking is often intertwined

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 7.

¹⁷ Id. at 8.

¹⁸ Id.

¹⁹ Id.

²⁰ Finckenauer and Schrock, *supra* note 7.

with other illicit activities such as fraud, extortion, racketeering, money laundering, bribery of public officials, drug trafficking, document forgery, and gambling.²¹ Human Rights Watch²² has exposed consistent patterns in the trafficking of women.²³ In all cases, coercive tactics, including deception, fraud, intimidation, isolation, threats and use of physical force, or debt bondage, are used to control women.²⁴ Further, in many instances, government officials are responsible for using these means to facilitate trafficking. For example, in Bosnia and Herzegovina, corrupt officials accept bribes to falsify documents and provide protection for traffickers.²⁵

Traffickers recruit female victims through advertisements in local newspapers offering good jobs at high pay in exciting new locations, or use fraudulent travel, model, or matchmaking agencies to lure unsuspecting women into their trafficking schemes.²⁶ Traffickers also find child victims by misleading parents into believing that their children will be taught useful vocational skills. In addition, children are often also kidnapped or abducted into the trafficking scheme.²⁷ Traffickers then use threats, intimidation and violence to force victims to engage in sex acts under conditions comparable to slavery for the traffickers' financial gain.²⁸

Modern-day slavery in the form of trafficking thrives because of its profitability.²⁹ The United Nations estimates that trafficking in human beings generates \$7 to 10 billion

²¹ Id.

²² Human Rights Watch is an independent, nongovernmental organization that investigates and exposes human rights abuses internationally.

²³ Human Rights Watch, Trafficking, at <http://hrw.org/women/trafficking.html> (last visited Aug. 16, 2004).

²⁴ Id.

²⁵ Id.

²⁶ Trafficking Report, *supra* note 2, at 7.

²⁷ Id.

²⁸ Id. at 6.

²⁹ Id. at 9.

annually for traffickers.³⁰ Human cargo can be moved across borders and past immigration officials much more easily than narcotics or weapons. Even if trafficking victims are caught, they can quickly be re-trafficked to other areas, or sold to new employers, such as brothel owners.³¹ Traffickers may earn a few hundred to thousands of dollars for a child victim, and brothel owners may make a few thousand to tens of thousands of dollars for each woman forced into prostitution.³²

II. Human Trafficking Defined

Current definitions of human trafficking have become outdated, and do not address modern problems that need to be resolved. The concept of human trafficking first developed in the late 1800's and early 1900's when white women from Europe were sold as slaves in Arab and Eastern countries where they served as concubines or prostitutes.³³ Efforts were soon made to end this type of slave trade. From 1904 to 1910, the first agreements and conventions on the issue identified trafficking as the movement of women for immoral purposes, i.e. prostitution.³⁴ Over time, many definitions of human trafficking have developed. However, it most commonly refers to the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or the giving or receiving of payments or benefits to achieve the consent of a

³⁰ Id.

³¹ Id.

³² Id.

³³ Global Alliance Against Traffic in Women, Information Sheets 2002, *available at*

<http://www.thai.net/gaatw/> (last visited March 20, 2004) [hereinafter GAATW Information Sheets].

³⁴ International Agreement of May 18, 1904 for the Suppression of the White Slave Traffic; International Convention of May 4, 1910 for the Suppression of the White Slave Traffic; International Convention of September 30, 1921 for the Suppression of the Traffic in Women and Children; International Convention of October 11, 1933 for the Suppression of the Traffic in Women of Full Age.

person having control over another person, for the purpose of exploitation.³⁵ Exploitation occurs in many forms, but most commonly in the form of sexual exploitation, forced prostitution or forced labor or services.³⁶

At present, there is no widely recognized definition of trafficking in international law, making it difficult for international law to combat human trafficking. The term “trafficking” is used by different actors to describe activities that range from voluntary, facilitated migration, to the exploitation of prostitution, to the movement of persons through the threat or use of force, coercion, or violence, for certain exploitative purposes.³⁷ Historical characterizations of trafficking tend to be outdated, ill-defined and non-responsive to the current realities of the movement of and trade in people, and to the nature and extent of the abuses inherent in and incidental to trafficking.³⁸ Most definitions of human trafficking fail to address the associated human rights violations. Rather than relying on a definition of “trafficking” that dates back to the early nineteenth century, a new definition must be created based on our current understanding of human trafficking, and should focus on the human rights violations and gender protections. The common elements found in all of the trafficking patterns are: (i) a lack of consent; (ii) the brokering of human beings; (iii) the transport of human beings; and (iv) the exploitative

³⁵ Interpol, Children and Human Trafficking, at <http://www.interpol.int/Public/THB/default.asp> (last visited March 20, 2004).

³⁶ Id.

³⁷ *Report of the Special Rapporteur on violence against women, Integration of the Human Rights of Women and the Gender Perspective*, U.N. ESCOR, Comm. on Hum. Rts., 56th Sess., Agenda Item 12(a), at 8, E/CN.4/2000/68 (2000), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e29d45a105cd8143802568be0051fcfb?Opendocument> (last visited Aug. 16, 2004) [hereinafter Report of Special Rapporteur].

³⁸ Id.

or servile conditions of the work or relationship.³⁹ Thus, any definition of trafficking must encompass these elements.⁴⁰

The non-consensual nature of trafficking sets it apart from other forms of migration, but trafficking should not be confused with certain forms of illegal migration.⁴¹ While all trafficking is, or should be, illegal, all illegal migration is not trafficking.⁴² At the heart of the distinction is the issue of consent.⁴³ Human trafficking occurs most easily because the victims are misled into believing they will be given an opportunity to work in a respectable trade, earning a decent wage. Although they consent to going to the destination country, their agreement is obtained under false pretenses, and they do not ever consent to being forced into jobs involving sexual exploitation. Therefore, at the core of any definition of trafficking must be the recognition that trafficking is never consensual.⁴⁴

In addition to the nonconsensual aspect, the definition of trafficking must encompass the common elements of the entire trafficking process.⁴⁵ These common elements include the brokering of victims, and the exploitative or servile conditions of the work or relationship in which the trafficked person ends up.⁴⁶ The United Nations Economic and Social Council (“ECOSOC”) uses the following definition, developed by Radhika Coomaraswamy, the Special Rapporteur on violence against women, its causes, and consequences:

³⁹ Id.

⁴⁰ Id. at 10.

⁴¹ Id. at 8.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id. at 9.

⁴⁶ Id.

Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons:

(i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:

(ii) placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).⁴⁷

This definition is broad and covers every person involved in the trafficking chain:

from those at the beginning of the chain who provide or sell the victims, to those at the end of the chain who receive or purchase the victims, hold the victims in slavery, or profit therefrom.⁴⁸ Although numerous distinct abuses are committed during the course of trafficking, which themselves violate both national and international law, it is the combination of the coerced transportation and the coerced end practice that makes trafficking a violation distinct from its component parts.⁴⁹ Without this linkage, trafficking would be legally indistinguishable from the individual activities of smuggling and forced labor or slavery-like practices, when in fact trafficking differs substantively from its component parts.⁵⁰ The transportation of trafficked persons is inextricably linked to the end purpose of trafficking.⁵¹ Recruitment and transportation in the trafficking context is undertaken with the intent to subject the victim of the coerced transport to additional violations in the form of forced labor or slavery-like practices.⁵²

Further, rather than focusing only on prostitution or sexual exploitation, the definition adopted by the U.N. broadly encompasses all forced labor and slavery-like

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

practices, allowing international laws to address a wide range of trafficking violations. Documentation on trafficking patterns reveals that trafficking is undertaken for numerous purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labor, and marriage, adoptive or other intimate relationships.⁵³ Because human trafficking results for a number of reasons, such a broad definition is necessary to address all possible aspects of trafficking.

III. International Laws Against Human Trafficking

Trafficking is particularly easy work because traffickers often go unpunished. There are few laws under which they can be punished, and the existing anti-trafficking laws are scarcely enforced.⁵⁴ When traffickers are caught and prosecuted, their cases often fall apart because of a lack of witnesses, poor witness protection, or victims' fear of deportation.⁵⁵ Victims are afraid of retaliation by traffickers, recrimination within their families or villages, and the stigma of being labeled as a prostitute.⁵⁶ Many countries lack their own domestic laws to address human trafficking crimes. Thus, trafficking in those areas is difficult to control, and tends to allow the problem to flourish.⁵⁷

The international community has been slow to adequately address the problem of human trafficking. Historically, in the early 1900s the women involved in trafficking were not entitled to any protection because governments were not concerned with whether or not these women had consented to work in the sex industry.⁵⁸

⁵³ Id. at 10.

⁵⁴ Trafficking Report, *supra* note 2, at 9.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ GAATW Information Sheets, *supra* note 33.

⁵⁸ Id.

a. International Laws that Address Human Trafficking

International law has addressed human trafficking since 1904, although largely through ineffective legal instruments. In 1904, the first binding legal instrument to address human trafficking was adopted – the International Agreement for the Suppression of the White Slave Trade.⁵⁹ The purpose of this treaty was to preserve the “purity” of the white population, but it proved to be ineffective.⁶⁰ Also, it focused only on the protection of victims, and did not address the punishment of traffickers.⁶¹ It did not therefore effectively address the problem of human trafficking. Consequently, in 1910, the International Convention for the Suppression of White Slave Traffic was adopted and ratified by thirteen nations.⁶² This Convention more adequately addressed the punishment of trafficking perpetrators.

Later, once the League of Nations was formed, trafficking was deemed to be of such significance that the League of Nations included in its mandate “general supervision over the execution of agreements with regard to the traffic in women and children”.⁶³ The League of Nations concluded both the 1921 Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age.⁶⁴ The 1921 Convention called for the prosecution of persons who trafficked children, the licensing of employment agencies,

⁵⁹ Report of Special Rapporteur, *supra* note 37, at 10.

⁶⁰ Suhas Chakma, *UN in Combat with Human Trafficking*, The Pioneer, May 1, 2004, at http://www.achrweb.org/inmedia/media2004/un_trafficking_pio.htm (last visited May 23, 2004).

⁶¹ Report of Special Rapporteur, *supra* note 37, at 10.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

and the protection of women and children who immigrate or emigrate.⁶⁵ The 1933 Convention required state parties to punish persons who trafficked women of full age, irrespective of the women's consent.⁶⁶ After the United Nations was formed, these four Conventions were eventually consolidated in 1949 when the United Nations General Assembly adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁶⁷

The 1949 Convention entered into force in July 1951. It requires state parties to punish any person who procures, entices or leads away, or exploits, for purposes of prostitution, another person, regardless of that person's consent.⁶⁸ The 1949 Convention also seeks to punish traffickers by requiring punishment of any person who keeps or manages, or knowingly finances or takes part in the financing of a brothel, or who knowingly rents a building or other place or any part thereof for the purpose of the prostitution of others.⁶⁹

The 1949 Convention is considered the current standard for States that adopt anti-trafficking policies.⁷⁰ However, several problems have arisen. First, the terms "trafficking" and "exploitation of prostitution" seem to have merged into one definition that is unclear.⁷¹ This had led to confusion about which situations should be condemned

⁶⁵ "Immigration" refers to the act of entering a country with the intention of settling there permanently. "Emigration" refers to the act of leaving a country with the intent to not return. Black's Law Dictionary, 752, 541 (7th ed. 1999).

⁶⁶ Report of Special Rapporteur, *supra* note 37, at 10.

⁶⁷ Id.; UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317(IV), U.N. GAOR, 4th Sess., 264th plen.mtg. at 33, (1949), available at <http://ods-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/051/36/IMG/NR005136.pdf?OpenElement> (last visited Aug. 17, 2004) [hereinafter 1949 Convention].

⁶⁸ *See id.*, Art. 1.

⁶⁹ *See id.*, Art. 2.

⁷⁰ GAATW Information Sheets, *supra* note 33; 1949 Convention, *supra* note 67.

⁷¹ *Id.*

and punished.⁷² Second, the 1949 Convention addresses those women who enter into prostitution either with or without consent.⁷³ It thus disregards the intent of the women who are trafficked, and views all prostitution as trafficking.⁷⁴ Third, it fails to protect trafficking victims' rights as it does not take a human rights approach to addressing the problem of human trafficking.⁷⁵ Rather, it views women as vulnerable beings in need of protection from the evils of prostitution.⁷⁶ The Convention overlooks the victims' wills, and therefore, many of the women who are forced into prostitution are not properly viewed as victims.⁷⁷ As a result, harsher anti-prostitution laws are often passed, resulting in further isolation and stigmatization of sex workers.⁷⁸

Additionally, the Convention is largely outdated because it does not address the modern forms of human trafficking. It fails to address the fact that prostitution is a reality, and that non-consenting victims of sex trafficking need protection simply because they did not consent. The real issue that needs to be addressed is the problem of non-consenting women being trafficked into sexual slavery.⁷⁹ Only 74 United Nations member states are parties to the 1949 Convention, resulting in additional problems. The Convention also does not provide for any monitoring mechanism, but rather relies on each state to implement its own domestic laws that prohibit and punish trafficking for prostitution purposes.⁸⁰

In 1998, a global effort to combat human trafficking began when the United

⁷² Id.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Chakma, *supra* note 60.

⁷⁶ Report of Special Rapporteur, *supra* note 37, at 11.

⁷⁷ GAATW Information Sheets, *supra* note 33.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

Nations General Assembly passed Resolution 53/111, which called for an ad hoc committee to be established specifically to address the issue.⁸¹ Then in 2000, the United Nations General Assembly adopted the Convention Against Transnational Organized Crime and two optional Protocols supplementing it.⁸² One of these protocols, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, was intended to be the most comprehensive document on the subject of human trafficking.⁸³ Approximately 80 of the 191 United Nations Member States signed the Protocol.⁸⁴ The Protocol calls on nations to protect trafficking victims' human rights and to provide measures for their physical, psychological, and social recovery.⁸⁵ Specifically, its stated purposes are to: a) prevent and combat trafficking in persons, paying particular attention to the protection of women and children; b) protect and assist the victims of such trafficking, with full respect for their human rights; and c) promote cooperation among state parties in order to meet those objectives.⁸⁶ The Protocol also sets forth eight principles that are meant to guide states in providing protection for human trafficking victims.⁸⁷ These include non-discrimination, safety and fair treatment, access to justice, access to private actions and reparations, resident status, health and other services, repatriation and reintegration, and

⁸¹ LeRoy G. Potts, Jr., *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 Geo. Wash. Int'l. L. Rev. 227, 236 (2003); G.A. Res. 53/111, U.N. GAOR, 53rd Sess., at 3, U.N. Doc. A/RES/53/111 (1998), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/763/27/PDF/N9976327.pdf?OpenElement> (last visited Aug. 17, 2004).

⁸² Chakma, *supra* note 60; G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex I, at 4, U.N. Doc. A/RES/55/25 (2001), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/560/89/PDF/N0056089.pdf?OpenElement> (last visited Aug. 17, 2004).

⁸³ G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex II, at 31, U.N. Doc. A/RES/55/25 (2001), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/560/89/PDF/N0056089.pdf?OpenElement> (last visited Aug. 17, 2004) [hereinafter Protocol]; Potts, *supra* note 81, at 236.

⁸⁴ *Id.*

⁸⁵ Human Trafficking.org, *Protection*, available at <http://www.humantrafficking.org/protection/> (last visited Aug. 17, 2004); Protocol, *supra* note 83.

⁸⁶ Protocol, *supra* note 83.

⁸⁷ *Id.*

state cooperation.⁸⁸

The Protocol seems to address the punishment of traffickers and protection of victims, but its success will depend on each state's ability to provide the protections called for in its principles. Although many states signed the Protocol, most states, including the United States, did not ratify it.⁸⁹ Further, it did not enter into force until December 25, 2003, more than three years after it was adopted.⁹⁰

b. Recent Global Activity Addressing Human Trafficking

Globally, many countries are working together to combat human trafficking. In March 2004, the U.S. and Norwegian missions to the North Atlantic Treaty Organization ("NATO"), in cooperation with the Center for Strategic and International Studies, hosted the first ever NATO conference on trafficking in persons.⁹¹ The purpose of the conference was to advance the policy debate within the NATO alliance, and ultimately develop a policy to counter human trafficking consistently across all areas of NATO operations.⁹² Global experts were brought together at the conference to focus attention on human trafficking and its effects on NATO operations, and to decide on an appropriate NATO policy against trafficking.⁹³ An eventual policy will be one that all NATO allies and partners can support and one that follows the best established objective guidelines.⁹⁴

⁸⁸ Potts, *supra* note 81, at 238-39.

⁸⁹ United Nations Office on Drugs and Crime, Signatories to the UN Convention against Transnational Crime and its Protocols, available at http://www.unodc.org/unodc/en/crime_cicp_signatures.html (last visited May 25, 2004).

⁹⁰ *Id.*

⁹¹ R. Nicholas Burns and Kai Eide, *An Alliance Against the Traffic in Humans*, International Herald Tribune, March 4, 2004.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

Non-governmental organizations (“NGOs”) have been holding international conferences to address the issues of human trafficking and victim protection as well. They are taking a human rights approach to rehabilitating trafficking victims and reintegrating them into society. In May 2003, a conference entitled “21st Century Slavery – The Human Rights Dimension to Trafficking in Human Beings” was held in Rome, Italy. One of the speakers, Widney Brown of Human Rights Watch, addressed the issue of adopting a human rights approach over a legal approach to rehabilitating trafficking victims.⁹⁵ She stated that for a long time, trafficking in human beings has been seen only as a criminal justice issue that tends to ignore the victims and only addresses the process of trafficking.⁹⁶ However, over the past few decades, human rights activists have taken a more active role in addressing the issue of trafficking as a human rights abuse.⁹⁷ To actually resolve the trafficking problem, states will have to address the underlying human rights abuses in addition to the trafficking crimes committed.

As a result of the advocacy work being done by NGOs, states have been taking notice of the trafficking problem and have been enacting additional legislation. In the United States, human rights activists lobbied to expand trafficking laws to include all trafficking victims, as opposed to only those who are forced into prostitution.⁹⁸ This is important because, while not all trafficking victims are forced into prostitution, many suffer equally horrific human rights abuses if they are forced into domestic work, or other forms of slavery.

⁹⁵ Widney Brown, Address at the “21st Century Slavery – The Human Rights Dimension to Trafficking in Human Beings” conference in Rome, Italy (May 15-16, 2002), at <http://www.hrw.org/background/wrd/trafficked-victims.htm>.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

IV. United States Legislation Against Human Trafficking

In January 2004, a federal judge in Harlington, Texas sentenced Juan Carlos Soto, an illegal immigrant from Mexico, to 23 years in prison, the longest allowable sentence under the U.S. trafficking guidelines. Soto ran an alien smuggling and transportation operation together with seven other men. He smuggled women from Honduras and El Salvador into the U.S., and forced them to stay in his so-called “safe houses” until they had “worked off” their debt to him. During the day, these women were forced to perform domestic work, while at night they were repeatedly raped and forced to provide sexual services.⁹⁹

Trafficking cases are hard to identify, and therefore easily go unnoticed. For example, the *Soto* case¹⁰⁰ was almost prosecuted by the U.S. Attorney’s office as a routine smuggling matter, until an attorney with trafficking experience reviewed the evidence and noted that trafficking charges should have been brought.¹⁰¹ These charges would have otherwise been overlooked.¹⁰² Similar cases are often difficult to prosecute in the U.S. because the victims are the only witnesses to the crime, and are often afraid to come forward.¹⁰³ Also, once trafficking networks are identified, the people involved in

⁹⁹ Terry Eastland, Weekly Standard, *The Bush administration targets the modern day slave trade. But will the president’s plan work?*, Feb. 12, 2004, at <http://www.weeklystandard.com/content/public/articles/000/000/003/718xfSDL.asp> (last visited Aug. 17, 2004).

¹⁰⁰ See note 75 *supra*.

¹⁰¹ Eastland, *supra* note 99.

¹⁰² *Id.*

¹⁰³ Finckenauer and Schrock, *supra* note 7.

the networks quickly escape, and because of their mobility, they disappear.¹⁰⁴ Further, even if traffickers are convicted, they rarely spend much time in U.S. prisons.¹⁰⁵

Since 2000, the U.S. State Department has opened 210 trafficking investigations, charged 111 traffickers and convicted or obtained guilty pleas from 77 defendants, 59 of whom were found guilty of sex trafficking specifically.¹⁰⁶ These numbers have never been higher, and are largely the result of the recent anti-trafficking laws that have been passed in the U.S. since 2000.¹⁰⁷

a. U.S. legislation addressing human trafficking

Trafficking cases were traditionally prosecuted under various Title 18 sections, including the Mann Act of 1910.¹⁰⁸ The Mann Act prohibited the transportation of individuals in interstate or foreign commerce with intent to engage those individuals in prostitution or any sexual activity.¹⁰⁹ The punishment was a fine, ten years in prison, or both.¹¹⁰ As enacted, the Mann Act was meant to prohibit the White Slave Trade.¹¹¹ Its purpose in 1910 was to forbid transporting a woman or girl across state borders for “immoral purposes,” or prostitution.¹¹²

The Mann Act was amended in 1948 to include all individuals, rather than only women and girls.¹¹³ In its current version, the Mann Act states that “[w]hoever knowingly transports any individual in interstate or foreign commerce, or in any Territory

¹⁰⁴ Richard Estes, Address at the Protection Project Seminar Series, *Sexual Trafficking of Domestic and Foreign Children in the U.S.* (Mar. 25, 2002), available at <http://www.protectionproject.org/main1.htm> (last visited Aug. 17, 2004).

¹⁰⁵ Finckenauer and Schrock, *supra* note 7.

¹⁰⁶ Eastland, *supra* note 99.

¹⁰⁷ *Id.*

¹⁰⁸ 18 U.S.C. § 2421 (2002).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Fara Gold, *Redefining the Slave Trade: The Current Trends in the International Trafficking of Women*, 11 U. Miami Int'l & Comp. L. Rev. 99, 125 (Summer 2003).

¹¹² *Id.*

¹¹³ 18 U.S.C. § 2421 (2002).

or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.”¹¹⁴ Although the Mann Act is still in effect, it is rarely used to prosecute traffickers because it is so outdated.

The Mann Act was followed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which significantly expanded potential sentences for individuals who are convicted of alien trafficking, and increased the maximum penalty for alien smuggling from five to ten years.¹¹⁵ It also added new criminal offenses, so that transporting prostitutes is now a criminal activity.¹¹⁶

b. Trafficking Victims Protection Act of 2000

More recently, the United States has taken a three-step approach to addressing the human trafficking problem, attempting to prevent trafficking, prosecute traffickers, and protect victims.¹¹⁷ The Victims of Trafficking and Violence Protection Act (“VPA”)¹¹⁸ was passed in 2000 as a means of establishing one comprehensive domestic law to address violence against women. The VPA is meant to combat trafficking in persons as one type of violence against women, especially into the sex trade, slavery, and involuntary servitude.¹¹⁹ It is divided into three divisions: Division A, the most pertinent,

¹¹⁴ Id.

¹¹⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208 (1996) [hereinafter IIRIRA]; Finckenaue and Schrock, *supra* note 7.

¹¹⁶ IIRIRA, Pub. L. No. 104-208 (1996); U.S. Dept. of Justice, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Fact Sheet (Mar. 24, 1997), at <http://uscis.gov/graphics/publicaffairs/factsheets/948.htm> (last visited May 23, 2004).

¹¹⁷ Bill Summary and Status for the 106th Congress, available at <http://www.congress.gov/cgi-bin/bdquery/z?d106:H.R.3244>: (last visited May 25, 2004).

¹¹⁸ 22 U.S.C. § 7103(d) (2000).

¹¹⁹ Bill Summary and Status for the 106th Congress, available at <http://www.congress.gov/cgi-bin/bdquery/z?d106:H.R.3244>: (last visited May 25, 2004).

is the Trafficking Victims Protection Act of 2000 (“TVPA”)¹²⁰ and was enacted on October 28, 2000. The TVPA is meant to combat human trafficking by ensuring the effective punishment of traffickers, enhancing protection for victims, and creating significant mandates for the Departments of State, Justice, Labor, Health and Human Services and the U.S. Agency for International Development.¹²¹ Following the passage of the TVPA, prosecutors no longer have to sue trafficking perpetrators under numerous different statutes.¹²²

The TVPA has three purposes: 1) to combat trafficking; 2) to punish traffickers; and 3) to protect victims.¹²³ “Sex trafficking” is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, which is further defined as any sex act on account of which anything of value is given to or received by any person.¹²⁴ As a deterrent to sex trafficking, the TVPA established a severe penalty for perpetrators.¹²⁵ It increased penalties for involuntary servitude, peonage and other existing crimes from ten years to twenty years, and provided for life imprisonment if the violations include kidnapping, aggravated sexual abuse or an attempt to kill.¹²⁶ Traffickers may also be forced to make full restitution to their victims

¹²⁰ The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in various titles of the U.S.C.) is comprised of three divisions: A) The Trafficking Victims Protection Act of 2000; B) Violence Against Women Act of 2000; and C) Miscellaneous Provisions. This paper focuses on Division A, the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101-7110 (2000) [hereinafter TVPA].

¹²¹ Trafficking Report, *supra* note 2, at 13.

¹²² Susan Tiefenbrun, *The Saga of Susannah, A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 Utah L.Rev. 107, 166.

¹²³ 22 U.S.C. § 7101 (2000).

¹²⁴ 22 U.S.C. § 7102 (2000); Tiefenbrun, *supra* note 122, at 166.

¹²⁵ *Id.*

¹²⁶ *Id.*

by paying them the salary they would have earned for the months or years they spent in involuntary servitude.¹²⁷

As a means of providing additional victim protection, the TVPA enhanced aspects of federal government activity to combat trafficking in persons by providing a range of new protections and assistance for trafficking victims, expanding the crimes and penalties available to prosecute traffickers, and expanding U.S. activities internationally to prevent victims from being trafficked in the first place.¹²⁸

To ensure that the U.S. Government is actively combating human trafficking, the TVPA requires the Department of Justice (“DOJ”) to issue an annual progress report on the U.S. Government’s domestic anti-trafficking efforts.¹²⁹ The report sets minimum standards that other governments must meet in order to continue to receive certain types of U.S. assistance.¹³⁰ In June 2003, for the first time the report included information about foreign governments who are not making significant efforts to bring themselves into compliance with these minimum standards.¹³¹ Countries that do not comply with these promulgated standards face potential sanctions by the United States.¹³²

The minimum standards required by the TVPA of all countries, including the U.S., are: 1) to prohibit trafficking and punish acts of trafficking; 2) to 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); 3)

¹²⁷ Tiefenbrun, *supra* note 122, at 167.

¹²⁸ Assessment, *supra* note 1, at 2.

¹²⁹ 22 U.S.C. § 7101 (2000).

¹³⁰ Trafficking Report, *supra* note 2, at 13.

¹³¹ *Id.* at 15.

¹³² *Id.* at 13.

to 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; and 4) to make serious and sustained efforts to eliminate trafficking.¹³³

The DOJ Report uses three tiers to communicate various countries' levels of compliance with these standards. Tier 1 includes countries whose governments fully comply with the TVPA's minimum standards.¹³⁴ Tier 2 includes countries whose governments do not fully comply but are making significant efforts to bring themselves into compliance.¹³⁵ Finally, Tier 3 refers to countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.¹³⁶

The U.S. Government has also established two mechanisms to combat human trafficking domestically: the President's Interagency Task Force to Monitor and Combat Trafficking in Persons that implements the TVPA, and the U.S. Department of State Office to Monitor and Combat Trafficking in Persons, which was established in 2001.¹³⁷ The efforts of the Trafficking Office are guided by a legislative mandate to: 1) combat and eradicate human trafficking; 2) focus worldwide attention on the international slave trade; 3) assist countries with the elimination of trafficking; 4) promote regional and bilateral cooperation for trafficking eradication; 5) support service providers and NGOs in their trafficking prevention and victim protection efforts; 6) coordinate U.S. agency grant policies on trafficking; 7) assist other governments in drafting or strengthening anti-

¹³³ Id. at 15.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ Id. at 169.

trafficking laws; 8) and provide enforcement training to ensure traffickers are fully investigated and prosecuted to final conviction.¹³⁸

c. Trafficking Victims Protection Reauthorization Act of 2003

The Trafficking Victims Protection Reauthorization Act of 2003 (“TVPA 2003”) was passed on January 7, 2003 to authorize appropriations for fiscal years 2004 and 2005 for the TVPA.¹³⁹ It followed several congressional findings which concluded that trafficking victims had been facing unintended obstacles in the process of obtaining a T visa under Section 101(a)(15)(T)(i) of the Immigration and Nationality Act.¹⁴⁰ The T visa is a non-immigrant visa category for aliens whom the Attorney General determines are victims of a severe form of trafficking in persons.¹⁴¹ The TVPA 2003 provides for several amendments to the TVPA that enhance protection for trafficking victims.¹⁴²

First, the TVPA 2003 seeks to extend protection by providing assistance and benefits through the Secretary of Health and Human Services to *potential* victims of trafficking, and to minor dependent children of victims or potential victims of severe forms of trafficking.¹⁴³ Second, the TVPA 2003 amends Section 101(a)(15)(T) of the Immigration and Nationality Act, the section creating the ability for trafficking victims to apply for protection under a T visa.¹⁴⁴

V. United States Protection of Human Trafficking Victims

¹³⁸ Id.

¹³⁹ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, §2(3), 22 U.S.C.A. (117 Stat.) § 7101 (2003) [hereinafter TVPA 2003].

¹⁴⁰ Id.

¹⁴¹ Foreign Affairs Manual, 9 FAM 41.84 Notes (May 23, 2002), available at <http://foia.state.gov/masterdocs/09FAM/0941084N.PDF> (last visited April 20, 2004).

¹⁴² TVPA 2003, *supra* note 139.

¹⁴³ Id.

¹⁴⁴ Id.

The problem of human trafficking is still largely undefined. Although human trafficking should be viewed as a human rights violation, governments generally treat it as an immigration violation.¹⁴⁵ Thus, trafficking victims are often treated as illegal immigrants, leading to detainment or deportation.¹⁴⁶ Also, there is a general belief that most trafficking victims are willing participants instead of coerced victims, and thus there is even more tendency to focus on deportation procedures rather than on victim protection.¹⁴⁷

Once trafficking victims are identified, they need help rebuilding their lives. In the United States, the government provides several protections to trafficking victims.¹⁴⁸ Specifically, the TVPA makes them eligible for federally funded or administered health and other benefits or services.¹⁴⁹ Such benefits include access to food, healthcare and shelter. They also receive protections from removal from the United States by the U.S. Government, as do their families, particularly if they cooperate with law enforcement in the investigation and prosecution of traffickers.¹⁵⁰

a. Safety and Fair Treatment

Although the United States has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000, the Protocol provides the following protections to victims of human trafficking in accordance with its guidelines.¹⁵¹ As a means of providing safety for trafficking victims, shelters have been

¹⁴⁵ Gold, *supra* note 111, at 108.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Assessment, *supra* note 1, at 2.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Protocol, *supra* note 83.

developed that are specifically designed to provide shelter for trafficking victims.¹⁵² The U.S. Government has created guidelines for these shelters, outlining what services should be provided to trafficking victims.¹⁵³ Recommended services include security, access to physicians and job placement specialists, language support, and legal assistance.¹⁵⁴

Since 2000, the U.S. Department of Health and Human Services (“DHHS”) has awarded over \$4.6 million in grant funding to 22 organizations in the U.S. to provide services geared toward helping trafficking victims and providing outreach services.¹⁵⁵ These organizations provide temporary housing, independent living skills, cultural orientation, transportation, educational programs, legal assistance, assistance in finding permanent housing and employment, mental health counseling, and specialized foster care programs for children.¹⁵⁶

In addition, in 2004, the DHHS created a national, multi-lingual hotline for callers to report victimization.¹⁵⁷ It also created a Rescue & Restore Campaign, through which the DHHS and other federal government representatives are working with domestic civic leaders and NGOs to develop new ideas on how to reach more trafficking victims who need protection.¹⁵⁸ NGOs will coordinate assistance to victims and act as advocates and counselors.¹⁵⁹ This includes explaining the visa process and the necessity of seeking law enforcement assistance.¹⁶⁰

¹⁵² U.S. Dept. of State, Office to Monitor and Combat Trafficking in Persons, Shelter Best Practices (Mar. 2, 2004), available at <http://www.state.gov/g/tip/rls/30069.htm> (last visited Aug. 18, 2004).

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Assessment, *supra* note 1, at 5.

¹⁵⁶ Id.

¹⁵⁷ Vicki Silverman, Education and Outreach at the Grassroots Level is Key, U.S. Dept. of State (May 20, 2004), available at <http://usinfo.state.gov/gi/Archive/2004/May/21-902471.html>.

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ Id.

b. Resident Status

The Protocol also encourages states to provide resident status for human trafficking victims in their states.¹⁶¹ The United States has provided trafficking victims in the U.S. with the ability to apply for a T visa issued by the Department of Homeland Security's Bureau for Citizen and Immigration Services.¹⁶² Five thousand of these visas are available annually.¹⁶³ This is one of the most beneficial protections provided to trafficking victims in the U.S., and was first provided to account for the fact that trafficking victims generally have no legal rights or access to the legal system in the U.S. because of their illegal presence.¹⁶⁴

The T visa is a non-immigrant visa category for aliens whom the Attorney General determines are victims of a *severe* form of trafficking in persons.¹⁶⁵ The victim must apply for the T Visa under section 101(a)(15)(T) of Title 8 (the Immigration and Nationality Act), and the visa application must be approved.¹⁶⁶ Recipients of the visa can live and work legally in the United States for three years while their cases are being investigated and prosecuted.¹⁶⁷ They can also adjust to lawful permanent resident status after three years.¹⁶⁸ In addition, subject to some limitations, the T visa allows victims to apply for non-immigrant status for their spouses and children, and victims under the age

¹⁶¹ Protocol, *supra* note 83.

¹⁶² Tiefenbrun, *supra* note 122, at 167.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Foreign Affairs Manual, 9 FAM 41.84 Notes (May 23, 2002), *available at* <http://foia.state.gov/masterdocs/09FAM/0941084N.PDF> (last visited Apr. 20, 2004).

¹⁶⁶ 22 U.S.C. § 7105 (2000).

¹⁶⁷ Assessment, *supra* note 1, at 2.; *See also* National Immigration Law Center, DOJ Issues Regulations for T Visas, Available to Victims of Trafficking, 16 Immigrants' Rights Update, no. 1 (Feb. 28, 2002), *available at* <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr071.htm> (last visited April 19, 2004).

¹⁶⁸ *Id.*

of 21 may apply for non-immigrant status for their parents.¹⁶⁹ Further, the T visa-holder may be granted employment authorization at the same time, which lasts for the duration of the T status.¹⁷⁰ Recipients can also study in the United States without obtaining student visas.¹⁷¹

There are some limitations on the T visa. First, applicants must show that they: 1) are or have been the victim of a “severe form of trafficking in persons”; 2) are physically present in the United States, Samoa, the Mariana Islands, or a port of entry; 3) would suffer extreme hardship involving unusual and severe harm if removed from the United States; and 4) have complied with any reasonable request for assistance in a trafficking investigation or prosecution, or are at least 15 years old.¹⁷² Thus, if the victim was not subjected to severe trafficking, he or she will not be eligible. Second, the victim must have had contact with a federal law enforcement agency or prosecuting agency that is authorized to investigate or prosecute trafficking crimes, either by reporting a crime or by responding to inquiries from the agency.¹⁷³ Thus a state law enforcement agency cannot alone assist a trafficking victim in obtaining a T visa. Third, recipients must be willing to assist the federal government in prosecuting their perpetrators.¹⁷⁴

In addition to the T visa, Congress created a U visa. Ten thousand U visas are available annually to immigrants who are either victims of, or who possess information concerning certain forms of criminal activity including trafficking, prostitution, and

¹⁶⁹ U.S. Dept. of Justice, Dept. of Justice Issues T Visa to Protect Women, Children and All Victims of Human Trafficking (Jan. 24, 2002), *available at* http://www.usdoj.gov/opa/pr/2002/January/02_crt_038.htm (last visited April 19, 2004).

¹⁷⁰ Foreign Affairs Manual, *supra* note 165.

¹⁷¹ *Id.*

¹⁷² National Immigration Law Center, *supra* note 167.

¹⁷³ National Immigration Law Center, *supra* note 167.

¹⁷⁴ Tiefenbrun, *supra* note 122, at 167.

sexual exploitation.¹⁷⁵ If a federal, state, or local agency certifies that an investigation or prosecution would be harmed without the immigrant's assistance, the immigrant may qualify for a U visa.¹⁷⁶ After three years, U visa-holders may adjust to lawful permanent resident status.¹⁷⁷

c. Health and Other Services

The DHHS provides certification and eligibility letters for victims that give them access to similar benefits and services given to refugees.¹⁷⁸ Since the TVPA was enacted in 2000, the DHHS has issued nearly 400 of these certifications.¹⁷⁹ Since 2003, the U.S. government has been providing identified trafficking victims with access to certain benefits and services, including financial support, basic medical care, and counseling.¹⁸⁰ Although victims are usually illegal immigrants and would not be eligible for such support, the TVPA allows them to receive federally funded or administered benefits such as cash assistance, medical care, food stamps, and housing.¹⁸¹

d. Repatriation and Reintegration

Section 107 of the TVPA provides that trafficking victims who do not qualify for either the T or U visas may still be eligible for assistance from the Secretary of State and the Administrator of the United States Agency for International Development ("USAID").¹⁸² USAID works in conjunction with various NGOs to help victims safely

¹⁷⁵ National Immigration Law Center, Congress Creates New "T" and "U" Visas For Victims of Exploitation, 14 Immigrants' Rights Update, no. 6 (Oct. 19, 2000), available at <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr039.htm> (last visited April 19, 2004).

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ Assessment, *supra* note 1, at 5.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id.

¹⁸² 22 U.S.C. §7105 (2000).

integrate, reintegrate, or resettle in foreign countries.¹⁸³ In establishing and conducting these programs and initiatives, the Secretary of State and the Administrator of USAID must take appropriate steps to enhance cooperative efforts among foreign countries, including the victims' countries of origin.¹⁸⁴

e. State Cooperation

The TVPA guarantees that victims of severe forms of trafficking, while in the custody of the federal government and to the extent practicable, shall not be detained in facilities that are inappropriate to their status as crime victims.¹⁸⁵ This is significant because it treats trafficking victims as actual victims as opposed to illegal immigrants who would be held in federal detention facilities until they were deported.

VI. Conclusion

The United States has made significant strides in providing protection for human trafficking victims. However, in order to effectively address the human trafficking problem, the U.S. will not only need to raise awareness of the problem, but will have to train those involved in the prosecution process, including everyone down to the police force. Victims cannot be adequately protected if everyone involved in the process is not fully familiar with the problem. For example, a trafficking victim would not have adequate access to legal assistance if the attorney assisting her does not understand the difference between illegal immigration and coerced sex trafficking.

Also, trafficking legislation needs to address the prevention of trafficking, the protection of trafficking victims, and the prosecution of trafficking perpetrators.

¹⁸³ TVPA, *supra* note 120, § 107(a)(1) (2000).

¹⁸⁴ *Id.*, § 107(a)(2) (2000).

¹⁸⁵ 22 U.S.C. § 7105(c)(1)(A) (2000).

Criminalizing the activities of all parties involved throughout the process of trafficking would facilitate efforts to both prevent trafficking and punish traffickers.¹⁸⁶ To properly address the problem of human trafficking, domestic legislation will first need to properly define human trafficking so that it accounts for the entire trafficking process. A broad definition, such as the ECOSOC definition addressed *supra*, should be adopted to take into account all forms of trafficking, and all the players involved in the trafficking chain. For legislation to effectively address trafficking and punish traffickers, every single person involved in the trafficking scheme needs to be encompassed in the legal definition of trafficking so that they fall within the jurisdiction of prosecution. This would include everyone from recruiting the victims, to those responsible for transporting them, relocating them, and enslaving them.

Women generally account for the largest constituent of trafficking victims, and often have special needs. However, the domestic anti-trafficking legislation currently in effect does not address their needs specifically. The TVPA provides an effective mechanism against human trafficking, but it does have some downfalls. For example, it applies only to “severe forms of trafficking,” defined as: (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁸⁷ It thus fails to provide any protection for victims who were not subjected to “severe” forms of human trafficking. Specifically,

¹⁸⁶ Report of Special Rapporteur, *supra* note 37, at 9.

¹⁸⁷ 22 U.S.C. § 7102 (2000).

those women who are over age 18 and were not coerced into sex acts where something of value was given or received in exchange, have no protection under the TVPA. The TVPA's emphasis on protecting only those subject to "severe" forms of trafficking and facing "extreme hardship" upon removal, as well as its crime-fighting requirements, compromise the protection that should be afforded all people trafficked into the United States.¹⁸⁸

In accordance with the Protocol's standards, the DHHS serves victims after there has been a certification that the victims truly are victims and are fully cooperating with U.S. law enforcement as mandated by the TVPA. However, they do not provide any emergency services for victims as soon as the victims are encountered.¹⁸⁹

The United States is currently the only country that offers the possibility of *permanent* residency to victims, even after their cases have been fully prosecuted.¹⁹⁰ However, the actual application process for the T visa can be a hindrance to victims since many of them do not speak English, are not familiar with the American culture or legal system, and have little or no money. In order to apply for the visa, a victim must complete a 17-page application packet and provide at least \$250 in fees.¹⁹¹ Although the victim can request a fee waiver, the fee itself could be a potential deterrent for a victim who might be a good candidate for a T visa. Further, the T visa does not seem to adequately distinguish between victim protection and witness protection.¹⁹² As trafficking victims are required to cooperate with government authorities in order to

¹⁸⁸ Tala Hartsough, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 *Hastings Women's L.J.* 77, 11 (Winter 2002).

¹⁸⁹ Assessment, *supra* note 1, at 6.

¹⁹⁰ *Id.* at 9.

¹⁹¹ National Immigration Law Center, *supra* note 167.

¹⁹² Hartsough, *supra* note 188, at 11.

receive T visas, many victims will not receive the protection if they have no relevant information to offer. Further, all victims will not be selected as witnesses to aid the prosecution of trafficking criminals.

Although there are many benefits available to victims of human trafficking in the United States, these benefits are difficult to access and victims are rarely able to seek these benefits without the legal and financial assistance of government authorities, non-governmental, or non-profit organizations. To adequately protect victims in the United States, all victims of human trafficking should have access to the benefits provided by the TVPA, and the U.S. Government must seek to raise awareness of the human trafficking problem so that everyone involved in providing protection will have adequate knowledge of trafficking.