

The Effectiveness of Victim Protection Measures in U.S. Human Trafficking Legislation

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Abstract¹: Human trafficking is a form of modern-day slavery and a grave human rights violation. I argue that the dominant narratives around problem definition and victim construction in US policy impede effective implementation of victim protection measures, those measures that protect a victim's human rights. Ineffective victim protection is most harmful to women who are more vulnerable to exploitation than men in the process of migration. The victim protection measures, particularly T-visas and reparation, are failing due to high barriers to access. US Government policy attempts to reduce demand for sexual services by requiring family planning, HIV/AIDS, and other organizations that receive funding to have an explicit policy against prostitution. Yet the US Government and international organizations cite working with high-risk populations is one of the most effective ways to decrease the spread of the disease. The anti-prostitution policy has a detrimental effect on the fight against HIV/AIDS because it distances high-risk populations from medical and public health practitioners. The US can look to the efforts of other countries, such as Sweden and Italy, for ways to strengthen its anti-trafficking efforts.

Human trafficking is a form of modern-day slavery and a grave human rights violation that can occur within and across national borders. It is now the third most lucrative international crime after drug and arms trafficking. I argue that the dominant narratives around problem definition and victim construction in United States policy impede effective implementation of victim protection measures. The policies are not helping trafficking victims and they are not eradicating the problem. If anti-trafficking policies are to work effectively, then the US Government must look at reforming policies that contradict our trafficking objectives, such as our immigration policies. Additionally, we must also look at how we frame and operationalize the definition of trafficking, particularly at who makes the decision about whether someone is a trafficking victim. In order to analyze US anti-trafficking policy, the first section examines the discourses in the political debate and in the mainstream media. The second section discusses implementation issues with victim protection measures. Section three considers some alternative models to the US approach. Finally, I will provide some recommendations for strengthening US anti-trafficking efforts.

¹ I would like to thank the members of Prof. Levison's working group, Prof. Sally Kenney, Prof. Barbara Frey, Prof. Veena Deo, and Angela Bortel, Esq. for their comments and support in writing this paper.

Human trafficking is the use of force, fraud or coercion to exploit people in commercial sex work, sweat shop and agricultural work, child labor, domestic servitude, and other forms of work. Traffickers—usually international organized crime—use physical and sexual violence, threats, and other forms of coercion to force victims to work against their will, including controlling their freedom of movement, where and when they will work, and what pay, if any, they will receive. The denial of an individual’s basic human dignity is at the core of human trafficking. Since 2000, the United States, the United Nations, the Council of Europe, and many nations and US states have passed laws that develop broad frameworks to address this by-product of an increasingly globalized world economy where people as well as goods cross borders.

The focus of the debate so far has been on prostitution, which has diverted attention from a wider dialogue about other forms of exploitative practices, such as organ and labor trafficking. This paper seeks to answer a larger question of how the issues of problem definition have affected implementation of anti-trafficking policy in the US. We need to differentiate between legal sex workers and forced labor in order to focus the debate on the exploitation of economic migrants. Debating prostitution deters us from tackling trafficking. I argue that such a distinction is meaningful, contrary to activists who oppose prostitution. As DeStefano (2007) states, quoting Neha Misra of the Solidarity Center (part of AFL-CIO), prostitution “is what women do in order to make a living. So if you don’t want it to be work...give women real options for work, give them real options to make a living for their families and then we can stop the debate.”²

² Anthony DeStefano, *The War on Human Trafficking: U.S. Policy Assessed*, (New Brunswick, NJ: Rutgers University Press), p.144.

If we determine consent by the level of resistance a woman shows, then it is not always clear whether a woman consents to sex work. Some women, though, may agree to engage in sex work but not to the conditions—for example, the number of hours per day, the number of clients, or the pay. The case of organ trafficking provides a parallel example. A man may agree to have an organ removed, but may be taken advantage of—for example, unsanitary conditions during surgery and lower payment than agreed upon.

Clearly then, trafficking is a crime based on economic exploitation, and most forms of trafficking disproportionately affect women. Illegal migration leaves women and children more vulnerable than men to trafficking and sexual exploitation. Feminists have successfully placed the topic of trafficking onto the national agenda because they agree that trafficking is a serious violation against women's rights. The process of policy development, however, has not been in their control due in part to disagreement over problem definition. The main disagreement is whether a woman can ever consent to sex work. This debate has gone on since at least the anti-white slavery movement of the 19th century. Radical feminists perceive a woman's consent to be irrelevant because sex work is intrinsically exploitative. Therefore, they argue, all forms of prostitution should be included in a definition of trafficking. In debating how to define sex trafficking, this view aligns radical feminists with religious conservatives who see an opportunity to eradicate prostitution. Liberal feminists, on the other hand, argue that a woman's consent is relevant because sex work is not intrinsically exploitative. In defining sex trafficking, they argue that only forced prostitution, like all forms of forced labor, should be considered trafficking.

Senator Paul Wellstone (D-MN) initially envisioned that the goal of US anti-trafficking legislation was to provide protection to exploited migrants; a way to combat forced labor.³ The

³ DeStefano, *The War on Human Trafficking*.

current US policy on human trafficking, on the other hand, emphasizes the end purposes of migration to pinpoint a case of trafficking in order to distinguish it from other forms of migration. Such artificial divisions are problematic in implementing anti-trafficking policies because the focus is on the types of work that migrants do, not the conditions of work.

When we focus on the end-purpose of migration to determine a case of trafficking, we have to determine whether the migrant is “innocent” or “guilty,” a victim deserving protection or a criminal deserving punishment. For example, if a person ends up in debt bondage⁴ after knowingly paying a smuggler to smuggle them, is the person trafficked or smuggled? These definitions matter in determining whether the person is a victim or a criminal. The consequences are different. Illegal immigrants face immediate deportation and limited protection under the law; that is not the case with trafficking victims. However both cases are exploitative. The larger issue around trafficking is the issue of immigration. Trafficking becomes a way of talking about immigration policy without directly talking about immigration policy because we are deciding who we should let in and who we should keep out.

Global migration has increased rapidly over the past decade. The International Organization for Migration, an intergovernmental organization in Switzerland, estimates there are 200 million migrants worldwide, approximately 50% of whom are women.⁵ Many are economic migrants, and the global economy has provided a new form of income—remittances⁶—which has become a key component of some national economies. In 2007 alone,

⁴ Debt bondage is when a person exchanges labor for reducing the debt they owe instead of directly compensating the lender

⁵ International Organization for Migration, “Global Estimates and Trends,” <http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/global-estimates-and-trends>

⁶ A remittance is money that is sent back home from abroad, usually a migrant’s salary sent to family.

developing countries received an estimated USD 251 billion in remittances.⁷ These trends have strong political implications. In a recent *New York Times Magazine* article, Jason DeParle (2007) states that nurses are one of the prime exports of the Philippines. The remittances they send home are so valuable that it is political suicide for a Filipino candidate not to advocate for migrant safety measures, though such migrant laws cannot be strongly enforced.⁸ On the other hand, Austria's two main far-right parties, who ran on anti-EU and anti-immigration platforms, won 29% of the vote in the 2008 general election, placing them second.⁹ Politically, countries that send migrants are unable to enforce laws and countries that receive migrants are not interested in a migrant's safety or living conditions. In addition, migration trends have social implications as many women leave home alone to find work abroad in order to provide for their families. The political and social implications underline the complex push and pull factors of migration, and the inadequate or extreme responses in countries that send migrants and receive migrants, respectively.

Restrictive migration policies in receiving countries and scarce economic opportunities in sending countries are leading more and more people to participate in illegal methods of migration, therefore making them more vulnerable to the possibilities of exploitation. Development policies, meant to address economic scarcity and general poverty, could address some of the underlying reasons for migration, but they do not. These immigration and development policy failures, in part, are leading more people to try to migrate via illegal routes.

⁷ International Organization for Migration, "Global Estimates and Trends".

⁸ Jason DeParle, "Sending It All Back Home," *The New York Time Magazine*, April 22, 2007.

⁹ BBC News, "'Angry' voters aid Austrian right," <http://news.bbc.co.uk/2/hi/europe/7641479.stm>. It should be noted that this article did cite frustration with the other political parties as a possible reason for the victory. However, the gains came because of blatantly anti-immigrant campaign posters throughout the country.

Despite restrictive migration policies, global migration flows are not likely to decrease. Trafficking is one manifestation of an incomplete response by both sending and receiving countries to the problem of global migration and uneven economic development. Resolving trafficking requires addressing development, migration, and above all protecting the human rights of migrants by eliminating exploitation.

Narratives of Victims

The modern anti-trafficking movement and the current discourse about it have their antecedents in the anti-white slavery movement of the 19th and early 20th centuries. The narrative of the white slavery movement was ‘foreign’ men tricking innocent, young white women into sexual slavery. Anti-white slavery campaigners in many countries linked white slavery to immigration policy. In Canada, for example, the anti-white slavery movement’s efforts led to the 1923 Chinese Exclusion Act, which denied all legal migration of Chinese men until its repeal in 1947.¹⁰ The Chinese were one of the main immigrant groups entering Canada at the time, and Sharma states that it was a time of “virulent anti-Chinese beliefs and practices.”¹¹ In the US, anti-white slavery efforts led to the 1910 White-Slave Traffic Act,¹² which prevented “immoral” women and girls from entering the country. As Doezema (2000) demonstrates, the discourse of the anti-white slavery movement mirrors that of the modern anti-sex trafficking campaigns, with the central questions revolving around the innocence of the woman and the legitimacy of prostitution as work.

¹⁰ Nandita Sharma, “Anti-Trafficking Rhetoric and The Making of Global Apartheid,” *NWSA Journal* 17, no.3 (Fall 2005): 99.

¹¹ *Ibid*, 98.

¹² This is more commonly referred to as the Mann Act. While the Mann Act was used to combat trafficking, it was written broadly and used to regulate all women’s sexual behavior.

Contemporary discourses about trafficking began in the 1980s.¹³ The contentious debates to define trafficking, between feminists and between policymakers, came to a head in the late 1990s when both the US and the UN were developing legislation.¹⁴ This section analyzes the debates on the definition of trafficking in US law.

I. Problem Definition

In 2000, the US Government passed Public Law 106-386—the Victims of Trafficking and Violence Protection Act (VTVPA)—to address the problem that “at least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.”¹⁵ One part of the VTVPA is the Trafficking Victims Protection Act (TVPA), which was the first piece of comprehensive anti-human trafficking legislation in the US.

The TVPA received significant support in the US Congress, passing with almost unanimous votes in both the Senate and the House of Representatives. Each re-authorization has seen an ever-increasing number of co-sponsors from both sides of the aisle. DeStefano (2007) traces the impetus for legislation back to news articles in the late 1990s when law enforcement agencies uncovered several major trafficking rings involving immigrant brothels and forced labor. At the time, international feminist and global human rights activists were becoming more prominent.

Between 1997 and 1999, members of Congress introduced more than five bills regarding international trafficking. Representative Louise Slaughter (D-NY) introduced House Resolution

¹³ Jo Doezema, “Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women,” *Gender Issues* (Winter 2000): 31.

¹⁴ For a detailed discussion of the debates at the United Nations, please see Janice Chuang (2006) and Anne Gallagher (2001).

¹⁵ *Victims of Trafficking and Violence Protection Act of 2000*. Public Law 106-386. 106th Cong, 2nd sess. October 28, 2000.

114, which focused exclusively on sex trafficking.¹⁶ Senators Paul Wellstone (D-MN) and Dianne Feinstein (D-CA) introduced Senate Resolution 82, modeled on the Belgian and Dutch approaches to trafficking, in collaboration with several nongovernmental organizations including Human Rights Watch, Global Survival Network, and Global Rights. Both House Resolution 114 and Senate Resolution 82 made a distinction that force, fraud, or coercion was necessary for an act of trafficking and referred to forced prostitution instead of all forms of prostitution.

After Congress members introduced the bills, Congress held committee hearings to explore the scope of the problem. Academics and nongovernmental organizations testified, and the Senate Committee on the Judiciary, Subcommittee on Human Rights also heard from a trafficking victim. Senator Wellstone stated during general floor discussion of the TVPA that, “trafficking victims, after-care providers, and human rights advocates from around the world...have reminded us again and again of the horrible, widespread and growing nature of this human rights abuse.”¹⁷ The testimonials of advocates and victims generated anger that such a practice was happening in the US, and fueled bipartisan support for anti-trafficking legislation. While Congress members agreed on the need for action, the end result—the TVPA—reflects two competing approaches to the problem.

Senator Wellstone’s 1999 Congressional bill fundamentally differed from the bill introduced by Representative Christopher Smith (R-NJ) in the same year. Representative Smith’s bill focused US efforts only on combating prostitution, particularly of minors, to end sex trafficking. Senator Wellstone’s bill, on the other hand, defined trafficking more broadly as

¹⁶ House Resolution 114 refers to the trafficking of Burmese women and girls into Thailand for the purpose of forced labor. To contextualize the problem, the preamble cites the World Congress against the Commercial Sexual Exploitation, the State Department’s human rights reports on Thailand, CEDAW and international conventions against slavery and forced labor.

¹⁷ United States Senate, *Congressional Record*, 106th Cong., 2nd sess., July 27, 2000, <http://www.lexisnexis.com>.

forced labor regardless of the individual's occupation. Senator Wellstone introduced a second anti-trafficking bill in 2000. Much of the framework in his 2000 bill followed Rep. Smith's 1999 bill, but the two bills diverged on several points including the definition of trafficking. After a month of deliberations, the final result was a two-tier definition of the "severe forms of trafficking in persons": as sex trafficking and as forced labor.¹⁸ In any case of trafficking—including sex trafficking—force, fraud, or coercion must be present, unless that victim is a minor.

In addition to a compromise on the definition, the reconciled bills had several other significant compromises on provisions. These were the exclusion of the private right to action against traffickers and the forfeiture of traffickers' assets and inclusion of sanctions against countries that do not meet "minimum standards" as set by the U.S. Government.¹⁹ The private right of action and the asset forfeiture were included in Rep. Smith's bill as financial deterrents from future trafficking. Section 1595 of the 2003 Reauthorization successfully reintroduced the private right of action. Initially Rep. Smith's bill called for mandatory sanctions, which the Clinton Administration and many legislators opposed. The sanctions in the TVPA are at the discretion of the President and provide a means of unilateral action to address a global issue.

Trafficking represents a "nontraditional" human rights violation—carried out by private or non-state actors. Alison Brysk (2005) states that, normally, violations in the private sphere are considered crimes because they are sporadic. Opposing this view, she argues that "private wrongs," violations by non-state actors, are more systematized and therefore should be treated

¹⁸ *Trafficking Victims Protection Act of 2000*, PL 106-386, §103 (8), <http://www.state.gov/documents/organization/10492.pdf>

¹⁹ Kelly Hyland, "Protecting Human Victims of Trafficking: An American Framework," *Berkeley Women's Law Journal* 16 (2001): 68.

similarly to state violations of human rights. The responsibility falls on the State to ensure the human rights of the victim. While the victim protection measures recognize the human rights abuses that victims face, ultimately the TVPA defines trafficking as a criminal justice issue; in other words it de-emphasizes the systemic issues, such as global economic forces, that would give rise to human rights violations.

The definition of a problem affects which organizations exercise authority over that issue and therefore how the policy will be implemented. Political scientists Baumgartner and Jones (1993) state that the images we create of policy issues affect the venues that exercise authority over those issues. We reach equilibrium between venue and image through a positive feedback effect. The venues may be interested in maintaining and re-enforcing those images that bolster their authority and excluding others that may undermine their authority or shift authority to another venue. Putting human trafficking under the rubric of national security and criminal justice—for example, ICE, the Immigration and Customs Enforcement agency, has the lead investigative role for trafficking cases²⁰—re-enforces the idea that human trafficking is primarily a crime not a human rights violation. In other words, framing trafficking as a crime and the narratives of criminality and slavery strengthen the need to keep this topic under the purview of national security and immigration.

II. Images of victims

Telling the stories of victims and quantifying the problem are two of the most powerful tools advocates and policymakers can use to mobilize action. The stories and statistics about trafficking first mobilized action for the passage of the TVPA and the policy design and implementation. They have also influenced how we conceptualize trafficking. DeStefano

²⁰ <http://www.ice.gov/pi/investigations/publicsafety/humantrafficking.htm> ICE has been working on human trafficking since its establishment in 2003, under the Homeland Security Act of 2002.

(2007) argues that each new story of an immigrant brothel or sex club gave trafficking political traction. “Whether every case fit the mold was questionable... [but] those basic stories instigated American legislators and other officials to see human trafficking as a form of modern slavery.”²¹

While stories are important to mobilize action, they can also simplify complex issues by silencing some perspectives and privileging others. Trafficking first came to the attention of the public and lawmakers through the mainstream media. This section looks at some examples of articles in the mainstream media that appeared after the passage of the TVPA. While law enforcement agencies and advocates brought the issue to light and carried it on to the national agenda, they would not have been as successful without the news articles that related personal stories of women trapped in sexual slavery. News articles have sustained awareness of the issue and formed the initial image of the trafficking victim.

Nicholas Kristof is a syndicated columnist whose articles appear in the *New York Times*, the *International Herald Tribune*, and others. He has written extensively on the issue of sex trafficking in South and Southeast Asia to a broad, popular audience. Because of the extensive number of articles he has written, we can examine patterns that emerge of victim descriptions. Because of his wide readership, Kristof’s articles serve as examples of representations of trafficking victims in the popular imagination.

While there are variations in details, the reiteration of the main ideas in Kristof’s articles leads to a composite story of the trafficking victim. A young, rural girl from an impoverished country, with little to no education—at about the age of menarche—is kidnapped or tricked into leaving her family and taken to a brothel by community members. She may initially fight

²¹ DeStefano, *The War on Human Trafficking* (New Brunswick, NJ: Rutgers University Press), p.11.

against the clients, but is beaten or raped into submission. She may get pregnant and have her children taken away or she may end up with a disease. In two articles he uses almost identical phrases, stating that the difference between 19th century and modern slaves is that the ones today will die of AIDS by their 20s.²² The police are corrupt and will not help, the village may reject her if she returns; her only support is a nongovernmental organization or protection by marriage.²³

In the articles, Kristof reinforces the social dichotomy of women as prostitutes or madonnas. He states that, “in poor countries where sex trafficking and globalization have fostered new forms of slavery, it is the saintly ones [girls]—those who risk leaving their villages to help their families—who end up as whores.”²⁴ In that particular article, a young woman ends up very ill from the sexual abuse she was subjected to while in a brothel. While Kristof portrays her as a good girl, in the end he also blames her by suggesting that her failure gnaws at her. “This is a courageous young woman whose only goal was to help her family members. Instead she has bankrupted them and endangered her life—and risked her parents’ future.”²⁵ He presents a dichotomy here: a helpless victim who, when she escapes, is at fault for what has happened to her and subsequently to her family.

Kristof’s articles are full of silences and missing details. First, some women willingly enter prostitution or pay to be smuggled into another country. By portraying all women as

²² Nicholas Kristof, “Good girl risks all for parents,” *Beaumont Enterprise*, December 22, 2006: A.13.; Nicholas Kristof, “Sanctuary for sex slaves,” *The New York Times*, April 3, 2007: A.21.

²³ Nicholas Kristof, “A Cambodian Girl’s Tragedy: Being Young and Pretty,” *The New York Times*, December 12, 2006, A.31.; Nicholas Kristof, “The 21st Century Slave Trade,” *The New York Times*, April 22, 2007, A.13.; Nicholas Kristof, “Good girl risks all for parents,” *Beaumont Enterprise*, December 22, 2006, A.13.; Nicholas Kristof, “Sanctuary for sex slaves,” *The New York Times*, April 3, 2007, A.21.

²⁴ Nicholas Kristof, “Good girl risks all for parents,” *Beaumont Enterprise*, December 22, 2006, A.13.

²⁵ Kristof, “Good girl risks all for parents”, A.13.

kidnapped or tricked, Kristof focuses on the type of work done instead of the conditions of the work, narrowly defining trafficking in the popular imagination and re-enforcing the idea of trafficking as only prostitution. More broadly, he takes away women's agency to make the decision to migrate and leave their families. In these articles it never ends well for a woman who leaves home alone. Second, the articles largely ignore the fact that male migrants are subject to exploitation and that men are also trafficked—though rarely for sex work. As a result, it produces the dichotomous idea that only women are trafficked and men are smuggled—again reflecting women's lack of agency. Third, Kristof's article group women into one category. In these articles, Kristof makes no distinctions of age, class, ethnic background, etc., homogenizing women's experiences and conflating women and girls. By conflating women and girls, his narrative creates the image of women as dependents and unable to act for themselves.

This narrative of a young slave is politically important in two ways. First, it constructs the image of a deserving, helpless victim for an issue that is actually about international migration and the exploitative conditions faced by illegal immigrants. Whereas illegal immigrants are constructed as criminals, the trafficking victim creates dependents for which there exists a clear solution: "rescue and restore," rescue them from the criminals and restore them to their countries and families, which is where they want to be.

Second, it evokes the symbol of a slave which links back to the 19th century narrative of the transatlantic slave trade and the abolitionist movement (the 2008 Reauthorization is named after William Wilberforce, a 19th century abolitionist). In that way, acting on behalf of the slave is acting as a modern-day abolitionist. As Senator Sam Brownback (R-KS) said during floor discussion of the Trafficking Victims Protection Reauthorization Act of 2003, "I reiterate my belief that the spirits of such activists as the great English Parliamentarian and evangelist

William Wilberforce, and the abolitionist leaders of my home State of Kansas who led the 19th century war against the chattel enslavement of African men and women [are alive in this bill]. If we do it right, the Trafficking Victims Protection Act will be seen by generations to come to have met the high standards of William Wilberforce and the Free Kansas activists.”²⁶ Linking the narrative to the abolition movement also determines the features of a policy design—by abolishing the conditions that lead to slavery (in this case prostitution) and fighting it as a crime without addressing the underlying economic conditions. Furthermore it provides a moral imperative to act in much the same way William Wilberforce was called by God to act against 19th century slavery.

Providing a moral imperative to act and framing trafficking as a criminal justice issue are not inherently wrong. The focus of the narrative on sexual slavery and prostitution, however, has been to the detriment of victim protection. Under this frame, victim protection is not about the well-being of the migrant except to the extent that the individual can assist with prosecution. Women’s rights are also not well protected. Whether a woman can choose sex work or not is a discussion that should take place, but separately from a discussion of migrant exploitation. Because trafficking is about migrant exploitation, a criminal justice frame, “relegate[s] the issue of demand for cheap and exploitable labour within globalizing markets to the margins.”²⁷ Many of the industries that exploit cheap labor (service jobs, domestic work) are exploiting gender-specific forms of work that disproportionately affect women. What has happened as a result of the current discourse is the loss of a woman’s control both over her own body and over decisions about her life.

²⁶ United States Senate, *Congressional Record*, 108th Cong., 1st sess., December 9, 2003, <http://thomas.loc.gov>.

²⁷ Annette Lansink, “Human rights focus on trafficked women: an international law and feminist perspective,” *Agenda* 70 (2006): 47.

It is important to mention that while stories can be very powerful in public discourse, they become more powerful when they are reinforced by statistics which describe the scope of the problem and create a sense of urgency to act. The inherent difficulty of quantifying an illegal activity, however, is that it is hidden and therefore difficult to measure. Hence, problem definition plays a critical, but thorny, role in how we conceptualize who gets counted as a trafficking victim.

While four agencies—one nationally and three internationally—collect data on trafficking trends, these agencies do not coordinate efforts to systematically collect data nor do they systematize definitions. Gozdziaik and Collett (2005) point out that, “few governments... systematically collect data on human trafficking and when they do provide statistical information they often mix data related to trafficking, smuggling, and illegal migration.”²⁸ Situating trafficking under the rubric of law enforcement and immigration can limit a researcher’s access to information and may bias the information they obtain due to the victim’s fear of repercussions.

The CIA produces the trafficking estimates in the US. Because the estimates come from an intelligence agency, the methodology is “opaque and inaccessible,”²⁹ and subject to limited review. In the 2004 *Trafficking in Persons Report*, the U.S. State Department decreased the estimated number of people trafficked into the US annually from 50,000 to approximately 14,500 to 17,500.³⁰ CIA analysts extrapolated the lower estimate from accounts in foreign

²⁸ Elzbieta Gozdziaik and Elizabeth Collett, “Research on Human Trafficking in North America: A Review of the Literature,” *International Migration* 43, no.1-2 (2005): 107.

²⁹ Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad*, (2006), p.13.

³⁰ *Ibid*, 17.

newspapers—though the Justice Department subsequently stated that even this number might be an overestimate.³¹

The example of the CIA reveals underlying difficulties with the numbers that have added force to the narratives. Using uncertain definitions to make counts can unduly inflate the size of the problem. Part of the impetus to act came from the high estimate. Fourteen thousand potential victims is still a lot, but significantly less than what we initially thought and why we initially acted. The US Government spent over \$300 million in the first six years after the passage of the TVPA, including hiring a consulting firm to locate victims.³² Without accurate estimates, existing policies can be difficult to defend.

This leads to the second difficulty: the study of one problem—trafficking—to mask efforts towards combating others—such as illegal migration and prostitution—to create a sense of urgency to act. Furthermore, how do you determine ‘force, fraud or coercion,’ the three elements necessary to have a case of trafficking? By and large no external markers exist to indicate force, fraud, or coercion. Finally, many reports and publications have relied on secondary data sources. As a result, inaccurate estimates may have been based on other inaccurate estimates.

These troublesome data issues and limited narratives among policymakers and in the mainstream media have contributed to an inadequate policy design. Based on the discourses that led to the TVPA, what victim protection provisions does US legislation include? Furthermore, how are the provisions working in practice?

³¹ Jerry Markon, “Human Trafficking Evokes Outrage, Little Evidence,” *Washington Post*, September 23, 2007, A01.

³² *Ibid.*

Victim Protection Provisions in US Anti-trafficking Legislation

Since 2000, the US Government has assembled a large bureaucratic infrastructure to combat trafficking including mustering the staff of six departments, establishing a special office to combat trafficking, and setting up 42 state-level Justice Department task forces,³³ among other actions. Since 2001 the Government has provided approximately USD 375 million³⁴ to nongovernmental organizations and foreign governments dedicated to fight trafficking. The State Department annually releases a *Trafficking in Persons Report*, the definitive document on international anti-trafficking efforts. The country narratives present each country's progress towards meeting the "minimum standards" of combating trafficking established by the US federal government.

The minimum standards include developing an infrastructure (including establishing anti-trafficking laws or amending existing codes), prosecuting traffickers (including encouraging trafficking victims to participate with prosecution cases), protecting victims, and preventing future trafficking through economic alternatives and public education.³⁵ It is difficult to determine a sound methodology for measuring progress on attaining these standards, particularly the effects of education, which can take years. Despite the difficulties, countries must provide annual updates and must show quantifiable progress each year.³⁶ Countries that the US Government deems to be making insufficient progress on minimum standards can face sanctions or potentially lose non-humanitarian, non-trade-related US foreign assistance. These sanctions

³³ Markon, "Human Trafficking Evokes Outrage, Little Evidence," A01.

³⁴ Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad*, 1.

³⁵ *Victims of Trafficking and Violence Protection Act of 2000*. Public Law 106-386 §108(b). 106th Cong, 2nd sess. October 28, 2000.

³⁶ Unurtsetseg Tsedev, "Human Trafficking: a Mongolian Perspective" (lecture, University of Minnesota, Minneapolis, MN, March 12, 2008).

are discretionary, as mentioned above. In practice there is no evidence that the US has ever withdrawn foreign assistance to Tier 3 countries, those eligible for sanctions, based on their anti-human trafficking efforts.³⁷

This section examines the three primary victim protection measures in anti-trafficking legislation. The TVPA of 2000 established the T-visa, which gives victims legal status in the US. The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003) added the Section 1595 civil suits, which allow victims reparation from traffickers. The US Government has also tried to eliminate sex trafficking by reducing the demand for sexual services by US citizens who travel abroad through the United States Leadership on HIV/AIDS, Tuberculosis, and Malaria Act of 2003.

Trafficking is a crime of exploitation, and from a criminal justice frame, requires the cooperation of victims. The victim protection measures were instituted in order to ensure cooperation. But the measures such as T-visas and reparation are difficult to access due to barriers such as trial lengths and complicated paperwork. The costs, especially attorneys' fees, can be high because of the lengthy trial times. In addition, in order to claim restitution in a civil case, the victim must be able to locate the traffickers' assets which are oftentimes difficult to do. The attempt to address demand is weak and also inhibits work on another significant issue—HIV/AIDS.

I. T-visas

Many victims are deterred from trying to obtain T-visas, and subsequently residency permits, because of the stringent requirements. The T-visa allows trafficking victims to stay in the United States for up to four years and receive social benefits while their traffickers are being

³⁷ In the 2008 TIP report, fourteen countries are listed in Tier 3. Of those, 6 already face sanctions for other reasons; these countries include Burma, Cuba, Iran, North Korea, Sudan and Syria.

prosecuted. After three years the victim can apply for permanent residency. While the TVPA established a quota of 5000 t-visas per fiscal year, from FY 2001-2007, the Government issued only 1008 visas in total.³⁸ This number is a fraction of the total number of trafficking victims.³⁹ Angela Bortel, an immigration attorney who helped author the 2008 *Sex Trafficking Needs Assessment for the State of Minnesota*, stated she only knows a few attorneys in Minnesota who have filed an application for a T-visa. The complex process deters many attorneys. The Government, furthermore, did not establish regulations for the T-visa for more than five years after the TVPA became law.

In order to receive a T-visa, an individual must meet several criteria. First, s/he must be a victim of a “severe form of trafficking,” which means forced, coerced, or defrauded into a commercial sex act or being subjected to involuntary servitude, peonage, debt bondage or slavery.⁴⁰ Other criteria for a T-visa include being physically present in the US, one of its territories, or a port of entry; complying with any reasonable request for assistance in a trafficking investigation or prosecution; and showing that s/he would suffer extreme hardship if returned to their country of origin.⁴¹ If the individual is less than 15 years old, s/he is exempt from all of the requirements.⁴² According to the interim rules issued by the Department of

³⁸ The Advocates for Human Rights, *Sex Trafficking Needs Assessment for the State of Minnesota* (Minneapolis: The Advocates for Human Rights), p.81.

³⁹ *Ibid.*, p.81. The Minnesota Needs Assessment report cites a 2006 study of street outreach organizations that receive federal funds. Only 3.9% of victims found by the organizations had received t-visas. In a similar study done in Italy by an Italian NGO, over 60% of victims had received residency permits (please see section III, subsection II).

⁴⁰ *Victims of Trafficking and Violence Protection Act of 2000*. Public Law 106-386 §103(8). 106th Cong, 2nd sess. October 28, 2000.

⁴¹ *Trafficking Victims Protection Act of 2000*, Public Law 106-386, 8 U.S.C. §1101(a)(15)(T)

⁴² National Immigrant Law Center, “DOJ issues regulations for T visas, available to victims of trafficking,” *Immigrants Rights Update*, 16, no.1 (2002) <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr071.htm>

Justice, victims cannot cite social or economic reasons for hardship, but some specific reasons include:

Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country, the nature and extent of the physical and psychological consequences of severe forms of trafficking in persons, and the likelihood that the trafficker or another acting on behalf of the trafficker in the foreign country would severely harm the applicant.⁴³

Once the Department of Health and Human Services certifies that the individual is a bona fide victim of a severe form of trafficking and the individual is assisting with an investigation or has continued presence, the Customs and Immigration Service (CIS) approves their application in order for the individual to receive refugee-level services and benefits.⁴⁴ Victims under 15 years of age have to provide proof of their age either through birth records, passports, or school records.⁴⁵

Under Section 245(l) of the Act, the t-visa allows victims to stay in the US and to convert their status to permanent residency after three years.⁴⁶ One requirement for changing status is that, “[individuals] must establish that they have been persons of good moral character since first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status.”⁴⁷ This requirement reinforces that sex work is not a legitimate form of work. Victims must submit documents for each eligibility requirement from the Attorney General, ICE, and the Department of Health and Human Services, as well as evidence of good moral character.

⁴³ Department of Justice, “New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status; Final Rule,” *Federal Register* 67, no.21 (January 2002): 4799.

⁴⁴ *Ibid*, p.4787

⁴⁵ National Immigrant Law Center, *Immigrants Rights Update*.

⁴⁶ Department of Homeland Security, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” *Federal Register* 73, no.240 (December 2008): 75541.

⁴⁷ *Ibid*, 75541.

In order to be eligible for a t-visa, victims have to have been in contact with a law enforcement agency, which is limited to mean a federal agency (usually ICE).⁴⁸ More recently state and local agencies have been collaborating a little more with federal agencies. Even after they assist prosecutors, it is possible that CIS can deny the victim the visa or have it revoked if they perceived to be non-compliant. This means that the victim can be deported back to their country of origin, potentially leaving them vulnerable to be trafficked again. One major problem is that the visas are contingent on participation in a prosecution, but many cases are not brought to trial, and therefore the ‘continued presence’ of the victims is not necessary.

II. Reparation for Trafficking Victims

Under Section 1595 of the TVPRA 2003, trafficking victims can seek civil damages and attorneys’ fees directly from traffickers in US district courts. The intent of the provision is to provide victims with added protection, in recognition of the fact that immigration procedures and prosecutions of traffickers are lengthy processes. This provision was initially excluded from the TVPA, but reintroduced by Rep. Smith in 2003. As with other civil cases, it is up to the attorney to locate the assets from which a victim can claim restitution, which is very difficult to do. Furthermore, civil actions cannot take place while a criminal action is pending against the trafficker as it could affect the outcome of either trial.

Jennifer Nam (2007), a Columbia law student, completed a qualitative study looking at the number and distribution of Section 1595 filings since the provision came into effect. She found that from 2003 to 2007 attorneys filed only 18 cases nationwide all on behalf of labor trafficking victims, and none on behalf of sex trafficking victims. Victims that won cases did so under the Fair Labor Standards Act, the Civil Rights Act of 1964, and breach of contract.

⁴⁸ National Immigrant Law Center, *Immigrants Rights Update*.

Nam found two cases with rulings on Section 1595 but no court opinions deciding the claim on its merits. In *Ara v. Khan* (New York), the judge stayed the claims because of an ongoing criminal trial.⁴⁹ In *Roe v. Bridgestone Corp.* (Indiana), the court dismissed the claims because Section 1595 does not allow civil remedies for violations outside of the United States.⁵⁰

Considering the emphasis that national policymakers, service providers and advocates have placed on the sexual exploitation of women, it is surprising that Nam was unable to find any filings. She offers several reasons to explain the lack of filings. One is that prosecution can take anywhere from eight months to three years, and only then can victims file civil claims, so the law is still relatively new. Related to the time is a potential lack of knowledge or information on the part of advocacy networks—they may not be aware of the Section 1595 provision or have adequate training.

The Anti-Trafficking Litigation Assistance Support Team (ATLAST) at Loyola Law School is trying to remedy the lack of knowledge with trainings on how to file Section 1595 claims, and provide civil litigation resources and mentors. Their presentations show the complex considerations and process for filing civil suits. Both Nam and ATLAST state one of the primary benefits of the civil claims is empowerment for the victim and future deterrence for traffickers. If sex trafficking victims are not filing cases and those victims who do file are not winning restitution under the Section 1595 provision, then this record may indicate a total policy failure.

⁴⁹ Jennifer Nam, “The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims,” *Columbia Law Review* 107, no.7 (November 2007): 1670.

⁵⁰ *Ibid*, 1671.

III. Reducing Demand for Sexual Services

In 2003, Congress passed the United States Leadership on HIV/AIDS, Tuberculosis, and Malaria Act.⁵¹ The US State Department Office to Monitor and Combat Trafficking classifies the law as anti-trafficking legislation. DeStefano (2007) states that the law is a way to combat demand for commercial sex and therefore decrease the incentives for sex traffickers. The underlying assumption of the law is a cause and effect relationship between the demand for sexual services and sex trafficking, therefore if you eliminate prostitution you can eliminate sex trafficking.

Under §7631(f) of the Act, “No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.”⁵² The law applies to organizations that receive funding from USAID, the US Government’s international development agency. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Health Organization, and the US Department of Health and Human Services, best practice for combating HIV/AIDS includes working with high-risk populations such as sex workers.

An explicit policy against prostitution and trafficking negatively impacts the fight against HIV/AIDS by stigmatizing a high-risk population and disputing best practices. In May 2005, President Bush received an open letter from dozens of NGOs, academics, leaders of faith-based organizations, directors of AIDS programs, and physicians strongly urging him to reconsider the prostitution policy. They stated that, “the legal restrictions were contrary to ‘best practices in

⁵¹ Hereinafter the HIV/AIDS and Malaria Act.

⁵² *United States Leadership On HIV/AIDS, Tuberculosis, and Malaria Act* §7631(f), 108th Cong, sess.1, January 7, 2003.

public health and will undermine efforts to stem the spread of HIV and human trafficking’.”⁵³

Furthermore, simply having a policy stating that the organization is against prostitution and sex trafficking does not change behavior or attitudes, which is necessary to stem demand.

Several nongovernmental organizations have filed lawsuits against the Government, arguing that the policy violates an organization’s First Amendment right to free speech. In 2006 DKT International, an US-based family planning organization that was denied funding under the HIV/AIDS and Malaria Act, took USAID to court and won the lower court case, though the Federal Appeals Court later reversed the decision.⁵⁴ DKT International argued that the policy harmed their work on projects that did not receive USAID funding because it was an organization-wide policy. Because of the court cases, the Government developed alternate guidelines that would allow organizations to work with affiliates without the requisite pledge.

The following case best exemplifies the problematic narratives, definition and implementation of anti-trafficking legislation. The case highlights what happens when victims are re-framed as criminals because they do not fit the accepted narrative as well as the difficulties and failures of current policy.

Since 2008 there has been an ongoing labor trafficking case in the US District Court for the Eastern District of Louisiana.⁵⁵ In 2006, 500 Indian men were trafficked into the US to work in the Gulf Coast post-Katrina reconstruction under promise of green cards.⁵⁶ Recruited from India and the United Arab Emirates, each worker paid at least 600,000 rupees (approximately USD 12,000) for an H2-B guest worker visa.⁵⁷ Once they arrived, they were subjected to slave-

⁵³ DeStefano, *The War on Human Trafficking*, 110.

⁵⁴ *DKT Int’l v. United States Agency for Int’l Dev.*, 477 F.3d 758 (U.S. App. D.C. 2007).

⁵⁵ *David, et al. v. Signal International, LLC, et al.*, filed (E.D. La. 2008).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

like work and living conditions, and made to do more dangerous and dirty work than their American co-workers. After escaping and coming forward with their claim, the men formed the Indian Workers Congress and led a march from Louisiana to Washington, DC to highlight exploitation in the guest worker program and to insist that the Department of Justice bring a criminal case against Signal International, their employer. The trial is ongoing and some of the men re-settled for work in other parts of the country. All of the men also filed a civil suit under §1595 of the TVPRA 2003. In October 2008 ICE arrested over 20 of the victims in a raid in North Dakota on charges of false documentation.⁵⁸ Since then they have been released and the cases are ongoing.

This case demonstrates many of the inconsistencies that result from the narrowly-conceived dominant discourses. First, the case is about the exploitation of labor in the construction sector. Second, the victims are men and not young women. While neither of these facts fits the dominant narrative, the conditions the men were subjected to deny their basic human dignity in the same way that sex trafficking victims are subjected to indignity. They exercised their individual agency, but several were later arrested as illegal immigrants—re-framed as criminals because they acted for themselves, whereas dependents, by definition, cannot act for themselves. Furthermore, when they sought redress they did not get it. The US Justice Department brought criminal charges against Signal International, but the process has been moving slowly.

Alternative Policies

We have analyzed some of the difficulties in the implementation of current US anti-human trafficking legislation. In determining how the US can be more effective in combating

⁵⁸ New Orleans Workers' Rights Center, <http://www.nowcrj.org/press-releases/ice-raid-targets-snares-human-trafficking-victims-102908/>; *David, et al. v. Signal International, LLC, et al.*, filed (E.D. La. 2008).

trafficking it is helpful to examine other countries' efforts. Many other countries have developed national frameworks or action plans to combat trafficking. For example, Egypt recently established a National Committee to Prevent Trafficking in Persons, which released its first report in 2008.⁵⁹ Ecuador passed a comprehensive anti-trafficking law in 2005. It has increased public awareness through campaigns and increased the number of arrests and indictments.⁶⁰

Europe has taken a lead via national and regional efforts. Many countries have national laws, such as Great Britain, the Netherlands, Belgium, Italy, Sweden, Norway, and Finland. Several regions established pacts to combat the problem more broadly. Two examples are the Stability Pact—a multi-year action plan for south eastern Europe—and the Nordic-Baltic Campaign Against Trafficking in Women. In 2007 the Council of Europe Convention on Action against Trafficking entered into force.

Sweden has taken a unique approach to combating trafficking by criminalizing the purchase of sexual services. Italy provides extensive services and residency permits to trafficking victims and some nongovernmental organizations hold it up as an example of good practices in victim protection. This section examines the unique features of Sweden's and Italy's plans to determine whether these features may provide a different way of thinking about combating trafficking and strengthening victim protection in the United States.

I. Sweden

Sweden has a broad national framework for combating trafficking in persons although, by international standards, the problem is relatively small in absolute terms—an estimated 400-

⁵⁹ The Protection Project, <http://www.protectionproject.org>.

⁶⁰ United States Department of State, *2008 Trafficking in Persons Report*, <http://www.state.gov/g/tip/rls/tiprpt/2008/105387.htm>

600 people are annually trafficked into the country for commercial sexual exploitation.⁶¹ In 2002 the Government passed anti-sex trafficking legislation, amending it in 2005 to include all forms of trafficking. In 2004 the Government also amended the Aliens Act to allow time-limited residency permits to victims who need to stay in Sweden to assist with prosecution. They receive health care and social welfare services from the Government.⁶² Since 2000 Sweden has had a National Rapporteur on Trafficking in Women and the Government appointed an Ambassador for International Cooperation Against Human Trafficking in 2007. In 2008, it adopted the Action Plan Against Prostitution and Human Trafficking for Sexual Purposes, which will spend SEK 213 million (approximately USD 25 million) over two years on greater protection and support for people at risk (especially children), greater efficiency and higher standards in the justice system, more emphasis on preventive work, increased national and international cooperation, and a higher level of knowledge and awareness.⁶³

Probably the most unique, and controversial, legislation that is part of the national strategy to combat trafficking is a law passed in 1999 that criminalizes the purchase of sexual services; called The Law that Prohibits the Purchase of Sexual Services.⁶⁴ Under The Law, police intervene before the crime actually takes place, when an act has been made to purchase services. It provides fines and/or up to six months' imprisonment as punishment.⁶⁵ It is unique in that it was the first law of its kind to address the demand for sexual services in an attempt to address sex trafficking. Another unique feature of the legislation is its reach. Because Sweden

⁶¹ Government of Sweden, Ministry of Industry, Employment, and Communications, "Prostitution and Trafficking in Human Beings Factsheet," (April 2005): 3.

⁶² Ibid, 3.

⁶³ Government of Sweden, "National Action Plan Against Prostitution and Human Trafficking for Sexual Purposes," (July 2008).

⁶⁴ Henceforth referred to as The Law.

⁶⁵ Gunilla Ekberg, "The Swedish Law That Prohibits the Purchase of Sexual Services," *Violence Against Women* 10, no.10 (October 2004): 1192.

has extraterritorial jurisdiction, The Law is applicable to all Swedish citizens, including those abroad—e.g., deployed troops. In 2002, the Swedish Government used The Law to prosecute three Swedish peacekeepers who purchased sexual services in Kosovo.⁶⁶

The women's movement initiated The Law and female parliamentarians supported it in the *Riksdag* (Parliament). The underlying logic for the Law is that “gender equality will remain unattainable as long as men buy, sell, and exploit women and children by prostituting them.”⁶⁷ The strategy to combat trafficking includes The Law because “international trafficking in human beings could not flourish but for the existence of local prostitution markets.”⁶⁸ All official documents link the terms prostitution and trafficking to re-enforce the idea of all prostitution as trafficking and therefore exploitative.

According to official statistics the number of street and Internet prostitutes has decreased substantially as a result of the national strategy. While the number of actual convictions is low, Gunilla Ekberg, a special advisor to the Ministry of Industry, Employment, and Communication, argues that the law is intended to develop a new norm and stop a crime before it happens so the low conviction rate is not inconsistent with the policy goals.

Despite opinion polls showing that 80% of the Swedish public supports The Law,⁶⁹ some strong criticisms remain. First, though the number of prostitutes may have decreased, no evidence indicates a decrease in the number of women trafficked into the country. Some prostitutes feel that The Law has taken away their livelihoods and that they have been pushed

⁶⁶ Gunilla Ekberg, “The Swedish Law That Prohibits the Purchase of Sexual Services,” *Violence Against Women* 10, no.10 (October 2004): 1198.

⁶⁷ Government of Sweden, Ministry of Industry, Employment, and Communications. “Prostitution and Trafficking in Human Beings Factsheet,” 1.

⁶⁸ *Ibid*, 3.

⁶⁹ André Anwar, “Prostitution Ban Huge Success in Sweden,” *Der Spiegel*, November 8, 2007, <http://www.humantrafficking.org/updates/838>.

into the role of victim.⁷⁰ They also state they are more vulnerable to aggressive clients—the only ones willing to take a chance with being caught. Health care professionals say that the cases of sexually transmitted diseases, rape and abuse among sex workers have all increased since The Law’s passage.⁷¹

Second, Ekberg writes that the law is gender neutral, applying equally to men and women. However, she states that

In Sweden, prostitution is officially acknowledged as a form of male violence against women and children. One of the cornerstones of Swedish policies against prostitution and trafficking in human beings is the focus on the root cause, the recognition that without men’s demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able to flourish and expand.⁷²

The Ministry of Industry, Employment, and Communication also explicitly reiterates this sentiment in its literature. However, if the underlying premise is that prostitution is *male* violence against *women*, how can the law truly be gender neutral? The answer is that it cannot really be gender neutral. While there is no doubt that prostitution and trafficking both disproportionately affect women more than men, the danger of such a premise is “selective perception,” seeing only select items to the exclusion of the whole picture. Highlighting gender differences in the law can render those differences hyper visible, which potentially creates its own harm. A further consideration is the unintended consequences on women’s employment as sex workers. A law against the purchase of sexual services does not offer viable alternatives to leave the life. Sweden has a robust social safety net, but that does not replace the dignity gained by work.

⁷⁰ Anwar, “Prostitution Ban Huge Success in Sweden,” *Der Spiegel*, November 8, 2007.

⁷¹ *Ibid.*

⁷² Ekberg, “The Swedish Law That Prohibits the Purchase of Sexual Services,” 1189.

In spite of tough critiques, Sweden has made extensive efforts to combat trafficking and is one of the only countries to address the demand side of trafficking. Sweden has several strong measures that the United States should consider. First, Sweden has invested in education for its officials. Migration officials, for example, are required to create a safe and comfortable space when interacting with victims. Sweden has also invested in training for police and other officials that encounter trafficking victims.

Second, the Government holds soldiers (and all citizens) accountable for their actions abroad as well as at home, thereby decreasing demand for prostitution in other countries. While not enough research exists on whether The Law has actually reduced demand for services in other countries, it is noteworthy that the Swedish Government has been enforcing it as evidenced by the abovementioned case of the Kosovo peacekeepers. Sweden has invested nationally, regionally and internationally in combating trafficking. It has also invested in development projects that promote gender equality in other countries—in recognition of the fact that women’s unequal status in society makes them more vulnerable to exploitation. For example, in FY2008, the Swedish International Development Agency committed over SEK 35 million (USD 4 million) to 100 projects on gender equity in the developing world.⁷³

Finally, should the United States choose to address the demand side of all forms of trafficking, it needs to look to Sweden’s example but modify it. Sweden still has a knowledge gap about trafficking for other purposes and how to address it. Gender equality is a primary concern for the Swedish government and prostitution and sex trafficking are viewed as direct impediments to gender equality in a way that other forms of trafficking have not been.

⁷³ Swedish International Development Agency, “NGO database,” <http://www.sida.se/sida/jsp/sida.jsp?d=390&a=1073>.

Addressing demand for cheap labor in any industry is necessary to combat trafficking; therefore the focus of anti-trafficking policy should be on the conditions of work and not the type of work.

II. Italy

Italy's anti-trafficking efforts provide a clear juxtaposition to those of Sweden. Unlike Sweden, whose law was largely the result of the women's movement, Italy's law was the result of a broad, informal coalition of NGOs providing services to victims. While Italy has been considering a National Rapporteur, it does not currently have one. The basis of the Swedish Law began with the idea of gender equality. In Italy, anti-trafficking discourse and legislation is closely linked to immigration, partly due to Italy's geographic location. It serves as one of the main entry points of migration to Europe, and so its anti-trafficking efforts reflect the fine line it walks between protecting the exploited and protecting "Fortress Europe."

Italy passed the Law on Measures Against Human Trafficking in 2003. The Act provides for victim protection through witness protection programs and establishes a Fund for Anti-Trafficking Measures, which finances victim assistance programs through the confiscated assets of traffickers. As part of its national strategy, one of the most important provisions has been Article 18 of Legislative Decree 286/98 (incorporated into the Immigration Act), which Parliament passed in 1998. Article 18 provides stay permits for trafficking victims. The permits are for a minimum period of one year, and anti-trafficking legislation also provides a formal Social Assistance and Integration Programme, including housing, social services, Italian-language classes, and employment training. Officials may withdraw the permit only in the case of "conduct incompatible" with the law, which is not defined and in practice can be at the discretion of the *questura* (police headquarters).

In 2001, On the Road, an Italian NGO, compiled a detailed study of trafficking in Italy and the Article 18 provision. In its study of 80 clients, On the Road found three main reasons the Government granted stay permits: humanitarian, health, and family. Most common was the humanitarian reason, which can be further broken down into two paths: judicial and social. The judicial path is when a victim files a formal complaint against the trafficker and the Public Prosecutor provides a reference; the social path is where the victim must provide provable key information to police about the trafficker through an accredited Article 18 agency or the public social services of the City Council but need not participate in prosecution.⁷⁴

In its study, On the Road presented several major findings. First, it found that victims obtained more permits through the judicial than social path, and also that 60 out of 80 clients had already obtained stay permits after being in the country approximately one year. Second, the NGO concluded that, in practice, the tendency of the police was to insist that victims take the judicial path. The police did not inform some victims of their option to take the social path, though the law does not require that victim file a formal complaint. Third, On the Road was unable to find any evidence to support the fears of critics that women would try to use Article 18 to legalize their irregular stays.

Belgium and The Netherlands have similar provisions for stay permits in their anti-trafficking legislation, a “breathing space” period for victims. In Belgium this period lasts for 45 days and in the Netherlands for three months; during the stay period victims are given social services, and in Belgium, the right to work. Elaine Pearson, of Oxfam, argues that what makes the Italian law stronger is that its provision is not contingent on the victim’s participation in the prosecution. “Residency rights [are] based on the victim’s need for social protection, rather than

⁷⁴ Commission of the European Communities, *Research based on case studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy, and The Netherlands*, (2001) p.186.

on a willingness to testify.”⁷⁵ While this may be true on the books, it is not always true in practice.

The Italian law presents an interesting provision for the US to consider. A stay permit and a “breathing space” for victims present a lot of merits. For instance, On the Road found that, without pressure, many women ended up filing more formal complaints against traffickers which led to an increase in arrests due to collaboration. While it may lead to a fear of illegal migrants taking advantage of the provision (“opening the floodgates”), the recent Italian study found that that was not the case. A communal fund subsidized by traffickers’ assets that finances victim assistance programs presents an alternative to the cumbersome civil suits in current US legislation. The US should consider the distinct mechanisms of Swedish and Italian legislation to strengthen its own legislation.

Conclusions and Recommendations

Trafficking is a crime and a human rights violation against migrants. The United States has taken a stand against exploitation through the TVPA and its subsequent reauthorizations. Restrictive narratives of problem definition have nevertheless impeded effective implementation. The impact of the restrictive narratives is most apparent in the weakness and lax enforcement of victim protection measures. Victims face obstacles to accessing the T-visas and civil suits. Weak attempts to address the demand—because they focus exclusively on the demand for sexual services—have proven restrictive and ineffective. Models in other countries, such as Sweden and Italy, may provide ideas on how we can strengthen victim protection.

The main limitation to the analysis presented here is that anti-trafficking policy has only been implemented under the George W. Bush Administration, which was heavily influenced by

⁷⁵ Elaine Pearson, “Half-hearted protection: what does victim protection really mean for victims of trafficking in Europe?,” *Gender, Trafficking, and Slavery*, ed. Rachel Masika, (Oxford, UK: Oxfam 2002), p.58

conservative and faith-based groups with abolitionist agendas. In a 2003 speech to the United Nations, President Bush singled out human trafficking as a ‘special evil,’ publicly announcing his stance on the issue and its prominence in his agenda. In 2003 he also appointed John Miller, a conservative Christian, as director of the Office to Monitor and Combat Trafficking. President Bush signaled his approval for abolishing sex trafficking by abolishing prostitution through the global gag rule, which required organizations receiving US funding to explicitly state that they oppose prostitution. In doing so, he appealed to his largest political base, evangelical Christians, many of who saw the fight against sex trafficking in moral and spiritual terms. “It’s probably fair to say that [Senator Wellstone] would be troubled by how the goal of protection for trafficking victims has been supplanted by a moral agenda determined to abolish prostitution.”⁷⁶

A new administration brings new opportunities to move forward in the effort to combat trafficking and protect victims. Since Congress will not reauthorize the TVPA until 2011, now is an ideal time to re-evaluate the policy and the discourse on trafficking, and to open dialogue and lobby legislators. Therefore, I present several recommendations on ways to move forward in strengthening victim protection.

First, anti-trafficking advocates should broaden the discourse on human trafficking to look at the exploitation of all migrants in all forms of labor. By looking simply at commercial sexual exploitation we neglect looking at other forms of dangerous work that women engage in such as domestic service and factory work. This narrow focus does not help women because it seeks to solve a small portion of the problem; if feminists seek gender equity, then focusing on a small part of economic discrimination is not a way to reach that goal. One of the major challenges to re-framing the discourse is that it has been inextricably linked to slavery. In order

⁷⁶ DeStefano, *The War on Human Trafficking*, 143.

to broaden the discourse we must provide examples of other forms of forced labor in the domestic service, service, and agricultural sectors—not just sexual slavery—that resemble slavery but provide examples of a holistic picture of what slavery produced by trafficking looks like. One example is the Indian men’s labor trafficking case described above. Furthermore, we can change the venue of the discourse. In the past few years, the discourse has moved from the general public, civil society and policymakers to academia. Changing the venue of the discourse disrupts the dominant frames by increasing the number and types of actors that have a voice.

Second, we need to change institutional venues. Currently ICE is the lead investigative agency and the one that has primary contact with victims. Instead of ICE we should move that responsibility to the FBI and/or local law enforcement agencies, which would receive training on how to approach potential victims. Sweden provides an excellent model as it provides training to law enforcement on how to create a safe environment in which to speak with potential victims. The venue change has two benefits. First it disconnects immigration enforcement and border security from trafficking. Separating immigration enforcement and trafficking is a necessary measure as restrictive immigration policies are one of the factors fueling trafficking. In addition when the victim feels secure, s/he may be more likely to cooperate in capturing the trafficker. Since trafficking is a crime based on exploitation, the cooperation of the victim is important. Changing the venue from ICE to well-trained local law enforcement will help facilitate that cooperation.

Third, we must change the specific victim protection measures to make them more straightforward. It is counterproductive to prosecutions to have large barriers to T-visas because it encourages the victim to return home. If prosecutors rely on victim testimony, then the barriers make it difficult to bring cases to court. The corollary is that victims have a difficult

time obtaining T-visas because cases are not brought to trial, particularly in cases of sex trafficking.⁷⁷ Therefore, the Government should consider Italy's model for residency permits. They can create a "breathing space" period for victims that are not contingent on their testimony or participation with law enforcement beyond giving a statement of the events that transpired.

The Government should also consider how to make civil claims a more viable option. Currently many victims do not use the civil suits because it is difficult to locate traffickers' assets to claim restitution and it is a lengthy and expensive process. The goal of the Section 1595 claims is financial deterrence from future trafficking. Again the US can draw on Italy's model. The Italian Government seizes the assets of traffickers and uses them to set up a common fund to subsidize services for victims. While victims may not receive individual remuneration, the traffickers are still re-paying victims for the harm they have caused.

Fourth, the US Government needs to address the demand for all forms of forced labor and the conditions that lead to labor exploitation. The government must begin by revoking the provision in the HIV/AIDS and Malaria Act that requires an explicit policy against prostitution and sex trafficking—also called the global gag rule. It is, one, not deterring demand for prostitutes in foreign countries and, two, detrimental to those fighting the spread of HIV/AIDS by stigmatizing high-risk groups. UNAIDS, the World Health Organization, and the US Department of Health and Human Services have all stated that best practices to stem the spread of HIV/AIDS is to work with vulnerable populations. An explicit policy against prostitution judges and thereby stigmatizes sex workers. Public health officials cannot work with a group that feels is judging them. The work with HIV/AIDS, furthermore, empowers women with

⁷⁷ Bortel, interview.

information. In addition to inhibiting best practices, it is harming women under the guise of protecting women.

While Sweden provides one model for addressing demand, if the US is going to adopt this model we should modify it. As you give men disincentives to purchase sexual services, you should correspondingly give women incentives to pursue alternatives. In Sweden the law provides disincentives without providing women any economic alternatives; the lack of economic alternatives is one explanation for what draws women to sex work in the first place. In addition to adopting a modified version of Sweden's model, we need to hold companies accountable for their general labor practices and strengthen and enforce labor laws. Strengthening and enforcing labor laws will deter employers from engaging in exploitative labor practices that promote the trafficking of economic migrants.

The US has taken a leadership role in addressing the issue of human trafficking, but we have further to go. After almost ten years it is time to reassess our efforts and provide stronger leadership on all aspects of human trafficking to truly solve the problem and protect women's rights. By fulfilling its obligations under the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children through greater international cooperation and by implementing the recommendations listed above, the US may strengthen protection for all victims.

BIBLIOGRAPHY

- The Advocates for Human Rights. *Sex Trafficking Needs Assessment for the State of Minnesota*. Minneapolis: The Advocates for Human Rights, 2008.
- Anwar, André. "Prostitution Ban Huge Success in Sweden." *Der Spiegel* November 8, 2007. <http://www.humantrafficking.org/updates/838>
- Baumgartner, Frank and Bryan Jones. *Agendas and Instability in American Politics*. Chicago: University of Chicago Press, 1993.
- Bell, Bethany. "'Angry' voters aid Austrian right." *BBC News Online* September 29, 2008. <http://news.bbc.co.uk/2/hi/europe/7641479.stm>.
- Bortel, Angela. 2009. Interview with Swati Deo. March 13. Gigi's Café, Minneapolis, MN.
- Brysk, Alison. *Human Rights and Private Wrongs: Constructing Global Civil Society*. New York: Routledge, 2005.
- Chen, Michelle. "Slavery Slips Through Cracks in U.S. Law." *The New Standard*. July 5, 2005. <http://newstandardnews.net/content/index.cfm/items/2032>
- Chuang, Janice. "The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking." *Michigan Journal of International Law* 27 (2006): 437-494.
- Commission of the European Communities. *Research based on case studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy, and The Netherlands*. 2001.
- David, et al. v. Signal International, LLC, et al.*, filed (E.D. La. 2008)
- DeParle, Jason. "Sending It All Back Home." *The New York Times Magazine*. April 22, 2007.
- Department of Homeland Security. "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status." *Federal Register* 73(240) December 12, 2008: 75541-75543.
- Department of Justice. "New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status; Final Rule." *Federal Register* 67(21) January 31, 2002: 4783-4820.
- DeStefano, Anthony. *The War on Human Trafficking: U.S. Policy Assessed*. New Brunswick, NJ: Rutgers University Press 2007.

- DKT Int'l v. United States Agency for Int'l Dev.*, 477 F.3d 758 (U.S. App. D.C. 2007).
- Doezema, Jo. "Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women." *Gender Issues*. Winter 2000: 23-50.
- Ekberg, Gunilla. "The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings." *Violence Against Women* 10(10) October 2004: 1187-1218.
- Gallagher, Anne. "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis." *Human Rights Quarterly* (23) 2001: 975-1004.
- Gozdziak, Elzbieta and Elizabeth Collett. "Research on Human Trafficking in North America: A Review of the Literature." *International Migration* 43(1-2) 2005: 99-128.
- Government Accountability Office. *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad*. 2006.
- Government of Sweden. *National Action Plan Against Prostitution and Human Trafficking for Sexual Purposes*. July 2008.
- Government of Sweden. Ministry of Industry, Employment, and Communications. *Prostitution and Trafficking in Human Beings Factsheet*. April 2005.
- Hyland, Kelly. "Protecting Human Victims of Trafficking: An American Framework." *Berkeley Women's Law Journal* (16) 2001: 29-71.
- Immigration and Customs Enforcement. "Human Trafficking and Human Smuggling." <http://www.ice.gov/pi/investigations/publicsafety/humantrafficking.htm>.
- International Organization for Migration. "Global Estimates and Trends." <http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/global-estimates-and-trends>.
- Kristof, Nicholas. "A Cambodian Girl's Tragedy: Being Young and Pretty." *The New York Times*. December 12, 2006. A.31
- Kristof, Nicholas. "Good girl risks all for parents." *Beaumont Enterprise*. December 22, 2006. A.13
- Kristof, Nicholas. "Sanctuary for sex slaves." *The New York Times*. April 3, 2007. A.21
- Kristof, Nicholas. "The 21st Century Slave Trade." *The New York Times*. April 22, 2007. A.13

- Lansink, Annette. "Human Rights focus on trafficked women: an international law and feminist perspective." *Agenda* (70) 2006: 45-56.
- Markon, Jerry. "Human Trafficking Evokes Outrage, Little Evidence." *The Washington Post*. September 23, 2007. A01.
- Nam, Jennifer. "The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims." *Columbia Law Review*. 107 (7) November 2007: 1655-1703.
- National Immigrant Law Center. "DOJ issues regulations for T visas, available to victims of trafficking" *Immigrants Rights Update* 16(1) 2002.
<http://www.nilc.org/immlawpolicy/obtainlpr/oblpr071.htm>
- New Orleans Workers' Rights Center. <http://www.nowcrj.org/press-releases/ice-raid-targets-snares-human-trafficking-victims-102908/>
- Pearson, Elaine. "Half-hearted protection: what does victim protection really mean for victims of trafficking in Europe?" *Gender, Trafficking, and Slavery*. Rachel Masika, ed. Oxford, UK: Oxfam 2002.
- The Protection Project. <http://www.protectionproject.org>.
- Sharma, Nandita. "Anti-Trafficking Rhetoric and the Making of Global Apartheid." *NWSA Journal* 17(3) Fall 2005: 88-111.
- Swedish International Development Agency. "NGO database."
<http://www.sida.se/sida/jsp/sida.jsp?d=390&a=1073>.
- Trafficking Victims Protection Act of 2000*. Public Law 106-386. U.S. Code 8 (2008) §1101.
- Trafficking Victims Protection Reauthorization Act of 2003*. Public Law 108-193. 108th Cong, 1st sess. (January 7, 2003).
- Tsedev, Unurtsetseg. "Human Trafficking: A Mongolian Perspective." Immigration History Research Center, Minneapolis, MN, March 12, 2008.
- Tyldum, Guri and Anette Brunovskis. "Describing the Unobserved: Methodological Challenges in Empirical Studies of Human Trafficking." *International Migration* 43(1-2) 2005: 17-34.
- United States Department of State. *2008 Trafficking in Persons Report*.
<http://www.state.gov/g/tip/rls/tiprpt/2008/105387.htm> .

United States Leadership on Malaria, Tuberculosis and HIV/AIDS Act. Public Law 108-25. 108th Cong, 1st sess. (January 7, 2003).

United States Senate. *Congressional Record*. 106th Cong., 2d sess. (July 27, 2000).

United States Senate, *Congressional Record*, 108th Cong., 1t sess. (December 9, 2003).

Victims of Trafficking and Violence Protection Act of 2000. Public Law 106-386. 106th Cong, 2d sess. (October 28, 2000).