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Spring 2011

### Human Trafficking: a Growing, Global Concern

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# **HUMAN TRAFFICKING: A GROWING, GLOBAL CONCERN**

**A thesis submitted to Regis College  
The Honors Program  
in partial fulfillment of the requirements  
for Graduation with Honors**

**by**

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**May 2011**

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## LIST OF ACRONYMS AND ABBREVIATIONS

ICCPR	United Nations International Covenant on Civil and Political Rights
ICESCR	United Nations International Covenant on Economic, Social, and Cultural Rights
ILO	International Labor Organization
LRA	Lord's Resistance Army (Uganda)
NGO	Nongovernmental Organization
TIP Report	United States Department of State's Trafficking in Persons Report
TVPA	United States' Trafficking Victims Protection Act of 2000
TVPRA	United States' Trafficking Victims Protection Reauthorization Act of 2008
UDHR	United Nations Declaration of Human Rights
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNODC	United Nations Office on Drugs and Crime

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## CHAPTER 1

### **An Introduction**

Almost a century and a half has passed since the abolition of slavery in the United States. Yet today, a different type of slavery continues to victimize the most vulnerable. This modern-day slavery is present in a variety of forms on nearly every continent and affects millions of people. Estimates indicate that 27 million people are enslaved worldwide today.<sup>1</sup> These slaves are exploited in a variety of ways and serve in multiple areas of society. Some are restricted to domestic labor; others, and perhaps the most well known, are used in sexual roles; others are forced into jobs requiring intense, manual labor.

The definition of slavery is, "A social and economic relationship in which a person is controlled through violence or its threat, paid nothing beyond subsistence, and is economically exploited."<sup>2</sup> The psychological, physical, emotional, and rational control of one person over another is considered slavery regardless of the specific form it takes.

According to authors Kevin Bales, Zoe Trodd, and Alex Kent Williamson, slavery exists in four forms today: chattel slavery, debt bondage slavery, contract slavery, and forced labor.<sup>3</sup> They exist globally and some are more prevalent in

certain areas than others due to cultural, economic, and political differences.

However, they are insistent that the reader understands that human trafficking is not a form of slavery, but, “a mechanism...that brings people into slavery.”<sup>4</sup> This is an important point because it is a common misconception held by many.

### **The Palermo Protocol**

Human trafficking is the one of the three most lucrative illegal businesses in the world; second only to illegal arms trade and preceding drug trafficking. In 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime (hereinafter: the Palermo Protocol). This Protocol established a type of formula designated to describe and define acts of human trafficking. Article three states:

“ ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud deception, the abuse of power or of a position of vulnerability; or 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.”<sup>5</sup>

According to the definition above, the crime of human trafficking includes three elements of the crime of human trafficking: an act, a means by which a person is

acquired, and a form of exploitation. Each of these elements must be present in order for an activity to be considered “trafficking.” Various forms of these elements may be present in cases of trafficking. An act could include recruitment, transportation, or receipt of persons. One could be abducted, deceived, or coerced into a trafficker’s hands for purposes such as slavery, sexual exploitation, or forced labor.<sup>6</sup> This brief list is not exhaustive and the elements of trafficking will be discussed in greater detail later in this paper.

Conny Rijken’s 2009 journal article, “A human rights based approach to trafficking in human beings,” gives reason that the definition set forth in the Palermo Protocol is not sufficiently clear. She wrote, “The definition does not comprise clearly defined elements and terms and thus leaves room for different interpretation. This is the consequence of the fact that the definition is the result of an international compromise...[and] therefore should be seen as the lowest common denominator.”<sup>7</sup> To Rijken, the Palermo Protocol is misleading in the way it uses the term “exploitation.” She does not stand by the portion of the definition which describes what acts constitute an act of exploitation, arguing that the definition describing exploitation as abuse “excessive in nature.”<sup>8</sup> The excess can lead to emotional manipulation, such as threats of violence.<sup>9</sup> Abuse of another human being is always criminal behavior. However, Rijken argues that those abuses listed in the definition are not necessarily always “excessive in

nature” and, therefore, cannot always be considered acts of trafficking in human beings.

### **Three distinctions**

Three distinctions must be made prior to an in-depth dialogue and analysis on the topic of human trafficking. First, not all trafficking victims are forced into the sex industry. This is a common, but false, impression created predominately by popular media sources. In their book, *The Slave Next Door*, Kevin Bales, and Ron Soodalter wrote, “The government, when it addresses the subject of human trafficking at all, focuses primarily on the area of forced prostitution, possibly because it makes the biggest splash.”<sup>10</sup> Hence, many are familiar with the term ‘sex trafficking’, yet are not entirely sure what ‘human trafficking’ entails. While trafficking for sexual purposes is thought to account for about half of all trafficking crimes in the United States, many other forms of trafficking exist in this country and around the world.<sup>11</sup> Hollywood movies, such as *Taken*, have certainly shed light on the issue of human trafficking. However, the general public remains ignorant about the actual extent to which trafficking is present in developing countries and throughout the world. Further discussion on this topic will occur in later chapters.

Second, not all trafficking involves crossing international borders. Trafficking can, and often does, take place within a single country. This typically

occurs when victims from rural villages are taken to urban areas for work. Many of the traffickers prey upon rural women, promising a thrilling, lucrative life in “the big city.” At other times, traffickers entice their victims by promising to take them to faraway countries, like the United States, to start a new and exciting life. Instead, they are simply transported to a city within their own country and are exploited.

Third, and finally, a distinction must be made between human trafficking and human smuggling. While each involve the illegal transport of human beings, smuggling is consensual. Sheldon Zhang describes a difference between the two: “The fundamental issue in human smuggling lies in the voluntary relationship between the smugglers and the smuggled.”<sup>12</sup> This relationship is considered voluntary in that a smuggler is paid in full prior to when the smuggling occurs. Those who are trafficked typically pay a percentage of their transportation fee prior to their departure, but once they reach their destination, they are forced to work off the rest of the payment until they are allowed to go free.<sup>13</sup>

Zhang offers another differentiation between trafficking and smuggling. For Zhang, it is considered trafficking when “force, fraud, and coercion” are used to transport, gain control, or exploit an individual. However, this muddies the seemingly clear-cut definition. If a migrant pays the full sum of his or her transport up front, is exploited during their transport, forced to work jobs they

had not agreed to at rates lower than they were told, charged extra fees, or transported in deplorable conditions, it is no longer an act of smuggling.<sup>14</sup> This allows for numerous variables to significantly alter the nature of the transportation of humans.

### **Statement of Purpose**

This thesis is intended to describe and explain the lasting impacts trafficking have on individuals and societies. A general description of the forms, as well as the effects of trafficking will be reviewed. Perhaps more importantly, proposed responses will be discussed in depth. But the primary goal is to spread awareness and educate the reader about the crime of trafficking in human beings. Awareness by the public is the first step in eradicating trafficking in human beings. It is the author's hope to elevate this awareness through her research and writing.

## CHAPTER 2

### **Description and Scope of the Issue**

The exact processes of human trafficking are mostly unknown and unique from case to case. Many cases go unnoticed, unprosecuted, and criminals go unpunished. This chapter aims at informing the reader about the details of human trafficking. It will look at the various forms, the means and processes by which one is trafficked, the victims trafficked, the profits made by the trafficker, and the effects of trafficking upon the victim.

#### **Forms**

The forms of human trafficking are numerous and diverse. The Protection Project at Johns Hopkins School for Advanced International Studies groups trafficking into three categories: commercial sex, non-commercial sex, and labor trafficking.

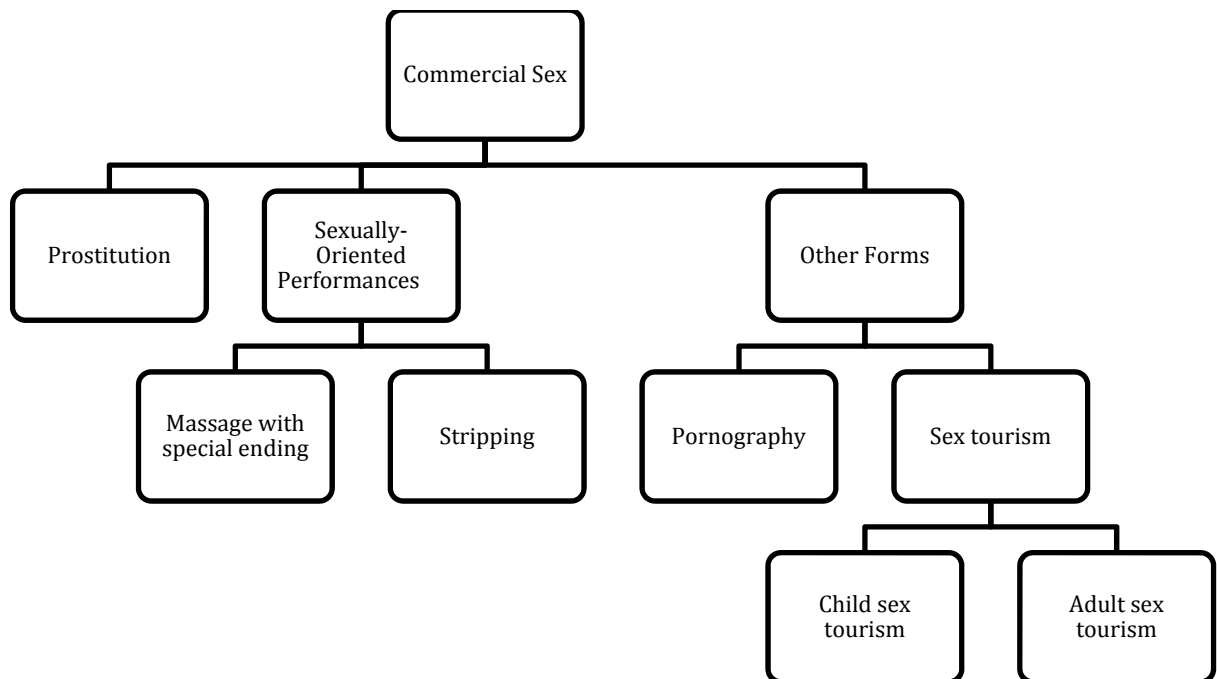


Chart 3.1<sup>1</sup>

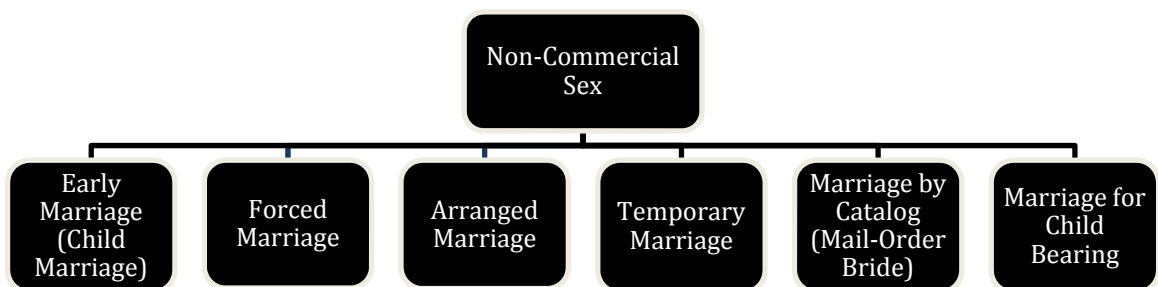


Chart 3.2<sup>2</sup>

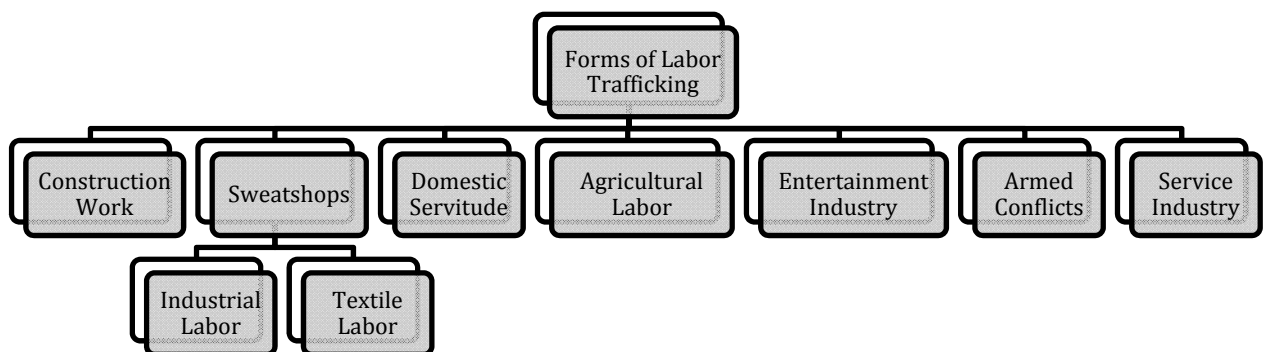


Chart 3.3<sup>3</sup>



These charts are not exhaustive in presenting the forms of trafficking they describe. Many additional forms of trafficking exist. One such form present predominately in Middle Eastern countries is trafficking of children to be camel jockeys. Children as young as four years old are sold or kidnapped and are forced into lives as camel jockeys. Their small size and light weight makes it easier for the camel to run faster, and therefore, to win more races. Many of the children are from rural, poor areas where employment is not easy to come by for struggling families. Traffickers convince the child's parents that they are taking the children to work well-paying, legitimate jobs. However, in reality the children are taken to camel training complexes in the desert called *azbas*.<sup>4</sup> At these camps, children are subjected to harsh living conditions such as being forced to sleep on cardboard boxes and not being fed regularly as a means to maintain their weight. Many injuries are sustained by the children when they are riding the camels. When a child dies due to either lack of nutrition or from a riding incident, the child is buried almost immediately in an effort to avoid police inquiries.<sup>5</sup>

After sex trafficking, the second most common form of trafficking in the United States is trafficking for agricultural purposes. People, primarily from Mexico and Latin America, are taken from their home countries and forced to serve as fieldhands picking fruits in southeastern states, such as Florida, North

and South Carolina, and Georgia. Many are smuggled into the United States willfully by a person called a *coyote*, in the hope of earning money and to send it back to their families. However, the *coyote* hands off the victims, or sells them to another person who either owns or runs a field nearby. The laborers are forced to harvest hundreds of pounds of fruit each day at an unjust and hardly noticeable pay rate. It has been said that today's workers make an average of \$25 per ton of tomatoes picked.<sup>6</sup> Workers have no choice but to rent filthy, overpriced rooms in trailers in a nearby village where they frequently share with other fieldhands due to the high cost of rent. The workday for a fieldworker, which exists seven days a week, begins at four in the morning when they are picked up and loaded into the back of a truck and taken to the fields. They remain in the fields all day, including during lunch, and are picked up and taken back to their village after sundown.

Yet another form of trafficking not listed in the above charts is organ trafficking. Alexis Aronowitz describes this form of trafficking as the "least-profiled" due to the lack of research and data available.<sup>7</sup> The most prevalent type of organ transplant worldwide is a kidney transplant, with about 6,000 being performed each year.<sup>8</sup> Since the demand for kidneys is so high in well developed countries, those in lesser-developed countries are the most likely to be organ donors. Thus, a donor can come from one country, the recipient from another, and the surgery could take place in an entirely different country from

the donor and recipient. The movement from one country to another by the donor can lead to a possibility of trafficking, all for the sake of an organ transplant. While donors are often willing, deception can be used in describing monetary compensation, medical facilities, and procedures. However, there are some instances where individuals are “kidnapped, killed, or sold for their organs.”<sup>9</sup>

The term “organ trafficking” does not imply illegal acquisition of organs, but, rather, the trafficking of people for organ transplants under false pretenses.<sup>10</sup> An example given in Aronowitz’s book, *Human Trafficking, Human Misery: the Global Trade in Human Beings*, was of a woman in Sao Paulo, Brazil who underwent surgery to remove an ovarian cyst. In a follow-up appointment, her family doctor discovered she was missing a kidney. The hospital where she received the surgery told the woman “her missing kidney was embedded in the large ‘mass’ that had accumulated around her ovarian cyst.”<sup>11</sup> This is a clear, albeit extreme, example of deception for the sake of an organ transplant. While this may not show the trafficking of an individual for organ removal, it shows the deception and lengths some will go to obtain these organs.

### **Means/Process**

The majority of trafficking occurs in underdeveloped countries and the victims are often taken to rich, industrialized countries for exploitation. Rarely

does this process take place in reverse due to cheap labor and increased profit demands in wealthier, developed countries. As stated in the introduction, not all trafficking crosses international borders. However, in such instances, the country the victim is taken from will be referred to as the origin country and the country to which the victim is brought, the destination country. There are some cases where victims are not taken to their destination country immediately, but to another country, which is called a transit country.<sup>12</sup> This is seen more commonly on continents and in regions such as Africa and Latin America due to the close proximity and small size of countries in these areas.

The acquisition of a victim by traffickers is accomplished primarily via a psychological ploy they have mastered. Women and children are the most likely targets and victims of human trafficking. Due to their lower social status in many countries, they find the promises of traffickers more enticing, such as educational and financial opportunities, as well as emotional stability and pleasure. However, this does not mean men are not at risk in becoming victims of trafficking; they are particularly vulnerable to be exploited in agrarian-based economies as field hands.

In the instances of women and young girls, some are approached by a man who appears to have a well-paying job and speaks to them about job or education possibilities abroad. Traffickers look to seduce females from abusive

families, little-to-no education, lack of self-confidence, and from poor economic classes.

For example, in the movie *Cargo: Innocence Lost*,<sup>13</sup> an Eastern European teenage girl is sitting on a swing set in front of her apartment building, which appears to be government housing. She looks sad and lost. An older man pulls up in a Land Rover, sits down next to her and begins to make her laugh. He tucks the fallen hair behind her ear, touches her shoulder as if they are close friends. After speaking and laughing for a few minutes, the man gives the now glowing teen his business card. He gets back into his car and drives away. The next scene shows her knocking on a door with the same sign found on the business card. The man from the playground opens the door and motions for her to step inside. This girl ends up in a brothel in San Francisco where her captors repeatedly rape her. She uses heroin to numb herself before each partner she is forced to have sex with. Many of the men refuse to wear condoms. In *Cargo: Innocence Lost*, this storyline was simply a staged dramatization aimed at illustrating the process of sex trafficking.

Victims of other forms of trafficking are found in a variety of ways. Some young children are sold by their parents for economic reasons. Others are simply given, unbeknownst to the parents through a third, trusted party, to traffickers in hope that the children will receive training in a certain trade, be educated, or work in a city and send money back home. In cases like those

described above, traffickers will travel to rural or impoverished areas and seek out families in desperate need of financial support.

The example of camel jockeys provided above could be a form of trafficking that would follow this pattern. A ten-year old Sudanese boy named Omer was trafficked at the age of four to serve as a camel jockey in the United Arab Emirates for two years.<sup>14</sup> His father was unable to find work and was forced to sell his sons for a deposit and the salary the boys' work would earn. Thus, for their father, economic factors, as in the boys' case, took precedence over their well-being, happiness, and childhood. Whether or not the father knew the type of work his sons would be doing or the living conditions they were subjected to, his choice to send his sons with an unknown man is telling of the extent of his desperation.

Along with systematic approaches to obtaining victims, others are simply kidnapped. This is seen in cases of trafficking for labor purposes, such as agricultural labor and armed conflict. Children in Sudan are often taken by rebel forces while walking home from school or from their homes in the middle of the night and forced to serve as child soldiers in the Lord's Resistance Army (hereinafter: LRA). Authors Khristopher Carlson and Dyan Mazurana insist that forced marriage within the LRA is not a form of sexual slavery. They explain this conflict by saying,

“Sexual slavery, a form of enslavement, denotes a crime whereby there exists a sexual element to the crime of slavery in addition to a coercive element where women are forced to perform sexual services...Within the context of Uganda, females abducted for the purpose of forced marriage are expected to perform activities similar to civilian women married under consensual circumstances.”<sup>15</sup>

The wives of LRA commanders are expected to perform household duties such as cooking, cleaning, and watching after children and to “bolster fighter morale.”<sup>16</sup> This does not mean that rape, forced pregnancy, forced labor, and abuse are not seen within the LRA camps. These crimes are seen regularly, especially immediately following the capture of a woman or child, and are used to gain control over the victim psychologically, physically, and emotionally.

## **Victims**

Victims of human trafficking do not follow a certain prototype. For example, not all field hands in the United States are illegal Mexican men who have crossed the border with the help of a *coyote*. Nor are all sex slaves underage girls sold by their parents. Nor are all workers in sweatshops middle-aged Eastern European women. Human trafficking is a nonbiased, nonexclusionary business that spans oceans and borders. It takes the freedom and autonomy, without consideration, from any and all victims.

As mentioned before, those who are targeted by traffickers are typically part of vulnerable, low social and economic classes. Women and children, for

example, are at high risk in areas in the Middle East, Southeast Asia, and Africa. In these parts of the world, the cultural and religious norms do not allow for the prosperity and self-sufficiency to come easily for women in particular. For example, in Cote d'Ivoire, the CIA World Factbook states that the "school life expectancy" (or SLE) for women is five years, while for men it is ten years. The same pattern is seen in Afghanistan education; women's SLE is five years and that of men is eleven years.<sup>17</sup>

In addition to receiving unequal and substandard education, young girls are not valued as highly as boys. Girls are seen as an economic liability for the family and arranged marriages are sought to help alleviate the financial responsibilities of the father to provide for his daughter. More than 40 percent of girls in Central and Western Africa are sold into marriage by their families for economic purposes.<sup>18</sup> Forced marriages can lead to a life of domestic or sexual servitude for the girls. It also heightens vulnerability in their country, especially if they are widowed or divorced, due to minimal education they likely received and the cultural stigmatization placed on them by simply being a girl.

Cultural myths and religious practices also serve as another pressure weighing down on women and children in certain societies. A myth found in South Asian and African countries is the belief that sex with a virginal girl can cure HIV/AIDS and other sexually transmitted infections, or STIs.<sup>19</sup> Virginal girls are worth a more significant amount of money than non-virgins to



traffickers. For example, a virginal, Lithuanian girl was sold to a British pimp for £8,000, which is equivalent to over \$12,500 US dollars.<sup>20</sup> The trafficker and brothel owner are financially better off recruiting and exploiting a virgin than a non-virgin because customers, especially in the regions listed above, will be willing to pay more for sex with a virgin.

A religious practice, known as *trokosi*, described in Kevin Bales' book *Modern Slavery* takes place in tribal areas in Ghana. In this form of ritual slavery priests of local shrines seek virginal girls as a means for atonement for "alleged offenses committed by their relatives or ancestors."<sup>21</sup> The girls who are given to these priests are turned into sex slaves and, often times, impregnated. They are beaten if escape is attempted and are unmarriageable in their society if they are released. Bales describes the *trokosi* system in Niger as hereditary and inescapable, "Any child born to a *trokosi* become slaves, and *trokosis* are passed to the next priest upon one priest's death."<sup>22</sup> Although the practice of *trokosi* was banned in Ghana in 1998, the enforcement of this ban is yet to be seen.

Young men and boys are vulnerable to trafficking in rural, poor communities, and agrarian-based economies. Since a boy will grow up to be the leader of the family, families take their education and training very seriously. Some young boys are sold or given to traffickers who promise to take boys to larger cities for a particular training or for the development of a trade. Others are sent to relatives who find themselves in better financial circumstances and

can offer educational and work opportunities. The promise of an apprenticeship in a large city is seen as an opportunity for the most fortunate.

However, boys are not always trained in a certain trade when they are taken or sent from their home to a relative's or another person's home. Some are placed in fields, mines, on the streets, or on fishing boats. In Ghana, for example, boys are used on fishing boats to detangle and retrieve fish from the nets. Their small hands, skinny arms, and cheap labor make them ideal workers on the boats.<sup>23</sup> These boys are expected to work long hours in harsh conditions and for little to no pay.

There is very little reliable data on the number of men who have been trafficked for any number of reasons. Most trafficked men become field hands, construction workers, restaurant workers, or workers in the manufacturing industry. Since men are considered the most important members in many societies, those trafficked typically have a physical or mental disability or are homeless.<sup>24</sup>

Various international organizations maintain databases that aim to monitor the trends and prevalence of human trafficking throughout the world. These organizations include, the United Nations Office on Drugs and Crime (hereinafter: UNODC) and the International Office on Migration (hereinafter: IOM). These databases are not exclusive to one form of trafficking or another, but look at reports of all forms of human trafficking.

The database compiled by the UNODC is the first attempt to track regional and global patterns of trafficking. Referring to over 113 source institutions, the research has helped illuminate various patterns seen in human trafficking. The largest group of individuals trafficked, worldwide, is underage boys and girls, or minors, followed closely by women.<sup>25</sup> Trafficking cases involving men are reported the least frequently. The IOM's database is somewhat narrower in its scope. It looks at the 12,750 cases of trafficking victims in which the IOM has assisted in the past. Less than 20 percent of those surveyed were male, when the rest were predominately single females under the age of 25.<sup>26</sup>

## **Profits**

Human trafficking is like any other business in that it exists because of the demand of its consumers. The obvious difference between human trafficking and most other businesses is that human trafficking is illegal. Thus, all figures and numbers are very rough estimates based on what is known, which is very little. Many experts in the field of human trafficking disagree on the numbers used to describe the breath of trafficking. For example, Kevin Bales estimates that 27 million people are enslaved around the world today.<sup>27</sup> Patrick Belser, on behalf of the International Labour Organization (hereinafter: ILO), detailed in his 2005 report estimates the profits made from human trafficking.

The ILO estimated that \$44.3 billion USD is generated from forced exploitation annually. Of that \$44 billion, \$31.6 billion USD is from trafficked victims.<sup>28</sup> Industrialized countries account for almost half of the profits of trafficking in persons, equaling \$15 billion USD.

Money that is entering and exiting the country is nearly impossible for agencies and governments to trace because of its clandestine nature. Also, most traffickers and recipients of the victims have established legitimate businesses where the money is kept. Massage parlors, for example, are common examples of businesses with the front of being legitimate, but in actuality are places of sexual exploitation.

A more recent and proximate example is a hair salon in Newark, New Jersey where the ladies working there were held against their will and forced to work long hours braiding customers' hair. In a CNN article, the victims say their enslavement began in 2002 when their families sent them to the United States from Ghana in hope of receiving a top tier education. Instead, the girls, who were as young as 12 when trafficked from Ghana, were forced to work six to seven days a week for twelve hours per day for five years. Along with the working conditions, the girls were beaten, starved, and at times, sexually abused.<sup>29</sup>

These girls made a significant amount of money for their abusers. Depending on the type of braid, customers could pay as much as \$400 for a

particular braid, which would take hours to complete.<sup>30</sup> The girls did not receive any of the money their customers paid; instead, it went to the salon owners. Once the perpetrators' money was confiscated following a raid of their house and salons, it was estimated that they earned close to \$4 million from the girls' enslavement.

In Chapter 1, Sheldon Zhang helped differentiate an act of trafficking from an act of smuggling. Now, he addresses the profits of *coyotes*. A *coyote* can make as much as \$1,000 per person by simply getting the payee across the border. However, if one wants to get to Phoenix or Los Angeles, an additional \$2,000 is required.<sup>31</sup> Many are under the impression that those smuggled into the United States are from neighboring or close-by countries. Nevertheless, Chinese are smuggled into this country as well. While their routes may be somewhat similar to those entering from Mexico or Canada, their prices are much higher. Chinese can pay up to \$5,000 (per person) to be smuggled into the United States.<sup>32</sup> While Zhang's numbers do not necessarily contribute to human trafficking, it has been made clear previously that human smuggling and human trafficking are separated by a fine line that is easily and often crossed.

### **Individual effects**

The individual effects of trafficking are numerous and lasting. Depending on the form of trafficking and eventual enslavement, the effects can be

manifested through various degrees of sexual, physical, and psychological abuse. However, in this section the discussion will be limited to the effects of trafficking in particular.

One may see the effects of human trafficking on the individual as obvious, and clear-cut. However, due to the numerous forms as discussed in previous sections, the effects vary. The victims' health is always in jeopardy when they are forcefully taken from one place to another. Typically, numerous victims are transported in unsanitary, unsafe conditions, for long periods of time and long distances. Their mental and physical health is compromised during their capture and transport, and upon arrival at their destination. Many times, victims are not fed during their transport, and are beaten, threatened, sexually assaulted, and are coerced into performing various acts of begging, stealing, or sexual favors.<sup>33</sup>

## **Conclusion**

Having described this issue in detail, it is important that the responses to this issue are examined. The following chapter will look at the various United Nations protocols, conventions, and declarations that address issues pertaining to the trafficking of humans.

## CHAPTER 3

### **An Historical, Legal Perspective**

Human trafficking has existed for hundreds of years, though was not officially recognized as such until well after the end of World War II. The African slave trade of the sixteenth century is an excellent example of legalized human trafficking on a very large scale. It coercively transported people from one place to another and exploited them for the benefit of those in control. While the purposes and ways humans are trafficked today are somewhat different than they were in the 1500's, the act of forcibly transporting people is still taking place in astounding numbers.

The purpose of this chapter is to explain the array United Nations instruments that have been put in place to combat various human rights abuses that contribute to human trafficking: the Universal Declaration of Human Rights; the International Covenant on Social, Economic, and Political Rights; and the International Covenant on Civil and Political Rights; all of which were created by the United Nations. These three legal documents are not intended to prohibit human trafficking, but, rather, to criminalize various acts commonly seen in cases of human trafficking and modern-day slavery. The ratification, implementation, and effectiveness of these instruments will be addressed in the

fourth chapter. It must be noted, however, the act of signing a UN treaty or protocol does not legally bind the signing party to the document. However, the UN asks that the party follow the rules and objectives set forth in the document “in good faith.”

### **The Universal Declaration of Human Rights**

Prior to World War II, the League of Nations served as an international body, comprised of 42 countries at its inception; the goal of which was to enforce and hold countries accountable for international treaties and agreements. The framework of the League of Nations was used in the establishment of the United Nations in 1945, a year prior to the dissolution of the League. The primary reason for the League’s downfall and eventual demise was the refusal of the Great Powers (France, Britain, Italy, and Japan) to stand by their alleged commitment to put an end to fascist and militaristic regimes. Thus, the legitimacy and reputation of the League was compromised.<sup>1</sup>

The United Nations was founded in 1945 by fifty-one nations. Since its inception, it has focused on international peace, fostering friendly and healthy relationships between countries, and promoting human rights. In 1948 and in the aftermath of World War II, the international community was shocked and appalled that such atrocities could take place on an incredibly large scale and with the compliance and help of so many individuals. Thus, it was agreed that a



legal document must be drafted to protect the fundamental, inalienable rights of people everywhere. The name Universal Declaration of Human Rights (hereinafter: UDHR) is a nonexclusive, all-encompassing title that does not differentiate between sex, race, gender, religion, or nationality.<sup>2</sup> The document was written in a manner that is easily understood and accessible to all. Various articles throughout the document address civil, political, economic, social, and cultural rights. However, its attempt to stay true to the goal of drafting a declaration of basic human rights, two separate covenants focused on those topics were created and ratified some years later.

Although the subject of human trafficking is not explicitly included within the UDHR, many articles speak to issues surrounding trafficking. Four articles within the UDHR whose focus relates directly to trafficking will be addressed. The first article of the document states, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>3</sup> Draftees debated about whether to include this broad, summarizing article in the preamble or the body of the document.<sup>4</sup>

#### Selek'ha<sup>5</sup>

Selek'ha, a twenty-six year old Mauritanian woman, was born into slavery. She served the same master her mother and cousins served for twenty years. She watched after goats, her master's children, and did household chores throughout her servitude. If Selek'ha disobeyed her master, she was punished with tobacco being rubbed into her eyes or beaten. When she was ten, she was given as a gift to her master's daughter for her wedding to become her slave. There, she was never paid, beaten and insulted regularly, and forced to do everything around the house. One day when her masters were not watching, Selek'ha walked out of the house, into town, and never went back.

Article four of the UDHR says, "No one should be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."<sup>6</sup> This particular article makes punishable the trade of people for slavery purposes and the act of enslaving another human being. While the forms of slavery are numerous and encompass a wide variety of practices, this fourth article states that all forms of slavery are prohibited. The fifth article goes hand-in-hand with the fourth. It says, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>7</sup> Typically, those who are enslaved by another individual or group are treated cruelly, inhumanely, or degradingly. In many instances, traffickers violate both of these articles, and therefore violate the fundamental human rights of the victim.

### **Rosa<sup>8</sup>**

Rosa grew up in Veracruz, Mexico and when she was fourteen a man came to her parents' house and asked if she would like to earn money in the United States. In Mexico, Rosa was working at a hotel and the man promised she would be doing much of the same work in the States, but would be able to make much more money. Her parents were hesitant, but she persuaded them to let her go. A week later she was smuggled into Texas and taken to Orlando, Florida, where the men in charge told her that her work would be having sex with men for money. Since Rosa was a virgin upon her arrival, she was initiated by many men raping her and teaching her how to have sex. The next few months consisted of her being taken to a different trailer every two weeks where she was forced to serve customers all day and all night. Since she was so young, many men paid to have sex with her, some refused to wear condoms. She was forbidden from going outside without a guard and all of her bosses carried guns. When Rosa became pregnant, she was forced to have an abortion and immediately returned to the brothel.

Finally, article 24 states, "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."<sup>9</sup> This article is particularly interesting because it details a basic, seemingly obvious right when one is employed. However, those forced to work without pay and without proper documentation, are the most likely to experience this sort of prejudice. The number of hours, amount of time off with pay, and limitations on labor all have legal regulations set by various governing bodies. These regulations are in place for documented, legal workers. Thus, employers hiring and utilizing undocumented workers do not believe these illegal workers are entitled to the same rights, such as those stated in article twenty-four, as those who are legal workers.

### **Kil Soo Lee<sup>10</sup>**

Kil Soo Lee was the Korean owner of a garment factory in American Samoa. His factory produced clothing for Wal-Mart, JCPenny, Target, and Sears. At one point Kil Soo Lee had 250 young Chinese and Vietnamese women working for him, who he promised good pay, adequate housing, and steady work upon their recruitment. Each of the 250 women paid traffickers and Kil Soo Lee between \$5,000 and \$8,000 for the position. When the women arrived, Kil Soo Lee and his men began to beat, starve, and sexually assault them. Each was locked into unsanitary, rat-infested barracks with 35 other women in a gated compound where they were unable to leave. These women worked long hours in rooms where the heat reached over 100 degrees daily and they were paid nothing. If they refused to work or showed signs of disobedience, he threatened them with deportation and withheld food for days. This abuse went on for two years before Kil Soo Lee and his men were charged with extortion, money laundering, conspiracy to violate individual civil rights, and involuntary servitude, among others. Kil Soo Lee was sentenced to forty years in prison.

## **United Nations International Covenant on Economic, Social, and Cultural Rights**

Following the United Nations' Declaration of Human Rights of 1948, two international covenants were drafted and signed in 1966, though neither was recognized until 1976. The first of these covenants is the International Covenant on Economic, Social, and Cultural Rights (hereinafter: ICESCR). As stated above, the goal of the UDHR was to elaborate and define fundamental human rights. The two covenants aimed at providing more support and speaking more explicitly to various aspects of the UDHR. The combination of these three documents created the International Bill of Human Rights.<sup>11</sup> Each document must be signed and ratified individually. For example, a nation could be a member party to the UDHR and neither of the covenants.

The goal of the ICESCR is to detail various economic, social, and cultural rights to which every individual is entitled. A significant structural difference between the two covenants and the UDHR is that after each article, stated in the covenants, is a suggestion or requirement of the nation is provided. The first article, of four, in the ICESCR that is related to trafficking, is number six. It states, “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”<sup>12</sup> In light of human trafficking, the most important part of this article is where it says, “...to gain his living by work he *freely chooses or accepts...*” (italics added). This freedom of choice and acceptance of any sort of employment is not a norm in the world of human trafficking. Those victims deceptively taken from one place to another for exploitative purposes are never given a choice of employment and are typically coerced physically and psychologically into a certain job.<sup>i</sup>

The seventh article, while rather lengthy, resembles the sixth in that it speaks to work related rights. It says,

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<sup>i</sup> The use of the words “employment” and “job” assumes the employee freely applied for and accepted the position, is being paid a certain amount of money by the employer, and can resign from the position at any point. Obviously, this is not the case in modern slavery and human trafficking, though the words “employment” and “job” will continue to be used under the assumption that the reader understands the qualifications listed above are not being met by the employer.

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: remuneration which provides all workers, as a minimum, with: fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; a decent living for themselves and their families in accordance with the provisions of the present Covenant; safe and healthy working conditions; equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”<sup>13</sup>

The decision to include the article in its entirety was made due to the importance of the topics and examples mentioned in the article. The concepts of fair wages, safe and healthy working conditions, and the right to rest and leisure are the most commonly violated or withheld in cases of trafficking.

Article eleven states, “The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>14</sup> Adequate housing in human trafficking is rarely provided. Throughout their journey from one place to another, victims are packed in vans, trucks, or other vehicles and often times hidden from sight of passersby and border security, if they are illegally crossing borders. Once they reach their destination and are handed over to their employers, their living conditions do not improve. Victims of sex trafficking are often forced to sleep in

unsanitary brothels or overcrowded houses. Victims of domestic servitude likely sleep in a barren room with a mattress, if their employer is generous. The living conditions of field hands are even more deplorable and will be discussed in the following chapter.

Like articles six and seven of the UDHR, articles eleven and twelve complement one another nicely and are more detailed. For example, article seven says,

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>15</sup>

It is clear that “the highest attainable standard of physical and mental health” cannot be attained while under the control of a trafficker. However, the inclusion of medical service and attention is noteworthy since most, if not all, victims of trafficking need medical help after they are freed. Psychological services and general health services are necessary in the restoration process of the victims’ lives.

## **United Nations International Covenant on Civil and Political Rights**

The second covenant created at the time of the UDHR was the International Covenant on Civil and Political Rights (hereinafter: ICCPR). It was signed on December 16, 1966, yet was not recognized for another decade, March 23, 1976. The idea behind the drafting of this document was much like the goal of the ICESCR, but with a different focus: to further elaborate the civil and political rights in the UDHR,<sup>16</sup> along with universally abolishing the death penalty. Thus, many of the articles in the ICCPR are similar to those in the UDHR and ICESCR, however a few are somewhat different.

Article two requires all signatories to ensure all rights are protected and provided for each individual under their jurisdiction regardless of race, sex, and religion. It urges nations,

“To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; to ensure that the competent authorities shall enforce such remedies when granted.”<sup>17</sup>

An important part of this article is the first clause. This allows those who have had their rights withheld or violated to seek recourse whether it is legal, medical,



or financial. For trafficking victims, this article is particularly useful and relatable in that during the time they were persecuted by their trafficker and/or employer, the amount of suffering is significant and the loss of, or inability to, access these rights is obvious and illegal.

As mentioned when addressing the UDHR, all forms of slavery and forced labor are forbidden under all international law. The ICCPR dedicates article number eight to address this prohibition. It says, “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited; no one shall be held in servitude; no one shall be required to perform forced or compulsory labour....”<sup>18</sup> The first two clauses of this article are verbatim from the fourth article of the UDHR. However, the ICCPR mentions the terms “forced or compulsory labour,” which makes it more encompassing of the various kinds of slavery. In the United States, thousands of people are trafficked into and throughout the country for domestic slavery purposes. Thus, this particular article articulates the forbidden nature of these actions on behalf of the trafficker and slaveholder.

The next article mentions the freedom and right to movement that all individuals possess. Article 12 states, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence; everyone shall be free to leave any country,

including his own..."<sup>19</sup> While this is not the entire twelfth article, it includes the most important concepts included therein. Along with its controversial content, this article poses some great difficulties for those who have been forcibly taken into a country and stripped of their documentation. The first part of this article speaks to the universal right to choose one's residence. This right is violated in cases of trafficking and modern slavery because the victims are never given the choice of where to live or move. The controversial aspect of this article is its beginning. It says, "everyone *lawfully* within a territory or a state..." (italics added). Thus, anyone who has not entered a country legally is not protected under this article.

Finally, the 24<sup>th</sup> article calls for the protection of the rights of the child in terms of the right to nationality as well as be listed as a minor of the state. It says,

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State; every child shall be registered immediately after birth and shall have a name; every child has the right to acquire a nationality."<sup>20</sup>

The protection of children in this capacity is important due to their vulnerability and inability to care for themselves. This article grants children rights and protections in member states, just as it does for adults. Some traffickers look for

children because they are easy to deceive if unprotected, easy to transport, and more versatile in areas of labor.

## **Conclusion**

These three instruments drafted by the United Nations have served as the foundation of laws focused solely on combating human trafficking. Laws have been created in various countries and states within the United States as a result of the increasing problem of human trafficking nationally and domestically. As noted above, each had different foci. However, many of the articles are applicable to the issue of human trafficking due to the long list of human rights violations seen in human trafficking. The application, enforcement, and implication of these documents will be discussed in next chapter.

## CHAPTER 4

### **Responses**

The goal of this chapter is to look at the way in which international, national, and nongovernmental bodies are at the forefront of the effort to eliminate trafficking in humans. The United Nations, the United States government, and nongovernmental organizations (hereinafter: NGOs) will be the foci of this chapter. I will examine the approach of each of these bodies and highlight a few organizations within each dedicated to this cause.

#### **United Nations**

Chapter Three illustrated and described the process which brought the United Nations into being. As mentioned in previous chapters, the United Nations is well known for its stance against human rights abuses including the global problem of human trafficking. It has taken these steps through adopting the legal instruments discussed in Chapter two, has dedicated a portion of the work of the United Nations Office of Drugs and Crime (hereinafter: UNODC) to fight the global trade of humans and, in September 2010, launched 'The United Nations Global Plan of Action to Combat Trafficking in Persons' which, "urge[s] Governments worldwide to take coordinated and consistent measures to try to

defeat [human trafficking].”<sup>1</sup> This section of will be dedicated to discussing the UN’s sustained effort to rectify human rights violations surrounding the issue of human trafficking.

The work of the UNODC is the only UN entity combating human trafficking from a criminal justice perspective.<sup>2</sup> The bulk of the UNODC’s efforts and energy is placed in helping nations draft and implement anti-trafficking laws. The UNODC does so by writing various publications, including reports and training manuals, which offer advice on how to enforce anti-trafficking laws and how to create toolkits that demonstrate best practices for governments and lawmakers. The toolkit entitled, “Toolkit to Combat Smuggling of Migrants” includes ten tools:

“Understanding the smuggling of migrants, actors and processes in the smuggling of migrants, international legal framework, problem assessment and strategy development, legislative framework, international criminal justice cooperation, law enforcement and prosecution, protection and assistance measures, prevention of the smuggling of migrants, and capacity-building and training.”<sup>3</sup>

It is clear that this toolkit is thorough and diverse in the tools it highlights for lawmakers and those in power. Each tool provides an in-depth analysis of a particular facet of trafficking, offers additional resources, and, occasionally, has case studies to help the reader better relate to and understand the issue at hand. Toolkits, such as the one mentioned above, are effective ways to train and

educate lawmakers and government personnel on useful, preventative trafficking skills.

Another program of the UNODC that provides support for combating human trafficking is the United Nations Global Initiative to Fight Human Trafficking (hereinafter: UN.GIFT). The UN.GIFT attempts to eradicate human trafficking through holding signatories to the Palermo Protocol responsible and accountable to the document they signed. This is unique because it is the only UN body serving as a monitoring system for the countries party to the Palermo Protocol. It was launched in 2007 by a multitude of UN organizations. The mission statement of UN.GIFT says,

“UN.GIFT aims to mobilize state and non-state actors to eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for exploitation in all its forms; ensuring adequate protection and support to those who fall victim; and supporting the efficient prosecution of the criminals involved, while respecting the fundamental human rights of all persons.”<sup>4</sup>

This mission statement provides an insight into the goals of UN.GIFT. An important aspect of this statement is its goal, “To eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for exploitation in all its forms.”<sup>5</sup> This shows the organization’s commitment to eliminating the problem by starting at the root causes. The significance of this organization’s steps to eradicating human trafficking should not be overlooked

since they are making a concerted effort to leave no facet of human trafficking untouched, unexamined, and unpunished.

## **United States**

### *Trafficking Victims Protection Act*

The issue of human trafficking has often come to the forefront in American news and justice related issues. The American public is becoming more aware of trafficking in humans and is taking more interest in the workings of this illegal trade of human beings. The Bush administration initiated the Victims of Violence Protection Act or Trafficking Victims Protection Act of 2000 (hereinafter: TVPA). This Act and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (hereinafter: TVPRA) are the only legal instruments in force within the United States whose main focus is human trafficking. The TVPA was reauthorized in 2003, 2005, and again in 2008. Due to minimal changes in 2003 and 2005, the most recent reauthorization will be the primary focus.

As stated in Chapter Three, the United Nations' Palermo Protocol required that countries party to this protocol institute further regional and national laws prohibiting human trafficking. The United States signed the

Palermo Protocol in December of 2000 and ratified it in November of 2005. The ratification process varies from state to state. Though, once a document is ratified, the nation is legally bound to abide by the articles set forth in the text of the document. And, in obedience to the Protocol, the United States drafted and passed the TVPA as a legal form of taking action against trafficking in humans within the United States. The goal of the TVPA is to eliminate human trafficking in the United States through public awareness, consultation, and economic opportunities as well as to provide better restorative services for the victims.

Due to the lack of knowledge held by the general public on the issue of human trafficking, public awareness is a priority of the TVPA. The Act establishes that the President, with help from the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, will aim to create programs that increase public awareness, particularly among those most vulnerable to trafficking.<sup>6</sup> One way to achieve the goal of greater public awareness in the area of human trafficking is through the media. The media can be a valuable tool, if used correctly, in reaching many people of different genders, religions, economic class, ethnicity, geographical location, and education level. Also, the media can take various forms in an effort to reach the general public through television, radio, newspapers, magazines, the Internet, and billboards, to name a few. All Americans, regardless of their social status, frequently use these mediums of communication and entertainment.



However, the use of mass media can be dangerous in that not completely accurate information is published. As mentioned in the introductory chapter, the media frequently selects stories to report based on their shock value and assumed public interest. A story on sex trafficking in New York City will gain more attention and publicity than a story on undocumented field hands in Florida. When this occurs, the public is only focused on sex trafficking and not the other forms in which human trafficking takes place.

The next proposed course of action set forth by the TVPA is consultation. The United States government, through the TVPA, seeks to consult with national NGOs dedicated to eradicating human trafficking regarding the goal of greater public awareness. These consultations between government and nongovernment agencies typically open the lines of communication between the two areas as well as advance the education and knowledge of those in decision-making positions. The NGOs will help with the spread of information through the media and their targeted audiences. While NGOs might not have the most diverse membership group, they are another way for the general public to gain awareness on this issue.

The final way the United States government and the President hope to eliminate trafficking is through the TVPA's economic opportunities. These opportunities are aimed at potential victims of trafficking. They include micro credit lending programs, job skills training, "programs to promote women's

participation in decision-making,”<sup>7</sup> programs to encourage young children, and girls in particular, as well as victims of human trafficking to stay in school, “development of educational curricula regarding the dangers of trafficking,”<sup>8</sup> and grants to NGOs focused on eliminating human trafficking. These economic opportunities are ways to foster education, awareness, and the acquirement of lifelong skills for those most vulnerable to human trafficking.

As stated above, the TVPA has been revised and reauthorized three different times. The TVPRA of 2008 supplemented the previous list of action plans by adding “border interdiction.”<sup>9</sup> This calls for the training and educating of border guards on human trafficking at key border crossings. Training guards in identifying a person being trafficked, acknowledging them as victims, and treating them as any other victims of crime is the goal of this preventative method.

A main goal of the TVPA and TVPRA is to strengthen victim assistance. Most often, this aspect of human trafficking is overlooked, yet the most important. As detailed in Chapter Two, the effects of human trafficking are numerous and lasting. Many victims are unable to help themselves and are unfamiliar with their surroundings upon escape. Thus, the United States government is expected to offer some sort of protection and assistance to the victims of human trafficking. The introduction of the T visa was one way of victim assistance. The T visa is a type of visa reserved only for victims of severe

cases of human trafficking. Although all forms of human trafficking can be seen as “severe,” the TVPA defines severe cases of human trafficking as, “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 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.”<sup>10</sup> Only 5,000 T visas are available each year and apply to victims most able to aide in the prosecution of the trafficker.<sup>11</sup> After three years under the T visa, and participation in legal proceedings, victims may become American citizens.

### *Criticisms of TVPA*

There are many criticisms of the TVPA and TVPRA coming especially from scholars and activists in the field of human trafficking. Many of these criticisms are of the forms of trafficking actually mentioned within the Act itself, certain criteria of eligibility, and laws and charges on pimping.

In her journal article, “From Bush to Obama: Rethinking Sex and Religion in the United States’ Initiative to Combat Human Trafficking,” professor Yvonne Zimmerman criticizes the TVPA as being too focused on sex trafficking. She writes, “...sex trafficking is nevertheless the first type of trafficking that the text

specifies, and the only type of trafficking whose characteristics are explicated at length.”<sup>12</sup> Zimmerman’s main concern is that other forms of trafficking will be overlooked and not classified as trafficking. She also mentions as one of the dangers of the TVPAs exclusive focus on sex trafficking is that it could be assumed that all workers in the sex industry are trafficked and not necessarily in that line of work by choice. By repeatedly mentioning sex trafficking alone, the TVPA fails to represent millions of people trafficked in the United States. In doing so, these people are left to fend for themselves, seemingly unprotected by this law. Although this is not the case, by failing to emphasize the importance and prevalence of other significant forms of trafficking, law enforcement personnel who know little about trafficking and learn primarily through the TVPA, may not know how to distinguish victims of trafficking because they are not educated as to its many forms.

Claude d’Estrée<sup>ii</sup> finds issues with the pimping laws in the United States. He says, “They are merely a slap on the wrist.”<sup>13</sup> He explained how many traffickers slip through the system by being charged for pimping as opposed to human trafficking. A trafficking victim is not under the control of a pimp, such as a prostitute. Thus, when a man is charged with pimping instead of human

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<sup>ii</sup> Claude d’Estrée is a professor at the Josef Korbel School of International Studies at the University of Denver. d’Estrée is the director and founder of the Human Trafficking Clinic and director of the Masters in Human Rights degree program at University of Denver. He worked as a federal prosecutor for many years in Washington, DC, is the Buddhist chaplain at University of Denver, and has worked in the field of human trafficking for thirteen years.

trafficking, the female is charged with prostitution instead of being treated as a victim of human trafficking. When there is a pimp, there is a prostitute.

When there is a trafficker, there is a victim of trafficking. For Professor d'Estrée, this loophole is dangerous and counterproductive in that many traffickers are being charged with pimping, a charge that carries a small fine and maybe a minimal jail sentence, and then are back on the street. Prosecutors are more likely to file a pimping charge and not a trafficking charge, because of the lack of resources, evidence, and money it takes to charge a person with trafficking. Professor d'Estrée suggests tougher pimping laws which would then deter repeat offenders and would encourage prosecutors to look further into these cases for a potential trafficking case.

The final criticism of the TVPA is in regard to the T visa that was previously described. The T visa, like any other visa, has many stipulations in order for one to be eligible. One requirement is that the victim, recipient of the visa, be actively participating and aiding the prosecution throughout the trial of the trafficker. A Department of Justice document says, "If the INS [Immigration and Naturalization Service] determines that an applicant has not complied with a reasonable request for assistance from an LEA, the application will be denied or an approved application will be revoked."<sup>14</sup> Many are critical of this requirement because the trafficker frequently threatens the victims that if the victims run away or are disobedient, their families will be killed. Thus, the

victim is less likely to participate in the prosecution's trial because of the possibility of harm being done to their families. Victims under the age of 15, however, are not required to participate in the investigation or the prosecution, but are required to submit proof of age.<sup>15</sup> Many critics, instead, believe all victims should be granted assistance regardless of their participation in the trial proceedings due to the harm that has been done to them.

Instead of focusing on the flaws of the TVPA, Jim Smithwick<sup>iii</sup> focuses on its potential. He believes that the reauthorizations of 2003, 2005, and 2008 have addressed the shortcomings of the Act and have demonstrated that it is improving with each reauthorization. One element in particular that the Obama Administration has advocated positively for is that collaboration works. This administration has added a fourth P, partnerships, to the "3 P's," prosecution, protection, and prevention. The addition of partnerships emphasizes the importance for government agencies, NGOs, and private sector groups to collaborate and share information with one another. This creates an open, inclusive effort on the part of all of those involved in the issue.<sup>16</sup>

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<sup>iii</sup> Jim is the Program Director at the Laboratory to Combat Human Trafficking in Denver. Smithwick holds a Masters degree from University of Denver and served as a volunteer with the Peace Corps in Paraguay.

### *Trafficking in Persons Report*

In 2000, following the requirements of the TVPA, the United States Department of State issued a Trafficking in Persons Report (hereinafter: TIP Report). This report is aimed at documenting and recording the forms, numbers, and details of human trafficking in each country. Then, the United States ranks the country on a tiered system. Tier 1 signifies that the country has passed and ratified major international anti-trafficking and human rights treaties, passed and enforced anti-trafficking laws on a national level, and has made concerted efforts to address the problem in their country. Tier 2 is comprised of countries who have not fully complied with the standards set aside in the TVPA, but are making efforts to do so.

Those on the Tier 2 Watch List are countries who meet the requirement under Tier 2 and the number of victims in severe forms of trafficking is increasing, complicity is waning as are efforts on behalf of the nation to combat trafficking, and stronger efforts to make changes are ensured in the future. Finally, countries in Tier 3 do not meet the minimum standards stated in the TVPA nor are they making any noticeable efforts to fight human trafficking.<sup>17</sup>

The TVPA identifies four minimum standards that must be met by a country to show that steps are being taken to eliminate trafficking. They must prohibit and punish severe forms of trafficking. In the case of sex trafficking of a minor, the government must punish the violator in equal amount to the damage

done to the child. The government should ensure that the punishment for those charged with human trafficking is severe enough to discourage future offenders from taking part. Finally, the government should make constant efforts to eliminate human trafficking.<sup>18</sup>

For each country, the TIP Report discusses a brief history of the country, common forms of trafficking present within its borders, recommendations for the country on how to improve their Tier position and fight on trafficking, and the 3 P's policy structure previously mentioned. The TIP Report aims to stress the importance of prosecuting the perpetrators, protecting the victims, and preventing the act from reoccurring.

### *Criticisms of the TIP Report*

The utility of the TIP Report is obvious to many activists. It is one of few mechanisms currently in place that is used to report trafficking in humans and to help fight for an end to it. However, many scholars and experts disagree with the role of the TIP Report for various reasons. While the United States takes charge of reporting the prevalence of trafficking, and ranking countries according to the standards set by the TVPA, it has never included itself in the evaluation until the 2010 report. In this report, it ranked itself as Tier 1 and was the lengthiest country narrative of the almost 180 country narratives.



The TIP Report could be viewed as merely a political tool, annually published by the Department of State. Those on the Tier 2 Watch List and on Tier 3 are adversaries of the United States, countries in a state of war with massive human rights violations, or are obviously noncompliant with the instruments in place to combat human trafficking. For example, a few of those countries on the Tier 2 Watch List include Afghanistan, China, Cote D'Ivoire, Russia, and Vietnam. Those listed as Tier 3 are Cuba, Democratic Republic of Congo, Iran, North Korea, and Zimbabwe.

Professor d'Estrée maintains that he cannot defend the TIP Report because it is clearly politically based and is deficient in many areas. He insists that when the World Cup took place in Germany in 2006 and thousands of prostitutes were brought to the country to serve the hundreds of thousand spectators, Germany should have been placed on the Tier 2 Watch List or Tier 3 because of the human trafficking that surrounded the event. However, because of the close relationship between Germany and the United States, ranking Germany as high as Tier 2 Watch List or Tier 3 could jeopardize the relationship.

Another criticism of Professor d'Estrée's is that the TIP Report does not investigate how countries are dealing with victims of human trafficking. This is a very important question to consider since many countries are guilty of providing little or no victim services after victims are released from their trafficker. In cases of sex trafficking, many women have no choice but to re-enter

the world of prostitution once their trafficker is taken away by the authorities.

For domestic servants taken from abroad, many are unaware of their surroundings and do not know the language. Thus, these victims become even more vulnerable to human traffickers.

As a response to the inadequacies of the TIP Report, Professor d'Estrée has created the Human Trafficking Clinic at University of Denver in 2008. He insists that academic research is pivotal in the quest to eliminate human trafficking. The Clinic is a nonpartisan body that works with government agencies and NGOs to produce academic material directed at sharing information with various bodies working on this issue. To d'Estrée, the Human Trafficking Clinic serves as a response to the shortcomings of the TIP Report. While the Clinic does not produce its own report on human trafficking, it does look at the TIP Report and examines where the problems lie and how they can be addressed.

Smithwick is less positive about the TIP Report than he is about the TVPA. He says, "The methodology [of the TIP Report] is not systematic."<sup>19</sup> He says that by the United States attempting to direct a global response to human trafficking a productive environment does not exist where other countries are likely to listen to what the United States offers as suggestions. In terms of the TIP Report itself, the manner in which the data and information is collected is not consistent for each country. Those that report to the US State Department range from NGOs to government agencies. However, not every country has NGOs or private

organizations set aside to combat human trafficking. This creates an issue in that some of the data is not as reliable as others. Also, Smithwick notes, the TIP Report is not created within a “political vacuum.”<sup>20</sup> Yet, its purpose and goal is to serve as a tool, which it does. Smithwick agrees with many of the critics in one respect, “It could be and should be better.”<sup>21</sup>

### **Nongovernmental Organizations**

The role of NGOs in combating human trafficking is unique for each organization. Some advocate for legislation, others provide direct assistance and service to victims of trafficking, and others focus solely on research. Regardless of their approach, the work of NGOs is significant at the local, national, regional, and international levels.

The Office of the High Commissioner for Human Rights lists over 90 NGOs whose work is focused on the issue of modern day slavery and human trafficking. Seventy-three of those organizations focus specifically on human trafficking. Some of these NGOs, such as Amnesty International, are large, international organizations that are not only focused on human trafficking, but on a variety of human rights issues. Their efforts are focused on raising awareness of the issues. Other organizations, like the Laboratory to Combat Human Trafficking located in Denver, are focused on spreading awareness of

human trafficking in the Denver area and around Colorado through comprehensive research.

Since there are over 70 organizations combating human trafficking internationally, I will focus on only three. At the international level, The Protection Project will be examined. At the national level, the Coalition of Immokalee Workers will be explored and at the local level, Prax(us) in Colorado. Each of these organizations is dedicated to the complete elimination of human trafficking, but goes about it in very different ways.

The Protection Project (hereinafter: TPP) operates out of Johns Hopkins' Paul H. Nitze School of Advanced International Studies in Washington, DC. The focus of TPP is on research on human trafficking around the world. It also trains people interested in eradicating this problem. TPP publishes reports reviewing the TIP Report, manuals that give recommendations and models for Parliamentarians and other law makers in various countries, as well as legal approaches and best practices for ending human trafficking. Though this is not a comprehensive list of all their publications, it shows the wide variety of their expertise and scope of interest.

The Coalition of Immokalee Workers (hereinafter: CIW) does not consider itself an NGO, but a "community-based worker organization."<sup>22</sup> As described in Chapter 3 in regards to field hands in southeastern United States, some are unwillingly trafficked to these states and many are violently abused and denied

basic needs by their employer. The CIW fights to end this treatment of field hands through national and local legislation, ad campaigns, and visits to colleges and universities to spread awareness. By placing pressure on the field owners and large corporations who purchase these goods to improve the standards of living and working conditions of the workers, the CIW has had many successful prosecutions and boycotts of these large field owners. Restaurants like Taco Bell, Chipotle, Burger King, and McDonald's have been targets of the CIW's boycotts because of their refusal to insist that their produce be picked for one penny more per pound. This led to the CIW's highly successful "Penny a Pound" campaign.

Finally, at the state level, Prax(us) is making efforts through community and street outreach to raise awareness of trafficking with the help of many other Colorado human rights organizations. Prax(us)' primary focus is on individuals, such as homeless youth, likely to be trafficked for sexual purposes. It educates community members and law enforcement personnel on the issue of human trafficking in their neighborhoods and jurisdiction, and partnering with other organizations to share information and strengthen their efforts and effectiveness on the issue. A primary difference between Prax(us) and other local organizations, such as the Laboratory to Combat Human Trafficking, is that Prax(us) aims at making a difference through outreach and victim assistance.

## **Conclusion**

The wide variety of responses to the issue of human trafficking is both noteworthy and promising. It is obvious that certain organizations are unable to do as much as others due to financial and, staffing restrictions; they are not necessarily ineffective. Instead, they are challenged to work in more specialized areas. The United Nations, for example, has an exponentially larger budget than Prax(us) does. However, Prax(us) does a significant amount of work in victim assistance within the Denver area, a focus not on the radar of the United Nations.

The United States has made concerted efforts at curbing the problem of human trafficking through legislation, the TIP Report, and awareness campaigns. Its success in these areas is debated by many, but is obviously improving as research and data become more available. Professor d'Estrée and Jim Smithwick offered their own suggestions and critiques of the United States' efforts and the legal instruments that are in place.

While human trafficking is still an ever-present reality in our world and nation, the responses from these organizations and bodies does not go unnoticed. Though each has a considerable amount more work still to be done in order, they are off to a commendable start.

## CHAPTER 5

### **Author's Responses**

Throughout the research and writing process, I developed my own opinions on the topic of human trafficking. My opinions are primarily centered on the United States' responses and the current tools in place to fight human trafficking.

First, I believe the United States should ratify various United Nations conventions and protocols that attempt to fight against the injustices commonly seen among the most vulnerable. The Convention on the Rights of the Child and the Convention on Elimination of Discrimination Against Women are the two most important conventions in place that advocate for protection of the rights of women and children. The United States has signed both conventions, but has yet to ratify either of them.

Second, I believe that the United States should rewrite and replace the Trafficking Victims Protection Act. As mentioned in Chapter 4, Professor Yvonne Zimmerman offers many critiques of the law that I support. We are in agreement in that the current TVPA focuses too much on sex trafficking and overlooks the other forms, especially those present in the United States.

Third, the restorative services for victims of trafficking in this country are insufficient and need to be strengthened. As it has been detailed in this thesis, the effects of trafficking on the victims are severe, lasting, and, at times, chronically debilitating. It is my opinion that if the victim is exploited and abused within the United States, the government is responsible for providing psychological and medical services as well as protective services to ensure the safety of the victim.

My final suggestion is that all law enforcement personnel should be required to take a course related to human trafficking. This course would provide the recruits or current officers with the tools necessary to identify and properly treat victims of trafficking. Police officers and border guards are one of the first people in contact with the victims upon their abduction or transport. However, many are unaware of what to look for in victims, in perpetrators, or in travel arrangements. The education of law enforcement would be helpful in curbing the number victims taken across borders, international and local, and eventually abused.

The knowledge gained through this thesis process has been demonstrated through my writing and presentation on this topic. It is my hope that this serves as an educational tool and prompts action among its readers.



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