

A Study of Human Trafficking: Within the United States and Abroad

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Abstract

Human trafficking is a dishonorable and lucrative business, with numerous laws and definitions aimed to combat the crime. Prosecutions and identification of a trafficking case are extremely difficult for law enforcement personnel, due to the ambiguity of the definitions and laws put in place. Hundreds of thousands of victims fall into the sex industry each year, and more attention needs to be placed on combating the crime. Law enforcement have little to no training in regards to human trafficking situations, laws and definitions. To try to prevent trafficking from happening, there needs to be better education opportunities, higher standards of living in impoverished countries, a decrease in demand, better victim services provided, and better training for the courts and for law enforcement. Combating human trafficking proves to be a very difficult task, but with better definitions and laws, and more effective court involvement, it is possible.

Chapter 1

There are millions of people, specifically children and young women, who are being forced to perform repulsive and sickening acts against their will every day. According to Clawson, Dutch, Solomon, and Grace (2009), human trafficking is defined as the, “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, which shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs” (p. 1). Human trafficking is commonly referred to as modern day slavery.

Under the United States definition, transportation or physical movement of the victim does not technically need to be present in order for the crime to occur; instead, it is the presence of exploitation, such as force, fraud, or coercion, which indicates whether a trafficking crime has taken place (Clawson et al, 2009). In other words, a victim has to be physically unable to get out of the situation and he or she has to be forced to perform an act against his or her will for the crime to occur. Logan, Walker, and Hunt (2009) extend the definition of human trafficking a little bit further and say, “Human trafficking, as per the Trafficking Victims Protection Act (TVPA) of 2000, is (a) the recruitment, harboring, transporting, supplying, or obtaining a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude or slavery; or (b) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform sex acts is under eighteen years of age” (p. 3). This definition goes further and explains that human trafficking occurs when the

victim is a minor, which is someone who is under the age of eighteen, and who is being forced to perform sexual acts.

Breaking down the definitions of human trafficking, coercion is a complex issue because not all victims of trafficking are physically restrained or constantly controlled by their trafficker(s) (Aronowitz, 2009). For some victims, the coercion is more psychological than physical. For many, coercion occurs when the trafficker physically restrains the victim in order to perform sexual acts, or promises ill will against the victim's family and friends if he or she does not comply with the trafficker's instructions. According to Anti-Slavery International, coercion exists in any situation in which the victim has no real and acceptable alternative except to submit to the abuse involved by the trafficker(s) (Aronowitz, 2009).

Exploitation occurs when the trafficker coerces the victim to perform illegal sexual acts in order to obtain payment from the customer(s), which the victim never receives for his or her services (Gozdiak & Bump, 2011). This means that the victim does as the trafficker says and performs sexual favors to the customer(s), the customer(s) pay the trafficker for those services, and the victim is mistreated and not given any of the restitution from his or her work. Most victims receive ill-treatment and are physically, emotionally and psychologically beaten in order for the trafficker to obtain dominance over the victim and make him or her perform the sexual acts.

Fraud comes into play when a victim thinks he or she is paying for safe passage and illegal entry into a country, but is actually tricked into paying off a huge debt that they will never be able to pay off and are forced into exploitive conditions (Aronowitz, 2009). In this case, the trafficker tells the victim that he or she must pay of the dues that it took to get him or her to another country, or other expenses, but are actually paying off a fine that does not exist and can

never actually be paid off. Fraud also occurs when the victims are tricked into joining the trafficking industry by false promises of a modeling career, a good job, or an intimate relationship by the trafficker. From personal experience, it has commonly been seen that a pimp, or trafficker, will put an advertisement on Craigslist or another website, luring young pretty girls into a high-paying modeling career, but once they meet the trafficker, they are stuck in an awful situation from which they cannot escape.

One misconception about human trafficking that people make is that a person must be transported to meet the definitions of the human trafficking law; however, the current legislation does not actually mandate that a person must be physically transported across locations or borders in order for the crime to meet the definition of human trafficking (Renzetti, Eldeson & Bergen, 2011). The term “trafficking,” does not necessarily mean that the victim has to be moved from one location to the other; the victim could be kept chained in a basement for his or her entire life performing sexual acts against his or her will, and that is still considered to be a human trafficking situation. Human trafficking is not a new phenomenon, and it is, in fact, closely related to slavery in various forms throughout history.

The data and methodologies for estimating the prevalence of human trafficking globally and nationally are not well developed and, therefore, estimates have varied widely and changed significantly over time (Clawson et al, 2009). The United States State Department has estimated that approximately 600,000 to 800,000 victims are trafficked annually across international borders worldwide and approximately half of these victims are younger than age eighteen. Additionally, the United States State Department has estimated that eighty percent of internationally trafficked victims are female and seventy percent are trafficked into the sex industry, and up to fifty percent are children, which is anyone under the age of eighteen. Initial

estimates cited in the TVPA suggested that approximately 50,000 individuals are trafficked into the United States each year (Clawson et al, 2009).

Between 244,000 and 325,000 American youth are considered at risk for sexual exploitation, and an estimated 199,000 incidents of sexual exploitation of minors occur each year in the United States (Clawson et al, 2009). However, these figures are limited estimates of youth at risk for human trafficking and do not address United States adult citizens trafficked into the sex industry. According to Clawson et al (2009), at-risk populations for human trafficking in the United States include runaway or throwaway youth, youth exploited through prostitution, and child labor. Runaway youths are particularly vulnerable to being trafficked because they are scared and in need of comfort from some, as in a trafficker who tricks them into thinking they will take care of them, and they are usually alone and easily manipulated into coming with the trafficker(s).

In 1999, 1,682,900 youth had a period of time in which they could be characterized as a runaway or throwaway youth, of which seventy-one percent of these youth were considered at risk for prostitution (Clawson et al, 2009). National juvenile arrest data provide another glimpse of the potential magnitude of the domestic trafficking of youth. During 2003, 1,400 youth were arrested for prostitution and commercialized vice and, of these youth, sixty-nine percent were female and fourteen percent were younger than the age of fifteen; unlike overall juvenile arrest rates, these numbers increased thirty-one percent between 1994 and 2003 (Clawson et al, 2009).

Despite these various estimates, it is still uncertain what the actual prevalence of human trafficking into and within the United States is for numerous reasons. First, given the covert character of the crime, accurate statistics on the nature, prevalence, and geography of human trafficking are very difficult to calculate (Clawson et al, 2009). The authors further this by

explaining that trafficking victims are guarded closely by their traffickers, many victims lack accurate immigration documentation, trafficked domestic servants remain invisible in private households, and private businesses often act as a front for a back-end trafficking operation. Thus, these factors make human trafficking a particularly difficult crime to identify and count. Additionally, available data are often non-comparable and contain duplicate counts, are limited to information on women and children trafficked for sexual exploitation and not other forms of human trafficking, and are often inconsistently or inaccurately recorded due to differing definitions and beliefs among service providers and law enforcement about who is a victim of human trafficking (Clawson et al, 2009).

Chapter 2

Under the United States law, sex trafficking is defined as, "the recruitment harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act and, for it to be punishable, the offense involve a severe form of trafficking involving (1) a person under eighteen who has been induced to perform a commercial sex act, or (2) an adult who has been so induced by the use of force, fraud or coercion" (Weitzer, 2011, p. 1337). There are numerous definitions of human trafficking and lawmakers are very ambiguous on what constitutes as a human trafficking situation. Because of the ambiguity of the definition of human trafficking, it is very hard to create effective and efficient laws to prosecute the offenders and to protect the victims.

Barnhart (2009) explains that it is completely unrealistic to expect primary enforcement of trafficking cases from the federal government because state and local governments are the primary places of criminal enforcement. As the very first anti-trafficking criminal statute passed in the United States, the federal law has been a model for state level legislation in this area. There are numerous federal and state laws and statutes, both in the United States and internationally, that define human trafficking as a punishable offense under the criminal law.

According to Barnhart (2009), Congress was the very first legislative body in the United States to confront the issue of human trafficking. The Federal Victims of Trafficking and Violence Protection Act, passed in October 2000 and amended in 2008, criminalizes human trafficking in two sections: "Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor," and "Sex trafficking of children or by force, fraud, or coercion" (p. 98). The TVPA was the first law in American history that criminalized human trafficking as such, which

provided an essential and paramount starting point for analyzing state legislation on human trafficking.

There are three primary sections within each definition of the TVPA: “first, the methods of gaining control over the victim; second, the means used to exploit the victim; and third, the underlying labor or services that the victim is forced to perform” (Barnhart, 2009, p. 98).

According to this piece of legislation, an individual can be convicted of trafficking only if there is evidence in each one of the prohibited methods for gaining control, such as recruiting, in combination with one of the prohibited means of exploitation, such as threats of physical force, in order to keep his victims working for him. Almost all human trafficking definitions have the same combination of methods, means, and underlying labor or services, no matter how different the definitions may be (Barnhart, 2009).

The TVPA also includes supplementary provisions dealing with both foreign policy and victim services. Victims of severe forms of trafficking, defined separately and encompassing victimization under the sex trafficking provisions, are eligible for immigration relief, and they receive the same federal benefits as incoming refugees and asylum seekers (Barnhart, 2009). As state legislatures have little or no power to extend immigration benefits, and usually have little or no funding for service provisions, these federal provisions for victim witnesses guarantee that even state-prosecuted human trafficking cases will have some federal governmental involvement and interference.

In the TVPA, “sex trafficking of children or by force, fraud, or coercion integrates both broadness and specificity in one definition. In section (a) of the sex trafficking provision of the TVPA, it starts with the broad by any means language, but the mens rea portion of the statute limits it to a particular means of force, threats, fraud, or coercion as separately defined in section

(e)(2)” (Barnhart, 2009, p. 98). The means in which to commit the crime do not even need to be proven if the victim is under eighteen years of age, provided that the trafficker knew, or recklessly ignored, the victim’s age. The hidden services for sex trafficking are limited to commercial sexual acts.

Sex trafficking effected by the listed means of the TVPA statute is subject to nothing less than fifteen years or life of prison (Barnhart, 2009). If the victim is under the age of fourteen, the sentence range is fifteen years to life in prison. If the victim is between the ages of fourteen and eighteen, imprisonment is not less than ten years or life for the offender. Also specified in the TVPA is that the obstruction of the enforcement of either the sex trafficking provision is punishable by imprisonment for up to twenty years for the offender.

There are forty-three state anti-trafficking laws and most of them follow the basic format of the federal law, mostly because states were encouraged to adopt a model law on human trafficking drafted by the Department of Justice (DOJ) after the passage of the TVPA (Barnhart, 2009). The author furthers this by explaining that, for the most part, state laws promote criminal sanctions, whereas a handful of states, such as California, Illinois and Missouri, also provided programs for victim benefits or victim compensation funds. It is evident that the most common form of enacted state-level human trafficking laws borrowed language directly from the model state law drafted by the DOJ.

Not surprisingly, the Model Law largely imitates the federal law. Twenty-five states adopted most or all of the language of the Model Law, including means of trafficking elements similar to the former federal formulation of force, fraud, and coercion (Barnhart, 2009). Many of these statutes divide the definition of trafficking into sex and labor, similar to the federal law. Apart from criminal provisions, the Model Law also provides for mandatory restitution for

victims, as well as encouragement to go in the direction of providing social services by mandating an assessment of trafficking the victims' needs (Barnhart, 2009). In other words, the Model Law was designed to be a generic law to direct states in gathering their respective national laws against human trafficking, and it was made to be adaptable to meet the social, economic, cultural, and geographical needs of each state.

The Model Law starts, as many such bills do, with a lengthy series of definitions of the terms it uses, such as “commercial sexual acts,” “forced labor and forced services,” and “trafficking victim” (Barnhart, 2009, p. 105). The means of trafficking are first defined in the forced labor or services definition. The services section specifies that commercial sexual acts are considered services and that the section should not be interpreted to validate prostitution. Barnhart (2009) explains that the Model Law sets out three separate criminal provisions: involuntary servitude, sexual servitude of a minor, and trafficking for forced labor or services. As specified under the federal TVPA, each section explains the methods of gaining control over the victim(s), the way in which the exploitation was achieved, and the form of the underlying services.

To put it more simply, the United Nations Office on Drugs and Crime (UNODC) (2010) explains that the Model Law covers not only the criminalization of trafficking in persons and related offenses, but also the different aspects of assistance to victims and the establishment of cooperation among different state authorities and non-governmental organizations. Each provision has a detailed commentary, providing numerous options for legislators. The UNODC helps states to get specialized assistance, including the development of local capacity and expertise, and practical tools to encourage cross-border cooperation in investigations and prosecutions.

The Model Law definition is more focused on the exploitative means by which trafficking is carried out, which appears to bridge the gap between the two perspectives (Barnhart, 2009). Thus, the Model Law represents a strong middle path. However, in practice, Barnhart (2009) explains that the slight minority of Model Law states follow the federal TVPA rather than the Model.

The focus of punishment of the Model Law is clearly placed on the form of exploitation used by the trafficker. Trafficking of Persons for Forced Labor or Services contains a single sentence of fifteen years imprisonment or less, and Sexual Servitude of a Minor carries a sentencing range that is dependent upon the victim's age, from up to fifteen years, to twenty-five years of imprisonment or less (Barnhart, 2009). Thus, it is evident that these flexible sentencing ranges allow judges or juries to take the specific actions of the trafficker directly into account at sentencing. In this manner, the focus of the Model Law is clearly on the exploitation used by the trafficker(s). Barnhart (2009) also explains that the punishment under the Model Law also includes sentencing enhancements, that depend upon numerous factors relevant to the severity of the exploitation and the harm that the trafficker caused.

Although the majority of states have followed the federal or Model Law example, several states have chosen to develop their own anti-trafficking statutes (Barnhart, 2009). A few states have tied the anti-trafficking law to smuggling provisions, while some have no mention of sexual conduct, and some solely focus on sex. It is extremely evident that states adopt and create human trafficking statutes based on their economic, cultural, and social environments. The 106th Congress took several legislative initiatives on the issue of trafficking in persons for sexual and other exploitation (Miko & Park, 2001). Several of the bills on trafficking were introduced in the House and Senate in 1999 and 2000.

In regards to the international spectrum of human trafficking sanctions and protocols, the international community began meeting in 1999 to draft the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, in concurrence with the United Nations Convention Against Transnational Organized Crime (Miko & Park, 2001). It is reported that over eighty countries signed the human trafficking Protocol in Palermo, Italy. The Protocol, adopted by the United Nations General Assembly in 2000, represented a significant milestone in international efforts to stop human trafficking. Currently, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the 2000 United Nations Convention against Transnational Organized Crime (TOC), provides the legal reference point for an international definition of human trafficking (Goodey, 2008). In the legal terms of this statute, once a person who is being smuggled experiences exploitation at any point from recruitment to arrival at the destination smuggling becomes trafficking.

The Protocol has provided both a framework and a motivation for the generation of a comprehensive range of international, regional, and national norms and standards. International interest in human trafficking emerged in the late 1980s and 1990s in response to increased population movements in the wake of war, civil conflict and the fall of communism in Central and Eastern Europe (Goodey, 2008). Governments throughout the world view human trafficking as a component of organized crime and the average punishment is comparable to other types of serious transnational crimes. It is also regarded as a crime against humanity in the statute of the International Criminal Court.

The trafficking in persons for sexual exploitation is one of the fastest growing areas of international criminal activity and it is one that is of increasing and paramount concern to the

United States and to the international community. According to Goodey (2008), in 2002, the Council of the European Union adopted its own framework decision on combating trafficking in human beings; in 2003, the framework decision on combating the sexual exploitation of children and child pornography was adopted, which addresses child trafficking.

The Charter of Fundamental Rights of the European Union specifically prohibits trafficking in human beings under one article, and it emphasizes trafficking as a human rights violation (Goodey, 2008). The United Kingdom, as a European Union Member State coming under certain European legislative obligations and as a signatory to the United Nations Convention and its trafficking protocol, has been actively integrating anti-trafficking measures into domestic law since 2000. The United Kingdom's government launched its Action Plan on Tackling Human Trafficking in March 2007 and signed the Council of Europe Convention on Action against Trafficking in Human Beings, which includes assistance for victims of trafficking of at least thirty days and a recovery period (Goodey, 2008). However, the passage of these statutes only begins to outline the various pieces of legislation at the international, European Union, and United Kingdom level that recognize and address the crime of human trafficking.

Miko and Park (2001) explain that the United States and other countries are also pursuing a number of bilateral and multilateral programs and initiatives to combat human trafficking. One step taken by the United States internationally is that the Departments of State and Justice are training foreign law enforcement and immigration officers to be able to better successfully identify and eliminate traffickers. United States embassies and consulates worldwide are working with other countries to stop international trafficking in women and children. The authors go on to explain that the United States has expanded its program to heighten public awareness about trafficking in source countries, targeting the messages to potential victims.

The United States is also working with the European Union, the Group of Eight, the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and the governments of Israel, Italy, Finland, Ukraine, and other countries to combat trafficking in women and children (Miko & Park, 2001). The authors go on to explain that the United States is party to two other international agreements that have been adopted to address aspects of trafficking in children: The International Labor Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor and the Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography. This means that the United States and other countries are working together to eliminate the crime of human trafficking and are taking the initiative to provide sanctions and provisions in order to more effectively combat the crime.

The International Trafficking Act of 2000 was a bill to combat human trafficking in the United States and in countries around the world through prevention, prosecution and enforcement against traffickers, and through protection and assistance to the victims (Miko & Park, 2001). This bill included provisions to combat sex tourism, a \$5 million pilot program for treatment of trafficking victims abroad, and a strengthening of the regulation of government contracts to make sure that they are not made with individuals or organizations that promote or engage in human trafficking practices. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, 2008) included several new prevention strategies, including requirements that the government provide information about the rights of workers to all people applying for work and education-based visas (Polaris Project, 2017). It also put in place new systems to gather and report human trafficking data. In addition to the prevention strategies, Polaris Project (2017) explains that the 2008 reauthorization expanded the protections available with the T visa and

required that all unaccompanied alien children be screened as potential victims of human trafficking. Polaris Project (2017) also explains that this reauthorization enhanced criminal sanctions against traffickers and it expanded definitions of various types of trafficking to make prosecutions of traffickers easier and more effective.

Chapter 3

Although human trafficking has a long and dishonorable history, it is only recently that human trafficking has become a major political issue for states and the international community and the subject of comprehensive international rules (Gallagher, 2013). Even though human trafficking has been around for decades, it has just now come to the attention of policy-makers that it is as rampant and prominent as it is, and something needs to be done to combat the crime. Gallagher (2010) explains that the 1990s marked an important shift in the international legal framework around human trafficking as the issue began to be examined from perspectives other than human rights. The prosecution and punishment of traffickers in human trafficking situations is very difficult, due to the lack of education, training, and resources available to law enforcement personnel.

Of particular significance was the link established between human trafficking and the international threats of migrant smuggling and transnational organized crime. Gallagher (2010), states that these changes eventually led to the establishment of a new treaty that has been acknowledged by states to be, “the principle legally binding global instrument to combat trafficking in persons” (p. 130). The United Nations General Assembly decided to establish an open-ended, intergovernmental Ad Hoc Committee for the “purpose of elaborating a comprehensive international convention against transnational crime and of discussing the elaboration, as appropriate, of international instruments addressing human trafficking in women and children...and illegal trafficking in, and transporting of migrants, including by sea” (Gallagher, 2010, p.131). The centerpiece of the new regime is the United Nations Convention against Transnational Organized Crime. Gallagher (2010) explains that the Organized Crime

Convention is supplemented by three additional treaties, dealing respectively with Smuggling of Migrants; Trafficking in Persons; Especially Woman and Children; and Trafficking in Firearms.

The Organized Crime Convention promotes interstate cooperation in order to combat transnational organized crime more effectively and it is essentially an instrument of international cooperation (Gallagher, 2010). In this respect, it can be inferred that its goal is to expand the number of countries taking effective measures against transnational crime and to strengthen cross-border links. The internal duty of the Convention is that of criminalization, where countries are required to criminalize a range of offenses. Gallagher (2010) explains that the Convention introduces a range of measures to enhance effective law enforcement in the area of human trafficking, through improving information flows and enhancing coordination between relevant bodies. A lack of communication and cooperation between national law enforcement authorities has been identified as one of the principal obstacles to effective action against human trafficking.

In 2000, the United States passed an anti-trafficking law, called the Trafficking Victims Protection Act (TVPA), and the United Nations adopted an anti-trafficking treaty called the Palermo Protocol (Baker, 2012). Both the TVPA and the Palermo Protocol focused on combating international human trafficking by encouraging countries around the world to pass laws against trafficking and prosecute the traffickers. However, in the United States, state-level criminal justice systems treated United States citizens who qualified under the federal definition of a human trafficking victim as criminals by prosecuting them for prostitution, instead of helping them by providing assistance to them.

The Palermo Protocol and the TVPA framed the problem of human trafficking as a criminal justice problem that necessitated criminal justice solutions (Baker, 2012). In addition to encouraging other nations to prohibit and prosecute trafficking offenses, the Act created the

federal crime of human trafficking. According to Baker (2012), the 2005 reauthorization provided grants to law enforcement for programs to investigate and prosecute acts of human trafficking, as well as to educate and train law enforcement personnel on how to identify and handle human trafficking cases.

Clawson, Dutch, Lopez, and Tiapula (2008) explain that the TVPA and TVPA Reauthorization Acts (TVPRA) are complete and offer a four-pronged attack on human trafficking in the United States: First, they provide for preventative measures against trafficking of humans across United States borders. For example, they call for stricter border control and for better identification of victims of human trafficking situations. Second, they provide for adequate prosecution of those who traffic in human beings. For example, the Acts call for stricter sentencing guidelines and better adequate prosecution techniques to lock the offenders up in prison. Third, they offer assistance and protection to trafficking victims already in the United States. The acts call for better resources to be offered to the victims, instead of prosecuting them for the crime of prostitution. Fourth, they provide for the monitoring of other nations' activities that contribute to human trafficking.

The second prong of the TVPA and the TVPRA focuses on strengthening the ability of federal agencies to prosecute and punish traffickers (Clawson et al, 2008). The TVPA increased mandatory minimum sentences for peonage, enticement into slavery, and sale into involuntary servitude from ten to twenty years in federal prison. The authors also explain that, for cases in which kidnapping, sexual abuse or killing, or any attempt thereof, occurs, the TVPA provided a life sentence for the offenders. Because those three criminal provisions alone were insufficient to effectively prosecute the traffickers, Congress criminalized four other criminal acts: forced labor, trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, sex

trafficking of children or by force, fraud, or coercion, and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor (Clawson et al, 2008).

Several key aspects of the TVPA and the TVPRA are intended to strengthen efforts to prosecute the traffickers. For example, Clawson et al (2008) explain that new criminal statutes were created and penalties for the crimes were enhanced under the TVPA in an effort to streamline prosecutorial efforts and deter recidivism. The TVPA also includes traffickers' use of psychological coercion, trickery, and the seizure of documents as sufficient elements to prove trafficking has occurred. The Act also encouraged the use of international law enforcement academies to train foreign law enforcement authorities, prosecutors, and members of the judiciary about human trafficking.

Only thirty states and United States territories have enacted statutes for the prosecution of human trafficking, and all of these states treat the offense of human trafficking as a serious crime, classifying it as either a first-degree felony or a second-degree felony (Clawson et al, 2008). Clawson et al (2008) did telephone interviews that were conducted with a small sample of federal prosecutors who had prosecuted TVPA-related cases, where the interviews were designed to capture their experiences prosecuting TVPA-related cases. More specifically, the interviews captured data on participants' background and level of experience, familiarity with trafficking in persons and TVPA legislation, experiences with the TVPA, training, prosecuted trafficking cases, challenges and barriers, and recommendations for other prosecutors.

The findings of the telephone interviews were staggering. They recorded that, in 2000, only four TVPA prosecutions happened in that entire year. The number of prosecutions slowly increased to forty-nine by 2007, adding up to a total of 298 prosecutions in the seven-year time-

span. The majority (77%) of cases resulted in guilty dispositions, with forty-seven percent by plea negotiations and thirty percent by verdict. Three percent of the cases resulted in dismissals and eight percent are pending. Less than one percent of the cases resulted in acquittals, suggesting that, once defendants are brought to trial, a favorable disposition for the federal government is likely (Clawson et al, 2008).

Clawson et al (2008) also found that, for offenders whose sanctions were available, sentences ranged from probation to 600 months, or fifty years, of incarceration. The average sentence was sixty-seven months, or six and a half years, in prison, while the median sentence was thirty-six months, or three years, of incarceration. Very few cases (5%) were appealed. Issues for the appeals were routinely based on the length and the severity of the sentence. Ten percent of the respondents indicated having three years or less of experience with human trafficking or TVPA cases (Clawson et al, 2008).

Clawson et al (2008) also found that, when respondents were asked to rate their level of knowledge about human trafficking issues, on a five-point scale, most of the respondents (70%) indicated that they were between somewhat and very knowledgeable on general trafficking in persons issues, while only twenty percent stated that they were very knowledgeable on the topic. In other words, there are far fewer law enforcement personnel who know about human trafficking and how to effectively prosecute the offender. Similarly, many of the respondents (60%) reported falling between somewhat and very familiar on their familiarity with the 2000 Victim of Trafficking and Violence Protection Act. Additionally, sixty percent of respondents indicated that they were somewhat familiar with both the TVPA and the TVPA Reauthorizations. Only twenty percent of the respondents reported being very familiar with the TVPA reauthorizations. Again, well over half of the law enforcement personnel who were interviewed

did not know much about human trafficking or about the laws created to prosecute and combat the crime (Clawson et al, 2008).

The findings in this study show that law enforcement personnel are not adequately trained on how to identify human trafficking cases, let alone trained on how to prosecute them. Very few cases of human trafficking are made aware to law enforcement agents, thus making it hard to effectively combat the crime. Although the majority of the cases that do get taken to court are prosecuted, not many cases actually get discovered. That is why it is so vital that law enforcement is made aware of the crime and how to combat it (Clawson et al, 2008)

The current research findings indicate that the people who are directly involved with enforcing the provisions of these laws recognize numerous challenges or barriers that can hinder their progress in the fight against human trafficking, which include: “limited understanding of the crime of human trafficking, existence of archaic statutes in some states that continue to victimize or blame the victim, a lack of understanding or awareness of new or modified legislation, and insufficient resources to support the investigation and prosecution of these crimes” (Clawson et al, 2008, p. 156). The authors go on to explain that, on the other hand, there are factors that increase a prosecutor’s likelihood of success because experienced human trafficking prosecutors have employed practices that include networking with local, state, and federal law enforcement and non-governmental organizations, providing victims with understanding and support, assisting victims in accessing services, recognizing key evidence when investigating trafficking cases, and using proven prosecutorial techniques to aid them in prosecuting these cases.

Laczko and Gramegna (2003) paint a grim picture of how law enforcement personnel are handling the crime of human trafficking. The authors explain that legislation is often lacking,

inadequate, or not implemented, making the prosecution of traffickers very difficult and often impossible. They also explain that trafficking convictions are often based on witness and victim testimony, which is extremely difficult to obtain because trafficking victims are either deported as illegal migrants or are too frightened to testify the majority of the time. Inadequate legislation, for both prosecution and for victim and witness protection, means that the police authorities often prefer not to prosecute traffickers at all because they know that these cases only seldom results in a conviction, so it is not even worth the effort (Laczko & Gramegna, 2003).

There are few incentives for victims to testify against their traffickers, and many disincentives including strenuous investigations and court procedures, threats from traffickers, and exposure to the public (Laczko & Gramegna, 2003). It is very evident that sentences against traffickers are usually light, the protection of trafficking victims in many nations is inadequate or simply non-existent, and approximately 104 countries have no laws, policies, or regulations to prevent victims' deportation. Consequently, most victims refuse to come forward and testify in court. It is also not uncommon for the victims to change their testimonies as a result of intimidation from their traffickers (Laczko & Gramegna, 2003).

Laczko and Gramegna (2003), explain that developing criminal justice systems that fairly and efficiently prosecute human trafficking is difficult and costly. Criminal justice systems will not be ready to make the necessary investment of time and resources until they are convinced that they cannot succeed without them. Laczko and Gramegna (2003) state that, "once people recognize that serious and sustained investment in effective prosecution is indispensable in the battle to substantially reduce the prevalence of trafficking, every critique of brokenness in a criminal justice system becomes, not an argument to abandon the prosecution project, but an obligation to improve it" (p. 179).

Mishra (2015) explains that, while both the federal and state-level initiatives to fight human trafficking are steps in the right direction, the initiatives currently used by both federal and state level law enforcement lack a clear plan or set of guidelines that would help law enforcement better identify victims of human trafficking. While there have been many groundbreaking initiatives started to combat human trafficking, gaps do still exist. State and local level law enforcement agencies are the primary contact point for coming into contact with, identifying, and rescuing human trafficking victims (Mishra, 2015). Because of this, it is evident that the greatest problem with identifying and rescuing human trafficking victims comes from the absence of local-level information, resources, and plans to combat human trafficking.

Law enforcers are primarily the first contact point and responders and have crucial roles to play in success of prevention, protection, and prosecution (Mishra, 2015). There can be no prosecution and prevention if law enforcement fails to react adequately, effectively and professionally. Most law enforcement personnel are not truly informed or educated about what human trafficking really entails (Mishra 2015). Law enforcement agencies are unable to perceive the problem in totality; thus, unless the law enforcers understand the crime properly, it will be difficult for them to work effectively. It is very evident that local law enforcement believe that trafficking is not a problem in their jurisdictions and they believe it is the responsibility of other departments to take care of it. Lack of priority, time, sensitivity and ignorance of the issues concerned, are commonly seen as the factors that are mostly responsible for the present day depressing and dim picture of enforcement and prosecution (Mishra, 2015).

According to Mishra (2015), law enforcement agents fail to comprehend the laws that are applicable in the given human trafficking situation. Particularly in the case of sex trafficking, law enforcement, due to lack of understanding, accuse the victims of other crimes, such as illegal

immigration or prostitution. Due to this approach, the victim becomes defensive. The traffickers take advantage of the defensive position of the victims and try to favor them during prosecution (Mishra, 2015). Obviously, when the traffickers and victims collude, it becomes almost impossible for the prosecution to effectively prosecute the traffickers and get a conviction. Due to limited knowledge, experience, apathy toward the issue, and complicity, appropriate laws and sections are not applied, which protects the traffickers (Mishra, 2015).

The prosecution and punishment of traffickers in human trafficking situations is very difficult, due to the lack of education, training, and resources available to law enforcement personnel. As human trafficking offenses increase in frequency and severity, there is a growing need for a critical assessment of the impact of existing federal and state legislation, an empirical evaluation of human trafficking offenses and offenders, and recommendations for prosecuting these crimes. It is evident that law enforcement personnel are not well equipped to identify and prosecute human trafficking situations and cases. With a lack of knowledge on how to detect a human trafficking situation comes a lack of prosecutions and punishments.

Chapter 4

Efforts to combat human trafficking around the world have advanced steadily over the past fifteen years, since the adoption of the Palermo Protocol and the passage of the Trafficking Victims Protection Act (TVPA) in 2000. In the context of human trafficking, prevention refers to positive measures to stop future acts of trafficking from taking place (Gallagher, 2010). There are numerous strategies, laws and policies put in place to combat human trafficking through prevention.

In the context of trafficking in persons, prevention refers to positive measures to stop future acts of trafficking from occurring (Gallagher, 2010). Policies and activities recognized as prevention are generally those that are believed to be dealing with the causes of human trafficking. While there is no universal agreement on the complex matter of human trafficking, the most commonly referred to causative factors are those that: increase vulnerability of victims and potential victims; create or sustain demand for the goods and services produced by trafficked labor; and create or sustain an environment within which traffickers and their accomplices can operate with impunity (Gallagher, 2010). From this perspective, prevention can be viewed as a way to include a wide scope of measures, from providing women with fair and equal migration opportunities, to fortifying the criminal justice response in order to end impunity and to dissuade future trafficking-related crimes.

Gallagher's study examines prevention under three chief categories: addressing the factors that increase vulnerability to trafficking; lessen demand for trafficking; and identifying and eradicating public sector involvement in, and corruption related to, trafficking (Gallagher, 2010). Regarding prevention through addressing vulnerability, it is very discernible that certain environmental or contextual factors help form the vulnerability of an individual, a social group, a

community, or a society to trafficking. These factors include, but are not limited to, “human rights violations, such as poverty, inequality, discrimination, and gender-based violence; all of which contribute to creating economic deprivation and social conditions that limit individual choice and make it easier for traffickers and exploiters to operate” (Gallagher, 2010, p. 415). Women, children, migrants, refugees, and the internally displaced are groups that already lack power and status in society, and it is very evident from Gallagher’s study that actors that form vulnerability to trafficking tend to impact differently and disproportionately in these groups.

The European Trafficking Convention declares an obligation to prevent human trafficking via addressing the factors that establish or escalate vulnerability. “Countries are required to establish or strengthen effective and rights-based policies and programs to prevent trafficking for persons vulnerable to trafficking, including measures such as information, awareness raising, and educational campaigns” (Gallagher, 2010, p. 416-417). Countries are also made to take suitable measures, such as constructing a protective and safe environment, to take fixed measures to reduce children’s vulnerability to human trafficking, and to allow legal migration, including through the circulation of accurate information. All of these measures need to encourage human rights and use an approach that recognizes both gender concerns and the special needs of children.

According to Gallagher (2010), “the United Nations Trafficking Principles and Guidelines are particularly strong on highlighting the need for Countries to take specific measures to reduce vulnerability, including through the provision of genuine livelihood options to traditionally disadvantaged groups, improving access of children to education, compulsory birth registration, review of policies that may compel people to take dangerous migration decisions, provision of accurate information to potential migrants, and the development of

realistic information campaigns to inform communities about trafficking” (p. 416). In other words, Gallagher (2010) is arguing that an effective way to prevent human trafficking from happening is to provide education, migration opportunities, and awareness events to those who are most vulnerable to falling in to the trafficking industry. One main reason why victims get caught up in human trafficking is because they are unaware of the signs and signals of a human trafficking situation, and Gallagher is advocating that more awareness needs to be placed on human trafficking.

Gallagher (2010) cites the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee’s General Recommendation No. 19 for arguing that poverty and unemployment increase opportunities for trafficking in women and force many women, including young girls, into prostitution. Because these victims come from poor, impoverished countries, they are more vulnerable to fall into human trafficking because they are promised successful careers, passports, visas, and other luxurious opportunities if they come with the traffickers to these richer, more industrious countries. Living in poverty makes the victims more susceptible to want to get better jobs, or a job in general, to provide for their families back home.

Gallagher (2010) is arguing that better employment opportunities and living conditions in the victims’ home country would help prevent human trafficking from happening. Countries, International Governmental Organization’s and human rights mechanisms have identified certain steps that could specifically address those aspects of poverty and inequality of most relevance to trafficking. These include the following: “improved education opportunities, especially for women and children; improved access to credit, finance, and productive resources, especially for women; elimination of any de jure or de facto barriers to employment for vulnerable groups,

including women; legal and social measures to ensure rights in employment including a minimum wage that enables an adequate standard of living; and the provision of technical and other assistance to countries of origin to enable them to address inequalities that contribute to trafficking-related vulnerabilities” (Gallagher, 2010, p. 421-422).

Gallagher (2010) also argues that Inequality, which can relate to opportunity as well as wealth and income, is another factor contributing to trafficking-related vulnerability. In this connection, it is pertinent to note that human trafficking involves the movement of individuals from regions and countries of relatively less wealth, income, and opportunities, to regions and countries of more considerable wealth, income, and opportunities. In other words, Gallagher (2010) is arguing that this is not just a North-South issue, but that the inequalities that impact human trafficking exist within, as well as between, countries, and within and between regions.

Gallagher (2010) states that international law recognizes that children, because of their reliance on others for security and well-being, are vulnerable to trafficking and related exploitation. Because of this vulnerability, children are given special rights of care and protection. Gallagher (2010) argues that the measures taken to reduce the vulnerability of children to trafficking should aim to improve their situation, rather than to just prevent behaviors, such as migration for work. It is also important to accept that children are not a homogenous group, in that older children have different needs, expectations, and vulnerabilities than younger children do.

Gallagher states that, “weak or dysfunctional criminal justice systems ensure that traffickers and their accomplices can operate with impunity, and violent and lawless war zones often become source, transit, or destination points for victims of trafficking” (2010, p. 430-431). Gallagher is making the point that, if countries do not implement the laws that have been passed

to secure the prevention of human trafficking, there is no prevention in place to combat human trafficking, and it will continue to flourish in the twenty-first century and beyond. There needs to be strong legislation in place to ensure the prevention of the trafficking and to keep the industry from flourishing.

Regarding the prevention through addressing demand, Gallagher (2010) argues that trafficking feeds into a global market that solicits cheap, unregulated and exploitable labor, and the goods and services that such labor can produce. As such, “demand, in this context, generally refers to two very different things: employer demand for cheap and exploitable labor, and consumer demand for the goods or services produced or provided by trafficked persons” (Gallagher, 2010, p. 432). Demand can also be created by exploiters and others involved in the trafficking process, such as recruiters, brokers, and transporters who rely on trafficking and victims of trafficking to prompt income.

Gallagher (2010) argues that, to ensure prevention, the demand side of trafficking needs to question the way in which countries, through a combination of action and inaction, construct conditions under which it is possible or profitable to consume or exploit such labor and services, and to inquire about the individuals who exploit or consume the labor and services of trafficked victims. In other words, countries need to avoid creating environments that make human trafficking an easy job to do. There needs to be more legislation, more law enforcement personnel trained and alert to such situations, and more strict sentencing guidelines for traffickers.

Gallagher (2010) also argues prevention through addressing corruption and complicity: “corruption is generally understood to refer to the misuse of public power for personal benefit or gain and it does not extend to embrace corporate crime, in which public officials are not

involved” (Gallagher, 2010, p. 442). Complicit indicates responsibility or liability for the actions of another that is subject through knowledge, tacit consent, or acquiescence. It is certainly from this study that traffickers require the active involvement, or at least the reluctant acceptance of public officials, to transport individuals across international borders and, in relation to both internal and international trafficking, to deliver them into and maintain them in situations of exploitation. The high level of impunity enjoyed by traffickers and their accomplices appears due, in large part, to public sector corruption involving enforcement officials, prosecutors, and the judiciary (Gallagher, 2010).

Gallagher (2010) states that, “one recent analysis of the relationship between corruption and the prevalence of human trafficking concludes that corruption is probably the most important factor in explaining human trafficking, and countries that make the least effort to fight human trafficking also tend to be those with high levels of official corruption” (p. 443). Gallagher is explaining that there needs to be more attention to what criminal justice personnel are doing in regards to communicating with human trafficking rings. Human trafficking flourishes because of official corruption, meaning that there are government officials working with these human trafficking rings in order to help them to flourish, either by getting them into the country, or by consuming in the industry.

According to Chuang (2006), if the protection of the victims is of secondary concern to countries, then the prevention of human trafficking, at least, in the long term, is practically an afterthought. Despite the requirement that countries should take measures to reduce the main causes of human trafficking, such as poverty, underdevelopment and lack of equal opportunity, prevention efforts focus on short-term strategies, such as public awareness campaigns regarding the risks of migration. Chuang states that, “common strategies to prevent human trafficking

include bar raids, computerized border checks and databases that register the names of undocumented migrants, and public awareness campaigns that broadcast to the general public the risks of trafficking” (2006, p. 154).

Chuang (2006) argues that there is no doubt that a strong criminal justice response is a critical component of any effective global counter-trafficking strategy. Chuang furthers this by arguing that stopping the vicious cycle of trafficking demands a strategy that frames the problem within its broader socioeconomic context and takes seriously the project of targeting the root causes of this complex problem. This study argues that there are two measures that are proposed to prevent human trafficking.

The first proposed step is to tackle extremely tough and independent assessments of the potential long-term effects of existing counter-trafficking strategies. Chuang (2006) explains that, in their haste to adopt counter-trafficking policies and legislation, governments have largely taken on faith that these strategies are effective with little or no basis in objective evaluations of their outcomes. In other words, the strategies that governments are using to prevent human trafficking are ineffective and need revised to better tackle the crime, and the existing strategies need to be re-examined to see what works and what does not. Then, those re-examined strategies can be turned into strategies that are better and more effective at bringing about prevention.

The second proposed step is to use international human rights law to provide a conceptual framework for addressing the root causes of trafficking. According to Chuang (2006), framing the project of alleviating the root causes of trafficking as a human rights issue would encourage more proactive efforts to address these problems, rather than the traditional assumption that such issues are solely within the province of broader development policy. The Palermo Protocol makes it obligatory for countries to take or strengthen measures to reduce the factors that make

persons vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. Chuang (2006) explains that, while development policy can provide detailed prescriptions for action on the ground, international human rights law offers an important normative framework within which these strategies can be constructed. Most importantly, a human rights framework presents legal and political space for the disenfranchised to begin to claim these needs as rights, and thereby bring the scope of state responsibility into clearer focus.

Chuang (2006) argues that there are no easy or simple solutions to reducing the demand for human trafficking because clamping down on demand for street prostitution may actually strengthen demand on other segments of the sex industry. Although there is a general understanding that trafficking has its root causes in poverty, unemployment, discrimination, and violence against women, no large-scale counter-trafficking program has been implemented to address these underlying problems (Chuang, 2006). The author is arguing that the policies that have been put in place to prevent human trafficking do not even take into consideration the underlying problems of trafficking, thus making the policies ineffective and pointless. Chuang is arguing that there needs to be more counter-trafficking programs put into place that actually address the root causes of human trafficking.

According to Jana, Dey, Reza-Paul, and Steen (2014), knowing that conditions of poverty and lack of economic options for women facilitate the work of trafficking networks, [Durbar Mahila Samanwaya Committee \(DMSC\)](#), which is based in West Bengal, India, also runs a number of programs that can be considered primary prevention of trafficking. The authors in this study argues that, by increasing educational and economic options for sex workers and their children, such programs reduce vulnerability and increase choices. DMSC works on multiple

levels against debt bondage and unfair interest rates. Most significantly, the community promotes savings among its members and offers credit on fair terms.

As a preventative measure, and to encourage sex workers to save money, a convenient collection system was established. A team of community members with training in basic accounting makes rounds on a daily basis to gather deposits, and each member carries a savings book in which deposits are recorded by the collector. According to Jana et al (2014), DMSC now promotes and facilitates school attendance through its educational programs and works with families, communities and local government to raise awareness about trafficking.

DMSC also bought land and constructed a boarding school in the country where sex workers can send their children, and, as a result of these initiatives, school attendance and literacy among the children has increased markedly (Jana et al, 2014). In other words, the authors in this article argue that to bring about prevention, education and awareness are both very important ways to do that. The more the vulnerable people are brought out of their poverty and illiteracy, the more knowledgeable and less vulnerable they will be to fall into the sex trafficking industry. The more aware people are about human trafficking, the less likely they will be to get involved in human trafficking.

Emphasis on rapid and confidential reintegration likely also improves outcomes, while primary prevention efforts reduce vulnerability and harm (Jana et al, 2014). Beyond such clear benefits to individuals, these results likely discourage perpetrators and networks from attempting to traffic women into areas where DMSC's operate. Jana et al (2014) explain that DMSC's efforts to reduce vulnerability for particularly marginalized populations can also be considered effective primary prevention of human trafficking. In other words, by increasing awareness and

options for women and girls living in extreme poverty, they will potentially be less susceptible to traffickers.

Chapter 5

There are numerous definitions of human trafficking and this variation makes it extremely difficult to identify and collect data on the issue. Breaking down the various definitions of human trafficking, coercion, exploitation, and fraud typically contribute to a human trafficking offense. The data and methodologies for estimating the prevalence of human trafficking are not very well developed and, therefore, estimates have varied widely and changed significantly over time

The current estimates and data on human trafficking are insufficient and create a false picture about what is really going on in terms of the trafficking industry. The current estimates speculate that approximately 600,000 to 800,000 victims are trafficked annually, with 50,000 being trafficking into the United States each year, with the majority of these victims being female. Youth runaway females are the most vulnerable for falling into the sex trafficking industry. Despite these estimates, the prevalence of human trafficking is still unknown. Accurate statistics on the nature, prevalence and geography of human trafficking are very difficult to calculate.

There are a number of national and international laws concerning human trafficking. Because of the ambiguity in the definition of human trafficking, it is very hard to create effective and efficient laws to prosecute the offenders and to protect the victims. Federal legislation, such as the Federal Victims of Trafficking and Violence Protection Act, was the starting point for criminalizing and drawing attention to the human trafficking problem. State legislation, such as the Model Law, allowed for states to parallel the federal statutes of human trafficking and to adapt their trafficking laws based on each state's economic, cultural, and sociological norms.

The United States and other countries are also pursuing a number of bilateral and multilateral programs and initiatives to combat human trafficking. More attention has been placed on human trafficking in the international spectrum and there are numerous pieces of legislation that have been put into place to tackle the problem of human trafficking, such as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, the International Trafficking Act of 2000, the Trafficking Victims Protection Reauthorization Act of 2008, and the Trafficking Victims Protection Reauthorization Act of 2013. There is still a considerable amount of work that needs to be done in effectively combating human trafficking, but the federal, state, and international pieces of legislation that are in place now are good enough starting points to tackle the issue in the twenty-first century.

The prosecution and punishment of traffickers in human trafficking situations is difficult, due to the lack of education, training, and resources available to law enforcement personnel. As human trafficking offenses increase in frequency and severity, there is a growing need for a critical assessment of the impact of existing federal and state legislation, an empirical evaluation of human trafficking offenses and offenders, and recommendations for prosecuting these crimes. It is evident that law enforcement personnel are not well equipped to identify and prosecute human trafficking situations and cases. With a lack of knowledge on how to detect a human trafficking situation comes a lack of prosecutions and punishments.

There are numerous laws that have been recently put in place to better combat human trafficking, such as the Palermo Protocol and the TVPA. These framed the problem of human trafficking as a criminal justice problem that necessitated criminal justice solutions. The TVPA and the TVPA Reauthorization Acts (TVPRA) provide for preventive measures, such as strict border control, adequate prosecution of those who traffic in human beings, and increased

mandatory minimum sentences for the crime. The research discussed in Chapter 2 indicate that there is insufficient training offered to law enforcement personnel and they are unequipped to identify and handle human trafficking situations. The initiatives currently used by law enforcement lack a clear plan or set of guidelines that would help law enforcement better identify victims of human trafficking.

There are numerous strategies, laws, and policies put in place to combat human trafficking through prevention. Some of the efforts to combat human trafficking around the world have advanced steadily over the past few years, since the adoption of the Palermo Protocol and the passage of the Trafficking Victims Protection Act (TVPA) in 2000. There are still many problems and issues that government agencies need to address to implement better policies and Protocols for prevention efforts. Prevention was examined under three key categories: addressing the factors that increase vulnerability to trafficking; lessening demand for trafficking; and identifying and eradicating public sector involvement in, and corruption related to, trafficking.

Other factors to try to prevent human trafficking include: better employment opportunities; better education opportunities; better living conditions; less inequality in respect to wealth and income; addressing corruption; and stronger criminal justice systems. There are many different procedures already put in place for the prevention of human trafficking, and the effectiveness of those procedures is debatable. There is a variety of strategies that are being created and implemented to better tackle the crime of human trafficking. With more research, a better understanding of human trafficking, more field experiments, and more sufficient policies and laws will be put into place to better prevent human trafficking in the twenty-first century and beyond.

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