

PRETTY PENNIES FOR PRETTY FACES: TRAFFICKING OF WOMEN FOR THE INTERNATIONAL SEX TRADE

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I. INTRODUCTION

In a groundbreaking report detailing the findings of a two-year investigation by the Global Survival Network, emerges the story of nineteen-year old “Lena,” a victim of trafficking:

Seeking to travel and earn money [she] joined several other Russian women who had responded to a newspaper ad for a work and study program in China. . . . The women were flown to Jukhai, China, where they studied cooking for a month. “Everything seemed fine . . . [u]ntil they took our passports . . .,” she continued. . . . “Then they didn’t return our passports. When we demanded them, they immediately . . . told us \$15,000 for each passport.” Lena and her friends endured beatings, imprisonment, and hunger. “They began to withhold our monthly salaries. They locked us up without food and without money. There was a balcony . . . you could jump if you wanted to die.”

The Chinese bosses said they would give the girls their passports if they started to “cooperate,” which meant working in hotels, restaurants, and karaoke clubs as “entertainers” and prostitutes for Chinese men. . . . The women finally managed to get back to their native Russia. “I sometimes have to turn to a psychiatrist to put myself back in place, because I became very jumpy. My health is

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ruined. I simply curse the day when my romantic notions made me decide, having trusted these people, to go see China.”¹

Lena’s story is all too familiar. Each day, thousands of women are trafficked around the world and become victims in the global sex trade.²

It is estimated that more than 4,000,000 people worldwide are bought and sold each year for the purpose of sexual exploitation, but other reports cite twice this figure.³ The illegal nature of trafficking necessitates secrecy. This, in turn, makes it difficult for government agencies to gather accurate statistics on the number of women involved.⁴ However, “failure to obtain accurate statistics should not in any way justify the view that sex trafficking is a ‘cultural myth.’”⁵ Shockingly, the numbers of women and children trafficked today for the purpose of prostitution may soon be as high as those involved in the African slave trade of the 1700’s.⁶ The statistics on profits earned from sex trafficking vary. In some countries, traffickers can buy a

¹ Gillian Caldwell, *et al.*, Global Survival Network, *Crime and Servitude: An Exposé of the Traffic in Women for Prostitution from the Newly Independent States 3-4* (1997), at <http://www.qweb.kvinnoforum.se/misc/crimeru.rtf> (last visited Jan. 1, 2004) (detailing the finding of a two-year investigation in trafficking and prostitution of women from Russia and the newly independent states).

² *Id.* at 1.

³ See *id.* The most closely documented statistics are disclosed in a CIA report. Amy O’Neil Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, DCI Exceptional Intelligence Monograph, Nov. 1999, at 3 (April 2000).

⁴ Margaret Murphy, *Modern Day Slavery: The Trafficking of Women to the United States*, 9 BUFF. WOMEN’S L.J. 11, 12 (2000).

⁵ Susan Tiefenbrun, *Sex Sells but Drugs Don’t Talk: Trafficking of Women Sex Workers*, 23 T. JEFFERSON L. REV. 199, 208 (2001) (stating that “statistics on trafficking are admittedly not very reliable because of the clandestine nature of the crime and the social stigma attached to sex worker activity;” also describing the problem of trafficking of sex workers and analyzing the efficiency of legal solutions adopted in the past which have been unsuccessful in eradicating the problem). But see Joe Doezema, *Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, <https://www.ciaonet.org/isa/doj01/> (last visited Jan. 23, 2004) (citing Global Alliance Against Traffic Women, *A Proposal to Replace the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, Utrecht: GAATW Bulletin, 1994). Doezema states that many women choose to do sex work willingly and therefore, should not be condemned for that choice. Doezema, *supra*.

⁶ *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the Comm. On Security and Cooperation in Europe*, 106th Cong. (1999), noted in Tiefenbrun, *supra* note 5, at 202 n.10, 204 n.16.

woman for \$15,000, while others charge as much as \$40,000 a woman.⁷ Traffic in human beings worldwide for sex is estimated between \$7 to \$12 billion dollars annually.⁸ The “pretty faces” of these women and children are losing their dignity for “pretty pennies.”

The purpose of this article is to increase the awareness of a horrific crime that affects so many women on nearly every continent. Part II provides definitions and various methods of trafficking to aid in understanding the nature of the problem. Part III describes the social, cultural, economic, and political factors that explain why trafficking are prevalent throughout the world. In Part IV, the existing laws that prohibit trafficking of women for the sex trade are presented, with a discussion as to how these laws can be used to eradicate the problem.

II. DEFINITIONS AND METHODS OF TRAFFICKING

The *United Nation’s Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, responded to the urgency felt by the international community about the growing problem of trafficking by defining trafficking in persons as:

the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or other forms of fraud, of deception, of the abuse of power of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹

This legislation has filled the need for a comprehensive legal definition that establishes trafficking as an international crime and human rights violation.¹⁰ Over eighty signatories will incorporate the

⁷ See Tiefenbrun, *supra* note 5, at 209.

⁸ *Id.*; see e.g. John Daniszewski, *Russian Coalition Fights Sex Slavery*, L.A. TIMES, May 17, 2001, at A3.

⁹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/53/383 (2000) (advance copy), available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (last visited Nov. 2, 2003) certified copy forthcoming at U.N. Doc. A/RES/55/25.

¹⁰ Kelly Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN’S L.J. 29, 32 (2001) (discussing the importance

Protocol's provisions, based on this definition, into their domestic law.¹¹ In addition, the United States has crafted a definition of trafficking. In the *Victims of Trafficking and Violence Protection Act of 2000*, sex trafficking, is defined as:

the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of commercial sex acts. Severe forms of trafficking in person which enable the victim to qualify for enhanced benefits and services is defined as sex trafficking . . . for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Many of the women are trafficked into the international sex trade by force, coercion or fraud, and compelled through physical violence or deception to engage in sex acts or performs slavery-like labor.¹²

Within the complex latticework of defining sex trafficking victims abroad and internationally, two theories of non-consensual sex workers have emerged.¹³ The first argues that women who are trafficked into sex work are duped, drugged, and forced into doing sex work against their will.¹⁴ "This form of non-consensual sex work is called 'forced prostitution,' and constitutes violence against women and deprivation of their fundamental right to self-determination."¹⁵ The second opines that non-consensual sex workers include women who willingly migrate to destination countries where they have

of law enforcement procedures that must be established to ensure the identification and rescue of trafficking victims, as well as the prosecution of traffickers).

¹¹ *Id.*

¹² *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, § 102(b)(14), 114 Stat. 1464, 1467 (2000) [hereinafter *Protection Act of 2000*] (finding that existing laws do not cover the range of offenses involved in trafficking and that enforcement and punishment do not reflect the seriousness of the crime). The definition of trafficking adopted by the U.S. does not imply that it has not adopted the Protocol definition; but simply refines a definition that previously existed.

¹³ Tiefenbrun, *supra* note 5, at 206. These two distinct categories of non-consensual sex workers appear to have emerged primarily within the U.S. There is no indication that these theories have emerged throughout the world, at least among feminist legal scholars.

¹⁴ *Id.* Kathleen Barry, founder of The Coalition Against Trafficking in Women ("CATW") and author of *FEMALE SEXUAL SLAVERY* (1979), is of the neo-abolitionist belief that prostitution is violence against women, sexual exploitation, and an institution that victimizes all women. Doezeema, *supra* note 5. The neo-abolitionists claim that prostitution justifies the sale of women and reduces all women to sex. *Id.*

¹⁵ Tiefenbrun, *supra* note 5, at 206.

consented to and expect to engage in sexual work,¹⁶ but upon arrival are forced to perform sexual acts under conditions they did not agree to or anticipate.¹⁷

Conversely, a number of scholars writing about sex trafficking argue that consent is not a probative issue in the definition because one cannot legally consent to enslavement.¹⁸ In the alternative, it can be argued that, for purposes of crafting a legal definition, consent must be considered.¹⁹

It is essential to understand the concept of “trafficking” before addressing the myriad of other issues involved.²⁰ Trafficking in

¹⁶ *Id.* This feminist school distinguishes between “forced prostitution” and “voluntary prostitution,” and does not seek to place a value judgment on women who choose prostitution or sex work for their livelihood. *Id.* at n.23. The Global Alliance Against Trafficking in Women (“GAATW”) is the primary voice supporting this position. *Id.*

¹⁷ *Id.*

The group of feminist scholars that adopt this view accept the right of women to choose sex work as a career and condemns sex trafficking only when the career choice is non-consensual or when the conditions imposed on a consensual sex worker are inhuman and unanticipated. These feminists argue that to condemn the right of consensual sex workers to engage in their career of choice is to buy into a myth of purity and innocence of women as dependent victims.

Id. at 206.

¹⁸ *Id.*

¹⁹ *Id.* To address the feminist line of thinking that if sex is consensual it is a permissible economic choice; the issue of consent must be considered. Tiefenbrun notes that because sex trafficking is clearly a variant of slavery; one cannot legally consent to it. *Id.* She cites the Thirteenth Amendment to the United States Constitution and its prohibition on “an individual from selling himself or herself into bondage.” *Id.*

²⁰ It is useful to distinguish trafficking from smuggling. According to Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime, G.A. res. 55/25, annex III, 55 U.N. GAOR Supp. (No. 49) at 65, art. 3(a), U.N. Doc. A/45/49 (Vol. I) (2001), “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” According to Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, art. 3(a), U.N. Doc. A/45/49 (Vol. I) (2001),

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

women is not limited to forced prostitution and not all trafficking victims are prostitutes, nor have all foreign prostitutes been trafficked.”²¹

Those who voluntarily migrate for the purpose of voluntary sex-work or who voluntarily migrate for another purpose but end up in non-exploitive working conditions in the sex industry without having been forced, defrauded, or otherwise coerced, should not be considered as having been trafficked. However, those women that are coerced or tricked into working under violent, subservient labor conditions and physically transported from one area to another fall into the category of trafficked victims.²²

Two fundamental elements of trafficking are the abusive or servile situation in which the women are placed, and whether they have consented to prostitution.²³ Under most conditions physical travel or transport is often necessary.²⁴ However, “trafficking may have the same effect on the victim if she is moved five miles across a state or five hundred miles within national boundaries.”²⁵

Various methods are used to procure and control women for a trafficking network. One method is through force or coercive tactics.²⁶ An official for a human rights organization commented on surveillance as a method of control used by a trafficker:

I know about women who worked in an apartment. There was a camera in the bedroom, in the toilet, in the kitchen . . . and in one of the rooms was the pimp sitting, watching all the time what they were doing . . . [t]hese women stay for months without going on the streets.²⁷

These women are subjected to cruelty and violent abuse from their controlling traffickers through isolation, and emotional and physical manipulation.²⁸ A second method by which women enter the trafficking network is through sale into sexual bondage by their

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

²¹ Michell O.P. Dunbar, *The Past, Present and Future of International Trafficking in Women for Prostitution*, 8 BUFF. WOMEN’S L.J. 103, 105 (2000).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Dunbar, *supra* note 21, at 105.

²⁷ See Caldwell, *supra* note 1, at 16 (quoting Counselor with Amnesty for Women).

²⁸ Dunbar, *supra* note 21, at 106.

families.²⁹ In Thailand, for example, some parents sell their girls when they are newborns.³⁰ After a certain age, the girls are then re-sold by traffickers into the prostitution circuit to serve foreign tourists.³¹

The false promise of work is a third method of luring women into forced prostitution.³² In Japan, white American women are in high demand.³³ Wonderful job opportunities are advertised in newspapers raising unjustified expectations of large salaries.³⁴ After accepting a job, these women are given a pre-paid ticket to Japan.³⁵ Upon arrival, the women are met by an agent who informs them that their contracts have been bought out.³⁶ The women are stripped of their passports, and their "life as forced prostitutes begins."³⁷ A fourth method by which traffickers procure women is by taking advantage of female attempts to leave the country through mail order bride agencies.³⁸ Women seeking spouses are lured into sex trafficking through matchmaking social events and search agencies' databases.³⁹

However, the most common method of coercion is through debt bondage.⁴⁰ Debt bondage involves women being instructed that they must work without wages until they have repaid the cost advanced by their employers for employment and travel.⁴¹ In most cases, women find that their debts only increase and can never be fully repaid, either because traffickers do not pay their victims as promised or pay them

²⁹ *Id.* at 106-07.

³⁰ *Id.* at 107.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See Hyland, *supra* note 10, at 35.

³⁹ *Id.*

⁴⁰ *International Trafficking of Women and Children: Testimony Before the Senate Comm. on Foreign Relations Subcomm. on Near Eastern and South Asian Affairs*, 106th Cong. (2000) (statement of Reagan E. Ralph, Executive Director, Women's Rights Division, Human Rights Watch).

⁴¹ See Hyland, *supra* note 10, at 38 n.80.

The term 'debt bondage' means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined (quoting Protection Act of 2000, *supra* note 12, at 1469).

very little under the rubric of debt repayment.⁴² Other women are slowly released from debt, but only after months or years of abusive labor.⁴³ One Thai woman was promised a job in a restaurant in Japan, but instead was taken to a bar where the other Thai “hostesses” told her she would have to work as a prostitute: “[t]hey told me there was no way out and I would just have to accept my fate. I knew then what happened to me. That first night I had to take several men and after that I had to have at least one client every night.”⁴⁴

III. SCOPE OF THE TRAFFICKING PROBLEM

The women lured into sex trafficking are victims of complex social, cultural, economic and political factors, which are exploited by their traffickers. Moreover, traffickers capitalize on the high profitability of the business and government inaction regarding trafficking schemes.⁴⁵ Currently, Central and Eastern Europe are the primary sources from which women are drawn into global sex trafficking;⁴⁶ Russia, the Ukraine, and the Czech Republic have become the dominant countries from which women are procured.⁴⁷ Most scholars agree that conditions of extreme poverty found in developing countries can compel women to involve themselves in sex trafficking.⁴⁸ Furthermore, as a result of the collapse of communism

⁴² Hyland, *supra* note 10, at 38 n.80 (noting that their debt may include their transportation to the new country, falsified documents, the their new owner paid for them, rent, food, and medical treatment); *see, e.g.*, Asia Watch Women’s Rts. Project, Human Rts. Watch, *A Modern Form of Slavery Trafficking of Burmese Women and Girls into Brothels in Thailand*, available at <http://www.hrw.org/reports/1993/thailand/> (relaying one woman’s story that she never saw a doctor because her debt would increase, and that when she did go under dire circumstances, the cost of the doctor’s visit and the medication were added to her debt).

⁴³ Hyland, *supra* note 10, at 38 n.80.

⁴⁴ Asia Watch Women’s Rts. Project, *supra* note 42.

⁴⁵ Katrin Corrigan, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 *FORDHAM INT’L L.J.* 151, 153 (2001) (noting that non-consensual sex work is performed when the work conditions imposed on the sex worker are unanticipated or not agreed to before the woman leaves her country to do sex work abroad, or when the woman is duped into performing sex work against her will).

⁴⁶ *Id.* at 154.

⁴⁷ *Id.* at 156; *see also* Michael Specter, *Contraband Women: A Special Report*, *N.Y. TIMES*, Jan. 11, 1998, at 1 (reporting that the Ukraine and its neighboring countries replaced Thailand and the Philippines as the primary source of women for international sex trafficking).

⁴⁸ Corrigan, *supra* note 45, at 157.

and recently conferred freedoms, many young women are particularly susceptible to sexual exploitation in an effort to escape poverty, war, or political persecution.⁴⁹

A. Social, Cultural, Economic, and Political Factors to Trafficking Women

The overwhelming majority of trafficking victims are young, ignorant or illiterate women, often under the age of twenty.⁵⁰ An investigation carried out in China's Shandong Province area of Lioacheng City between 1987 and 1989 examined reasons for the women's abductions.⁵¹ The promise of introductions to potential husbands in areas with a high standard of living where women are not expected to perform heavy work lured thirty-one percent of the women.⁵² Another "47.8 percent were attracted by offers of work, business partnerships or jobs as domestics or nannies; offers of travel around the country attracted 15.2 percent; and 5.8 percent were drawn in with pledges of training in technology or handicrafts."⁵³

In addition, the democratization and privatization in the Newly Independent States (NIS) of the former Soviet Union have left previously employed women without meaningful job options.⁵⁴ Unemployment compensation is non-existent, as are opportunities to start small businesses.⁵⁵ Women needing to support family members and looking for economic opportunity outside their country are prime

⁴⁹ *Id.* at 157-58; see also Kara C. Ryf, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT'L L. 45, 49 (2002).

⁵⁰ *The Property of Men: The Trafficking and Domestic Abuse of Women, Section 1 of HRIC's Report, Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women* (1995), available at http://iso.hrichina.org:8151/iso/article.adp?article_id=370&subcategory_id=16 (last visited Nov. 16, 2003).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Hyland, *supra* note 10, at 35; see e.g., Sally Stoecker, *The Rise in Human Trafficking and the Role of Organized Crime*, 8 DEMOKRATIZATSIYA: J. OF POST-SOVIET DEMOCRATIZATION 129, 132 (2000) (noting that women were most affected because industries where they predominated—such as social services, medicine, textiles, and government were sometimes eliminated entirely, and men were often hired over women because women were perceived to have more familial obligations that would distract them from work).

⁵⁵ Hyland, *supra* note 10, at 35.

targets to traffickers posing as employment agents.⁵⁶ For instance, in Russia, almost one-quarter of the population lives below the poverty line.⁵⁷ Women account for nearly two-thirds of those unemployed nationwide, but roughly eighty to ninety percent in some regions of the Russian Federation.⁵⁸

“The relatively low social and political status of women makes them prime targets for traffickers.”⁵⁹ “Gender inequality results in fewer educational and employment opportunities, making women more likely to accept traffickers’ misleading offers.”⁶⁰ In countries such as Afghanistan, women’s job training programs focus on stereotypical work such as sewing and hairdressing.⁶¹ Discrimination also manifests itself in unequal property and contract rights, making work abroad more desirable.⁶²

Experts note that many trafficking victims are procured through international organized crime networks, which use advancements in technology and communications to enhance the scope of their business.⁶³ Organized crime groups engage in sex trafficking globally, but the sources⁶⁴ of the criminal activity are generally in poor, war-torn, or transitory⁶⁵ countries that send women to richer, developed nations. “There are at least seven ‘families’ in Bangkok who recruit, sell and smuggle Asian women for prostitution throughout the

⁵⁶ *Id.*

⁵⁷ Caldwell, *supra* note 1, at 7.

⁵⁸ *Id.* A specialist in women and employment at the Moscow Center for Gender Studies reported that, “seventy percent of the women graduating from institutes of higher learning and from schools declare that they cannot find gainful employment.” *Id.*

⁵⁹ See Hyland, *supra* note 10, at 36.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Corrigan, *supra* note 45, at 160-61 (indicating computers and the Internet, increase the scope of traffickers’ activities by extending their reach beyond physical borders—“technological advances simultaneously facilitate effective response to the needs of the market”).

⁶⁴ See Hyland, *supra* note 10, at 39 (reporting that the main source countries include Thailand, Vietnam, China, Mexico, Russia, Ukraine, and the Czech Republic).

⁶⁵ *Id.*; see also Maya Raghu, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 GEO. IMMIGR. L.J. 145, 146 (1997) (explaining that in developed countries transitioning to a market economy, poverty is especially severe for women.) Economic hardship and oppression make these women more vulnerable to trafficker’s false promises of lucrative jobs in Western cities. *Id.*

world.”⁶⁶ However, “Russian criminals often operate behind the disguise of employment, travel, modeling, or matchmaking agencies listed on the Internet to reach a global market.”⁶⁷ Investigative reports reveal that Albanian criminals are also taking advantage of war-torn Eastern Europe, the migration of women and children, broken families and civil unrest in the refugee camps in nearby countries, such as Kosovo, to lure women into the sex industry.⁶⁸ Evidence of torture by the Albanian criminals to keep women in line is apparent. Girls have been burned or tattooed with the crime group’s symbols, while others have been killed by Albanian syndicates.⁶⁹

B. Profitability of Sex Trafficking Business

“[P]rofit . . . is at the root of the whole business” of sex trafficking.⁷⁰ Profits from sex trafficking are second only to drugs and weapons.⁷¹ Women are viewed as cheap products that can be used and reused.⁷² Those intimately involved in the trafficking industry believe that women provide cheap labor for the slave trade industry because selling a woman is no great loss to society.⁷³ In the drug trafficking industry, highly priced narcotics products can be sold only once, whereas a woman can be sold repeatedly.⁷⁴ Traffickers reason that the “potential profits in the sex trade are high and the risk for the perpetrators is low.”⁷⁵ Women are considered resalable, reusable, and expendable commodities that offer highly desirable profits.⁷⁶ As an illustration of earning potential, Thai women in a New York brothel

⁶⁶ United Nations Asia and Far East Institute, *Current Situation of Organized Crimes in Trafficking Stolen Vehicles, Card Fraud, Money Laundering, and Major Transnational Organized Criminal Groups*, 227, available at <http://www.unafei.or.jp/pdf/15-18.pdf> (last visited Nov. 10, 2003).

⁶⁷ Tiefenbrun, *supra* note 5, at 137.

⁶⁸ See *id.* at 211; see e.g., Janine Di Giovanni, *Prostitution Gangs Stalk Camp Women*, THE TIMES (London), May 24, 1999 (describing how men came to camps allegedly offering to take women to a teacher training course in Italy).

⁶⁹ See Tiefenbrun, *supra* note 5, at 212.

⁷⁰ *Id.*

⁷¹ *Id.* at 199 (noting that international sex traffickers enjoy lower risks of being prosecuted than drug smugglers or illegal arms dealers).

⁷² *Id.* at 212.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 213.

made \$1.5 million in approximately one year and three months, and were made to pay debts from \$30,000 to \$50,000.⁷⁷

Clearly, many factors contribute to the problem of trafficking of women—factors such as illiteracy, ignorance, and high profitability of the sex trafficking business. Because of its transcending nature and wide spread presence, sex trafficking has become an issue for the world to address.

IV. EXISTING LAWS THAT CONDEMN THE TRAFFICKING OF WOMEN

Currently, over 154 countries have legislation that criminalizes procuring women for the purposes of prostitution.⁷⁸ While some procurement laws are ignored or seldom enforced, attempts to combat trafficking through legislation are steadily progressing, especially in the U.N., Europe, and in U.S. legislation.

A. The United Nations

Five early treaties that establish the blueprint for current international instruments prohibiting trafficking of women are: The International Agreement for the Suppression of White Slave Traffic (“1904 Convention”);⁷⁹ the International Convention for the Suppression of the White Slave Traffic (“1910 Convention”);⁸⁰ the

⁷⁷ *Id.* (noting that “in order to eradicate sex trafficking, it will be necessary to reduce the lure of big profits which only the heads of organized crime, not the traffickers, earn in a complex network known as the sex work industry”).

⁷⁸ See Tiefenbrun, *supra* note 5, at 214.

⁷⁹ International Agreement for the Suppression of the Slave Trade, May 18, 1904, 35 Stat. 426, 1 L.N.T.S. 83 [hereinafter 1904 Convention]; see Corrigan, *supra* note 45, at 161-165 (citing Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT’L L. 303, 337 (1999) (“explaining that 1904 Agreement established procedures by which States Parties were required to gather information regarding procurement of women for sex trafficking” Corrigan, *supra* note 45, at n.50)).

⁸⁰ International Convention for the Suppression of White Slave Traffic, May 4, 1910, 3 L.N.T.S. 27 [hereinafter 1910 Convention]; see also Protocol Amending the International Agreement for the Suppression of White Slave Traffic and the International Convention for the Suppression of White Slave Traffic, May 4, 1949, 30 U.N.T.S. 23; see also Corrigan, *supra* note 45, at 216 (citing Stephanie Farrior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213, 216 (1997) (“noting that signatories of 1910 Convention pledged to punish procurers of women for forced prostitution”)).

International Convention for the Suppression of Traffic in Women and Children (“1921 Convention”);⁸¹ the International Convention for the Suppression of the Traffic in Women of Full Age (“1933 Convention”);⁸² and the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (“1949 Convention”).⁸³ In 1979, the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) was the final international treaty to expressly forbid trafficking.⁸⁴

The global trafficking of women was first recognized by the U.N. as an offense in the early 20th Century in response to concern regarding the sale of European women into forced prostitution.⁸⁵ To resolve this growing concern, the 1904 Convention was adopted.⁸⁶ The purpose of the 1904 Convention was to “halt the sale of women into prostitution in Europe at a time when economic conditions were so dire that women were increasingly vulnerable to being forced into prostitution.”⁸⁷ The 1904 Convention’s provisions were aimed at

⁸¹ Convention for the Suppression of Traffic in Women and Children, *opened for signature* Sept. 30, 1921, 9 L.N.T.S. 415 [hereinafter 1921 Convention] (mandating in Article 7 that States Parties “undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children”). The League of Nations established a reporting mechanism through the Advisory Committee on Trafficking in Women and Children, which had supervisory responsibility over the 1921 Convention. Farrior, *supra* note 80, at n.17.

⁸² International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431 [hereinafter 1933 Convention] (stating in Article 1 that “[w]hoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl or full age for immoral purposes to be carried out in another country, shall be punished. . . .”)

⁸³ Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature*, Mar. 21, 1950, 96 U.N.T.S. 271, 274, art. I [hereinafter 1949 Convention] (citing Farrior, *supra* note 80, at 217 (explaining that the 1949 Convention calls for punishment of international sex traffickers and exploiters of prostitution, including brothel owners)).

⁸⁴ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46 (1979), *available at* <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm> [hereinafter CEDAW] (citing Jennifer Ulrich, *Confronting Gender-Based Violence With International Instruments: Is a Solution to the Pandemic Within Reach?*, 7 IND. J. GLOBAL LEGAL STUD. 629, 642 (2000) (noting that CEDAW establishes general prohibitions regarding discrimination against women and obligates signatories to eliminate domestic practices that obstruct gender equality)).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Farrior, *supra* note 80, at 216.

protecting the victims, rather than punishing the traffickers.⁸⁸ States parties were required to collect data relating to the procurement of women abroad for “immoral purposes.”⁸⁹ This system of data collecting was unsuccessful, prompting the adoption of the 1910 Convention.⁹⁰

The 1910 Convention criminalized the act of procuring women for sex trafficking.⁹¹ It delineated the requirement that State parties punish any “person who hired, abducted, or enticed for immoral purposes any woman under the age of twenty-one, or used violence, fraud, threats, or any compulsion on a woman” for such purposes.⁹² Both the 1904 Convention and the 1910 Convention contained prohibitions regarding only the physical trafficking process, and were silent regarding the resulting forced prostitution.⁹³

The 1921 and 1933 Conventions addressed “the forced prostitution element of international sex trafficking as an issue controlled by States’ domestic relations.”⁹⁴ To facilitate the elimination of trafficking, the 1921 Convention broadened the protections outlined in previous conventions to include non-white women.⁹⁵ The provisions of the 1921 Convention sought to suppress such traffic using three approaches: (1) prosecuting persons who trafficked children; (2) licensing and supervising employment agencies; and (3) protecting immigrating and emigrating women and children.⁹⁶ To further these

⁸⁸ *Id.*

⁸⁹ See Rasam *supra* note, 79 at 337; see also Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 *FORDHAM INT’L L.J.* 163, 167 (1994) (explaining that 1904 Agreement focused only on protecting the victims of trafficking and did not address punishment of procurers).

⁹⁰ *Id.* Thirteen signatories agreed to punish procurers.

⁹¹ *Id.*

⁹² See Corrigan, *supra* note 45, at 164-65 (noting that the “problem of holding women in brothels against their will for purposes of forced prostitution was beyond the scope of the 1910 Convention because Member States considered such matters to be within a country’s exclusive domestic jurisdiction”).

⁹³ See *id.*

⁹⁴ See *id.* (citing Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 *HARV. HUM. RTS. J.* 65, 75 (1998) (discussing that 1921 and 1933 Convention did not outlaw brothels because business of prostitution was part of nation’s domestic jurisdiction, and as such, beyond the reach of international regulations)).

⁹⁵ See 1921 Convention, *supra* note 81, cited in Corrigan, *supra* note 45, at 165 (mandating that States Parties “undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children”).

⁹⁶ See *id.*

goals, the 1933 Convention required punishment of persons who trafficked in women of full age, and declared that consent was no longer a permissible defense to the crime of trafficking.⁹⁷

The United Nations Economic and Social Council subsequently established the Commission on the Status of Women in an effort to improve the earlier treaties that addressed trafficking of women, and to raise the status of women to equality with men.⁹⁸ Under the subsequent 1949 Convention, States were obliged under international law to punish procurement for purposes of trafficking, irrespective of whether consent had been given to traffickers, in domestic and international trafficking.⁹⁹ The 1949 Convention made prostitution governable by international law, whereas previously it had been exclusively within State domestic jurisdiction.¹⁰⁰

The 1949 Convention outlawed procurement of women for prostitution and exploitation of prostitution, including all activities associated with pimping and brothel management.¹⁰¹ Signatories to the Convention agreed “to punish anyone who, to gratify, the passions of another . . . procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; exploits the prostitution of another person, even with the consent of that person.”¹⁰² Many scholars have noted that the substantive terms of the 1949 Convention were more clearly defined than those terms contained in previous international agreements.¹⁰³ In addition, the 1949 Convention was instrumental in establishing provisions to

⁹⁷ See 1933 Convention, *supra* note 82, cited in Corrigan, *supra* note 45, at 165 n.57 (declaring that “whoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished”).

⁹⁸ See 1949 Convention, *supra* note 83, cited in Corrigan, *supra* note 45, at 167 (stating that the 1949 Convention does not specifically define trafficking or forced prostitution, but rather delineates actions associated with the trafficking of women that are outlawed by the 1949 Convention).

⁹⁹ See Corrigan, *supra* note 45, at 167 (stating that the Commission replaced the racially discriminatory language of the earlier anti-trafficking treaties with race neutral language in the 1949 Convention).

¹⁰⁰ See *id.*

¹⁰¹ See *id.* (recognizing that the Convention neglected to define trafficking or forced prostitution).

¹⁰² See Fariior, *supra* note 80, at 218.

¹⁰³ See *id.* (noting that the 1921 and 1933 Conventions were broad; this Convention constructed a comprehensive approach; the focus is on punishing procures, person exploiting prostitution, and brothel owners).

eradicate international sex trafficking.¹⁰⁴ For instance, it mandated punishment for traffickers, suggested programs to assist victims of forced prostitution and prevent further victimization of others by trafficking networks, and advocated increased collaboration regarding anti-trafficking efforts between nations.¹⁰⁵

Requiring State parties to advance equality between men and women would remove many obstacles to achieving these goals.¹⁰⁶ Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women says "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."¹⁰⁷ Specifically, the CEDAW outlawed all sexually discriminatory activities including trafficking and exploitation of prostitution, because these activities violated the fundamental equality rights of women.¹⁰⁸

An Optional Protocol was adopted by the U.N. General Assembly on October 6, 1999, on the right to petition.¹⁰⁹ Individuals and groups of women now have the right to complain to CEDAW about violations. This right allows the Committee to conduct inquiries into

¹⁰⁴ See *id.* at 219 (mandating that States parties agree to publicize warnings about the dangers of trafficking and to ensure supervision of airports, train stations, and other ports of entry and departure in order to prevent trafficking.) "They also agree to provide for the rehabilitative and social adjustment of the victims of prostitution, through 'public and private educational, health, social, economic and other related services.'" *Id.* "The cost is to be shared by the state of residence and the state of repatriation if the person is indigent." *Id.* at n.25.

¹⁰⁵ See Corrigan, *supra* note, 45 at 167-170.

¹⁰⁶ See *id.* at 171-173. In 1993, CEDAW, adopted General Recommendation 19, which explicitly states that CEDAW prohibits gender-based violence. *Id.* This Recommendation states that violence against women is addressed within the type of discrimination addressed in Article I of CEDAW, thus, gender based violence may violate CEDAW, regardless of whether provision explicitly denotes violence against women. *Id.*

¹⁰⁷ CEDAW, *supra* note 84. If a State takes inadequate measures, or no measures at all, to eliminate trafficking by either state or private actions, it violates its treaty obligations. *Id.* However, Art. 6 does not define what "appropriate measures" include. *Id.* CEDAW only provides general measures to eliminate gender discrimination in Art. 2: to embody the principle of equality of men and women in their constitutions and laws, adopt legislation prohibiting discrimination against women, establish equal protection under the law, refrain from discrimination, and repeal any penal provisions that discriminate against women. *Id.*

¹⁰⁸ See *id.*

¹⁰⁹ See Dunbar, *supra* note 21, at 112.

the abuse of women's rights in countries that are a party to the Optional Protocol.¹¹⁰

Various international treaties could potentially influence legislation on trafficking, but the committees in the U.N. bureaucracy have not implemented any such laws.¹¹¹ These committees simply collect and read reports concerning trafficking.¹¹² For many nations, the signing and ratification of these treaties is an act of good will and nothing more. There is virtually no pressure on countries to follow through with treaty obligations, thus relying on the international community and their internal commitment to human rights.¹¹³ This reflects a reluctance of signatory countries to pursue claims on behalf of trafficking victims—an unpopular group.¹¹⁴

B. Europe

One international forum which addressed trafficking was the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention"), established in 1950 by the Member States of the Council of Europe to safeguard human rights.¹¹⁵ The European Convention is recognized for allowing "individual victims to bring claims against States for alleged human rights violations."¹¹⁶ Although the "European Convention does not explicitly address trafficking of women for forced prostitution,

¹¹⁰ See *id.* (asserting that The Optional Protocol calls upon all states that are a party to the CEDAW Convention to sign, ratify, or accede to the Protocol as soon as possible).

¹¹¹ See Corrigan, *supra* note 45, at 193 (alleging that numerous nations' refusal to participate in anti-trafficking treaties illustrates absence of political will to eliminate sex trafficking and contributes to non-enforcement of international law).

¹¹² See Dunbar, *supra* note 21, at 119; see also Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 79 (noting that many nations do not possess the willingness to stop trafficking).

¹¹³ See Dunbar, *supra* note 21, at 120.

¹¹⁴ *Id.*

¹¹⁵ See Corrigan, *supra* note 45, at 174-75 (noting that all 23 EU Member states ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (213 U.N.T.S. 221 Nov. 4, 1950 (entered into force Sept. 3, 1953)) [hereinafter European Convention]). The European Convention is executed through European Commission on Human Rights ("European Commission"), and the Committee of Ministers of the European Council ("Committee of Ministers"), Corrigan, *supra* note 45, at 174-75. Each organization is authorized to adjudicate alleged human rights violations under the European Convention. *Id.* at 175.

¹¹⁶ Corrigan, *supra* note 45, at 175.

scholars note, however, that Articles 3 and 4 establish protection for trafficking victims.”¹¹⁷

Specifically, Article 3 provides protection against torture and inhumane treatment or punishment,¹¹⁸ while, Article 4 declares that “no one shall be held in slavery or servitude, nor shall anyone be subject to forced labor.”¹¹⁹ Article 14 secures the enjoyment of the rights and freedoms contained within the European Convention for all people, without discrimination based on sex or race.¹²⁰ Accordingly, “a trafficking victim may successfully bring a claim against an individual trafficker or pimp, if the violation is presented as a state’s failure to execute legislation essential to protecting a victim’s rights under the European Convention.”¹²¹ The rights and freedoms within the terms of the European Convention secure the enjoyment for everyone without discrimination based on sex or race.¹²²

In response to recent conferences and reports, the countries of the European Union (“E.U.”) created joint plans of action and agreed upon various measures to eradicate international sex trafficking. In an attempt to strengthen cooperation among member states, in order to eliminate sex trafficking, the Council of the European Commission adopted the 1997 Council Joint Action on Trafficking in Human Beings and Sexual Exploitation of Children.¹²³ This legislation

¹¹⁷ See *id.* at 176.

¹¹⁸ See *id.*

¹¹⁹ *Id.*

¹²⁰ See *id.* (citing European Convention, *supra* note 115.) Article 14 provides that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Corrigan, *supra* note 45, at n.120.

¹²¹ See Corrigan, *supra* note 45, at 175-76 (noting that an individual complaint is effective against every Member State of the Council of Europe.) In *Cyprus v. Turkey*, App. Nos. 6780174, 6950175, 4 Eur. H.R. Rep. 482 (1982) (Commission Rep.), the European Convention held the rape of Greek women by Turkish soldiers and officers during the Turkish occupation of Greece to be inhumane treatment under Article 3 of the European Convention. The Greek government alleged that these mass rapes were forced to prevent such actions by its soldiers. *Id.* This case demonstrates that pimping qualifies as inhumane and degrading treatment under Article 3 of the European Convention.

¹²² See Corrigan, *supra* note 45, at 176.

¹²³ 1997 Council Joint Action on Trafficking in Human Beings and Sexual Exploitation of Children, O.J. L. 63 (1997) 1, available at <http://europa.eu.int/scadplus/leg/en/lvb/133072.htm> (last visited Jan. 24, 2004) [hereinafter 1997 Joint Action]; see Corrigan, *supra* note 44, at 176 (noting that the 1997 Joint Action provides details concerning the measures each Member State must take separately

requires every member state to categorize trafficking and sexual exploitation as criminal offenses under its domestic laws.¹²⁴ Additionally, States must provide certain measures to ensure protection for witnesses in trafficking cases and render all necessary assistance to victims and their families.¹²⁵

On May 19, 2000, the European Parliament adopted another Resolution based on the urging of the Committee of Ministers.¹²⁶ The 2000 Resolution acknowledges that forced prostitution is a serious crime and that the number of trafficking victims is constantly increasing.¹²⁷ The 2000 Resolution broadens the E.U. Joint Action by urging the European Commission to establish a uniform definition of trafficking.¹²⁸ Thus, the crime will be categorized in the same manner by each Member State, effective sanctions against traffickers will be implemented, and measures to protect victims and witnesses of trafficking will be enacted.¹²⁹ The 2000 Resolution is an important effort to improve coordination of anti-trafficking efforts at a national level in the European community and establish a central authority committed to fighting trafficking and related crimes.¹³⁰

C. The United States

Along with the rest of the international community, the United States has struggled with creating effective legislation to combat the plight of traffic victims. In October of 2000, President Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000 ("VPA of 2000").¹³¹ Combining prevention, law enforcement and prosecution, protection, and reintegration, the VPA of 2000 is the

and collaboratively with other European Union Member States in order to put a stop to trafficking and sexual exploitation).

¹²⁴ See Corrigan, *supra* note 45, at 179.

¹²⁵ 1997 Joint Action, *supra* note 123.

¹²⁶ Recommendation of Comm. of Ministers, Eur. Comoult. Ass'n, 710th Meeting, Doc. No. R. (2000) 11 [hereinafter 2000 Resolution], *cited in* Corrigan, *supra* note 45, at 179 (stating that this Resolution condemns trafficking of women as a violation of fundamental human rights, and therefore, designates it as a criminal act).

¹²⁷ Corrigan, *supra* note 45, at 179-80.

¹²⁸ *Id.* at 180 (stating that the 2000 Resolution recommends "a common EU policy focused on a legal framework, on law enforcement, on measures to combat and punish offenders, on prevention and on protection of and support for victims").

¹²⁹ *See id.*

¹³⁰ *Id.*

¹³¹ See Hyland, *supra* note 10, at 60.

first comprehensive anti-trafficking legislation passed in the United States.¹³² However, the Bush Administration came into power before agencies could promulgate any regulations that would implement the legislation.¹³³ In July 2001, Secretary of State Colin Powell, in discussing the Act, called the practice of trafficking in persons an “abomination against humanity.”¹³⁴ In describing the victims, Powell said “the overwhelming number are women and children who have been lured, coerced or abducted by criminals who trade in human misery and treat human beings like chattel.”¹³⁵ There is still little indication whether the Bush Administration will support greater or lesser victim protection.¹³⁶ Nonetheless, this Act proscribes a holistic approach that indicates a dedication to combating crime and to protecting and assisting victims.¹³⁷

Additionally, United States law enforcement agencies employ various criminal, labor, and immigration laws to address the multitude of offenses committed by traffickers.¹³⁸ The White Slave Traffic Act (“Mann Act”), for example, can be used to prosecute traffickers who profit from the sexual exploitation and forced prostitution of women.¹³⁹ This Act provides for the punishment of anyone who knowingly transports an individual in interstate or international commerce for purposes of prostitution or any other criminal sexual activity.¹⁴⁰ In addition, those who persuade or coerce any individual to travel in interstate or foreign commerce for purposes of prostitution are punished.¹⁴¹

¹³² *Id.*

¹³³ *Id.* at 70.

¹³⁴ Secretary Colin Powell and Others, Release of the 2001 Trafficking In Persons Report, Remarks at Special Briefing, July 12, 2001, *available at* <http://www.state.gov/g/tip/rls/rm/2001/4071.htm> (last visited Nov. 10, 2003).

¹³⁵ U.S. Department of State, Trafficking In Persons Report, § 1 (July 2001), *available at* <http://www.state.gov/g/tip/rls/tiprpt/2001/3929.htm> (last visited Nov. 10, 2003) (noting that Congress has noted at least 700,000 persons each year are trafficked across international borders). The State Department, using information gathered from 186 embassies and consulates around the world, says the scope of trafficking is “difficult to measure accurately.” *Id.*

¹³⁶ *See* Hyland, *supra* note 10, at 70.

¹³⁷ *Id.*

¹³⁸ *See* Corrigan, *supra* note 45, at 180-81.

¹³⁹ *Id.* at 184. This Act penalizes the interstate transportation of women for illegal purposes. *Id.*

¹⁴⁰ White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-24 (1994)).

¹⁴¹ *Id.*

Scholars agree that forced prostitution is a highly organized business in which women are often controlled by organized groups of traffickers. The Racketeer Influenced and Corrupt Organization Act (RICO) is another means by which prosecutors may convict traffickers in the United States.¹⁴² Under RICO, if a victim of sex trafficking can prove injury to business or property, she will be able to generate a civil action against traffickers.¹⁴³ Injury to a trafficked woman's body constitutes injury to property under RICO § 1964.¹⁴⁴

The Civil Rights Act of 1964 provides recourse for violations of civil rights guaranteed by the United States Constitution.¹⁴⁵ This Act is implicated in trafficking cases because organized groups of traffickers conspire to conduct illegal traffic of women for purposes of sexual exploitation.¹⁴⁶ The provisions of this Act protect a women's right to be free from slavery, and from being targeted based on stereotypes regarding gender and ethnicity.¹⁴⁷ Specifically, Section 1985(3) of the Civil Rights Act creates a private cause of action in cases involving "two or more persons in any state or territory who conspires for the purpose of depriving any person or group of persons of the equal protection of the laws or of equal privileges and immunities under the laws."¹⁴⁸ The protection afforded by Section 1985(3) includes the right to be free from slavery and involuntary servitude.¹⁴⁹

¹⁴² 18 U.S.C. §§ 1961-68 (1994 & Supp. 1998). The Racketeer Influenced and Corrupt Organization Act ("RICO") was enacted at Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S.C.C.A.N. (84 Stat.) 922, 941-48; see Corrigan, *supra* note 45, at 185. Under RICO a private cause of action for anyone injured by the actions of an "enterprise" illegally engaged in interstate or international commerce through a "pattern of racketeering activity" or unlawful acquisition of income. Corrigan, *supra* note 45, at 185-86. A pattern of racketeering activity requires that plaintiff show that defendant perpetrated two RICO violations within the last ten years. *Id.*

¹⁴³ *Id.*

¹⁴⁴ See Corrigan, *supra* note 45, at 186. "Congress enacted RICO to eliminate the unlawful activities of those engaged in organized crime." *Id.* at 186-87.

¹⁴⁵ 42 U.S.C. § 1985(3) (1984); see Corrigan, *supra* note 45, at 187. Section 1985 provides that:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* A claim under § 1985(3) has three elements; plaintiffs must prove the existence of a conspiracy, discriminatory motive, and protected rights.

The United States Immigration and Nationality Act ("INA") penalizes those who encourage or induce an alien to enter or reside in the United States, knowingly, or in reckless disregard of the fact that such entry violates the law.¹⁵⁰ The INA also authorizes civil and criminal punishments for documented fraud associated with immigration.¹⁵¹ In conducting illegal business, traffickers often use fraudulent identification and travel documents for trafficking victims, including stolen or fake passports and visas.¹⁵² Hence, "in trafficking cases involving immigration related document fraud, prosecutors may charge traffickers with various INA violations."¹⁵³ In addition, there are several offenses associated with trafficking that are considered aggravated felonies under the INA.¹⁵⁴ These felonies may be deemed crimes of moral turpitude. Where intent to defraud is a specific element of the statutory defense or is implicit in the crime, prosecutors should be able to prove the moral turpitude of an aggravated felony.¹⁵⁵ In essence, the INA provisions can be utilized to deport or extradite traffickers from the United States.¹⁵⁶

D. Problems with Enforcement

Although valuable efforts to eliminate international trafficking have been made through the U.N., European community, and the U.S., many of the existing legal mechanisms are relatively ineffective and lack enforcement capability.¹⁵⁷ The early Conventions and CEDAW

¹⁵⁰ Immigration and Nationality Act of 1952, ch. 477, 8 U.S.C. § 1324, 66 Stat. 163 (1952).

¹⁵¹ Corrigan, *supra* note 45, at 189 (noting that under 1324(c)(A), it is unlawful to falsify any document in order to obtain a benefit under the INA; to provide a fraudulent document to someone else or to prepare, file, or assist another in preparing or filing any application for benefits).

¹⁵² *See id.*

¹⁵³ *Id.* at 189-90.

¹⁵⁴ *See id.* at 189. Section 1101(a) (43) states that "aggravated felony" includes: offenses related to money laundering; crimes of violence; racketeering offenses; owning, controlling, managing, or supervising a prostitution business; transportation for purposes of prostitution; peonage, slavery, and involuntary servitude; alien smuggling; document fraud; and under Section 1324(c)(A), it is unlawful to falsify any document in order to obtain a benefit under the INA; to provide a fraudulent document to someone else; or to prepare, file, or assist another in preparing or filing any application for benefits.

¹⁵⁵ Corrigan, *supra* note 45, at 190-91.

¹⁵⁶ *Id.* at 191.

¹⁵⁷ *See id.* at 191-92.

are marked by serious enforcement problems that undermine their goals.¹⁵⁸ For example, the 1949 Convention requires states to report information regarding all legal and non-legal measures they adopted in furtherance of the terms of the treaty to the U.N. Secretary General annually.¹⁵⁹ “This reporting and communicating procedure is the only method of enforcing the 1949 Convention’s provisions.”¹⁶⁰ No independent supervisory body exists that is empowered to evaluate and act upon states’ reports.¹⁶¹ Furthermore, the treaty’s language is ambiguous and fails to describe how traffickers should be punished.¹⁶²

Although “potentially useful in promoting the equality of women, [CEDAW] is ineffective as a prohibition against international trafficking of women for the sex trade.”¹⁶³ Specifically, there is no mention of when States must accomplish the elimination of trafficking and establish an independent body to collect information regarding the status of women.¹⁶⁴

While the United States has numerous laws that may be used to combat trafficking of women for the sex trade, most are ineffective in eliminating the problem.¹⁶⁵

Classifications of trafficking vary from one law enforcement agency to another. The limited amount of resources available to fight trafficking cases prevents United States law enforcement officials from successfully discovering and prosecuting such cases.¹⁶⁶ Prosecution of traffickers is hindered both by limited United States enforcement measures and a lack of zeal to punish those who traffic women for the sex trade.¹⁶⁷

The Mann Act is limited in its ability to prosecute sex trafficking cases.¹⁶⁸ Many prosecutors may be reluctant to invoke the Act because it was enacted almost one hundred years ago and is considered to be outdated.¹⁶⁹ A major hurdle with the Mann Act is its application. The

¹⁵⁸ See *id.* at 191.

¹⁵⁹ *Id.* at 195.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 196.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See *id.* at 192.

¹⁶⁶ *Id.* at 203.

¹⁶⁷ *Id.*

¹⁶⁸ See *id.* at 204 (noting that prosecutors do not often use Mann Act in trafficking cases where women travel abroad).

¹⁶⁹ *Id.*

statute is seldom used to prosecute cases that involve women who are trafficked beyond national borders.¹⁷⁰ It is generally invoked only in cases where women are transported within the United States' borders.¹⁷¹

The application of RICO to trafficking prosecutions also has limitations. "It may not be possible to prosecute isolated cases of isolated trafficking under RICO."¹⁷² Traffickers are often guilty of kidnapping, involuntary servitude, extortion, bribery, racketeering, and money laundering. Thus, RICO creates difficulty in prosecuting traffickers because it classifies the traffickers' operation as an "enterprise" and their activities as a "pattern of racketeering activity."¹⁷³ Nonetheless, the increase of organized criminal groups in the international sex trade business indicates the potential for RICO in prosecuting large organized trafficking violations.¹⁷⁴

The Civil Rights Act of 1964 imposes a difficult burden of proof.¹⁷⁵ A conviction under the Civil Rights Act requires proof of discriminatory motive, rather than monetary gain, as the motivation for trafficking.¹⁷⁶ It is often difficult to prove that specific groups of women are victimized.¹⁷⁷

¹⁷⁰ *Id.* at 204-05 (alleging that the plain language of the statute allows for prosecution of traffickers who transport women across international borders).

¹⁷¹ *Id.* (alleging that there is a lack of judicial precedent utilizing the Mann Act as a means of prosecuting perpetrators of international sex trafficking).

¹⁷² *Id.* at 206 (noting that because a civil RICO charge necessitates the classification of the traffickers' operation as an "enterprise" and their activities as a "pattern of racketeering activity" it makes it more difficult to prosecute cases of isolated trafficking under RICO).

¹⁷³ *Id.* at 205-06; *see also* Lan Cao, *Illegal Traffic In Women: A Civil RICO Proposal*, 96 YALE L.J. 1297, 1311 (1987) (explaining that the illegal activities associated with sex trafficking constitute a pattern of activity related to the criminal enterprise when organized trafficking operations kidnap or otherwise coerce women into being transported in interstate or international commerce for purposes of prostitution). Cao also notes that proving "pattern of racketeering activity" requires that plaintiff demonstrate that defendant perpetrated two RICO violations within the last ten years. *Id.* at 1309. These predicate acts are comprised of various state and federal offenses, including kidnapping, mail and wire fraud, and interstate transportation of women for prostitution (Mann Act violation). *Id.*

¹⁷⁴ Corrigan, *supra* note at 45, at 206.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* (stating that discriminatory motive without evidence of marketing materials used to procure women creates a significant limitation in application of Civil Rights Act to trafficking cases).

¹⁷⁷ *Id.*

While particularly useful in prosecuting traffickers, immigration laws are ineffective for various reasons. For instance, they are traditionally viewed as applying to cases involving illegal aliens, rather than cases where women are coerced into entering the United States.¹⁷⁸ Additionally, there are several international agreements that conflict with the protections available to victims of trafficking under United States immigration laws.¹⁷⁹

Accordingly, the United States and other countries must call for zealous leadership to combat trafficking. First, this leadership must express a zero-tolerance policy toward trafficking and the conditions that allow it to thrive (e.g. legalized prostitution).¹⁸⁰ Second, government authorities found to be taking bribes or otherwise protecting sex trafficking operations must be disciplined or dismissed. Third, the international community needs to truthfully and precisely record all human rights violations from around the world. In its annual Trafficking in Persons ("TIP") report, the United States, as mandated by Congress through the Victims of Trafficking Protection Act of 2000, must report the severity of the trafficking crisis and the lack of government action in many countries.¹⁸¹ The conclusions of this report

¹⁷⁸ *Id.* at 206-07.

¹⁷⁹ *Id.* at 207 (recognizing the ability of domestic immigration and anti-prostitution laws to undercut benefits afforded to trafficking victims by international anti-trafficking treaties); see also Chuang, *supra* note 94, at 68.

¹⁸⁰ Statement of Lisa L. Thompson, Liaison for the Abolition of Sexual Trafficking (The Salvation Army National Headquarters), *2002 Trafficking in Persons Report: A Whitewash*, June 10, 2002.

¹⁸¹ *Trafficking Report Overrates Worst Offenders, Undermines Objective of New Law*, World Vision, June 7, 2002, available at http://www.worldvision.org/worldvision/wvusuf/nsf/stable/globalissues_childprotection_tipstatement [hereinafter *Trafficking Report*] (World Vision is a Christian humanitarian organization, serving the world's poorest children and families in nearly 100 countries). The report "serves as a report card for nations that have serious trafficking problems. The 109-page report includes a three-tier rating system, which places countries that have the worst trafficking records in Tier 3." *Id.* Tier 2 has nations with diverse records. *Id.* "Tier 1 represents countries that are considered to be compliant with the standards of the Act." *Id.*; see also Ryf, *supra* note 49, 54 (explaining that:

the Act first requires the U.S. State Department to prepare a report evaluating foreign governments' efforts to combat severe forms of trafficking. A report must be completed for all countries that receive economic or security assistance and are countries of origin, transit or destination for trafficking victims. The assessment shall detail the participation, facilitation, and condoning of trafficking by government authorities and other individuals as well as the steps taken to prohibit and punish such activity. Additionally, the governments' cooperation in

are then used in United States international and domestic policy decisions. For instance, the assessments in the report “will determine how the President will be advised to exercise the Trafficking and Violence Protection Act of 2000’s directive that the President deny non-humanitarian aid to countries that fail to meet minimum requirements in the effort to end sex trafficking in their own country.”¹⁸² However, the report is often disappointing due to the lenient ratings applied to some countries with well-known trafficking and child prostitution problems.¹⁸³

Recently, the United States and other countries have initiated bilateral and multilateral programs and initiatives to combat trafficking.¹⁸⁴ The United States is working with the European Union, the Group of Eight, the United Nations, the Organization for Security and Cooperation in Europe (“OSCE”) and a number of countries to combat trafficking in women and children.¹⁸⁵

international investigations, extradition of traffickers, and assistance of trafficking victims must be evaluated).

¹⁸² Protection Act of 2000, *supra* note 12, at § 109(a). In the final section of the Act devoted to international sanctions, the President is authorized to help nations meet the minimum standards. *Id.* The Act suggests that such assistance should include aid in drafting new laws, investigating and prosecuting traffickers, and creating new programs, projects, facilities, and activities that protect victims. *Id.*

¹⁸³ *Id.* But see Tom Strode, ERLC, *Others Displeased at New Trafficking Report*, BP NEWS, June 6, 2002, at <http://www.bpnews.net/bpnews.asp?ID=13522> (last visited Jan. 24, 2004).

The Trafficking In Persons report released June 5, 2002, rated 89 countries on their efforts to deal with trafficking, a worldwide problem that has been estimated to involve from 700,000 to four million people The Department of State listed 19 countries in tier 3 There should have been more countries in Tier 3, and some in Tier 1 should have been lower, critics said.

Strode, *supra*.

¹⁸⁴ Francis Miko, *Trafficking in Women and Children: The U.S. and International Response*, CONGRESSIONAL RESEARCH SERVICE CRS-12 (last updated Mar. 18, 2002), available at <http://fpc.state.gov/documents/organization/9107.pdf> (last visited Jan. 24, 2004).

¹⁸⁵ *Id.* at CRS-13.

The United States and the European Union agreed on a joint initiative to combat trafficking in November 1997. U.S. and EU officials met in Luxembourg to launch a jointly funded initiative against trafficking in women from Russia and Eastern Europe. It is primarily an information campaign, warning potential victims and an education program for law enforcement, customs and consular officials to heighten their awareness of the problem. Pilot projects were launched in Poland by the EU and in Ukraine by the United States. If successful, the program could be expanded to other countries. The United States has initiated bilateral cooperation programs in Russia, other former Soviet Republics, Bosnia, Albania, Poland, Bulgaria, Hungary, Thailand and the Philippines to fight trafficking.

Id.

V. ENFORCEMENT AND REMEDIAL MECHANISMS TO CURTAIL TRAFFICKING

A broad range of international and domestic agreements address the problem of sex trafficking; however, there is a lack of effective enforcement mechanisms or remedies. There are various legal and non-legal measures that still must be implemented to curtail trafficking. For anti-trafficking legislation to be effective three areas should be addressed; 1) prevention; 2) prosecution of traffickers; and 3) protection.¹⁸⁶

A. Prevention

One essential need is the implementation of information campaigns in major trafficking countries. According to Kelly Hyland, author of *Protecting Human Victims of Trafficking: An American Framework*, young women and girls should be informed about the dangers of trafficking and how to avoid traffickers.¹⁸⁷ Television, radio, newspapers, as well as school programs, must utilize their media as an effective forum to educate women.¹⁸⁸ In a brochure entitled, "Be Smart, Be Safe," launched by the U.S. State Department, warnings were given to women about trafficking.¹⁸⁹ The brochure advises women to "research employment and marriage agencies, obtain correct names and addresses where they will be working, keep hidden copies of their passport, and let friends and family know their location."¹⁹⁰ In addition, law enforcement and emergency contact numbers are included for victims trafficked into the United States.¹⁹¹ To be an effective information campaign, there must be widespread distribution to the target group.¹⁹² Furthermore, information should encourage

¹⁸⁶ Hyland, *supra* note 10, at 62.

¹⁸⁷ *Id.* at 45.

¹⁸⁸ *Id.*

¹⁸⁹ Hyland, *supra* note 10, at n.140. Bureau for Int'l Narcotics and Law Enforcement Aff., U.S. Dept. of State, *Be Smart, Be Safe*. This brochure is available in 24 languages. *Id.*

¹⁹⁰ *Id.* at 45 (quoting the *Be Smart, Be Safe* brochure, *supra* note 189).

¹⁹¹ *Id.* The brochure suggests that women will be deported if they are in the US illegally employed in illegal activities such as prostitution. Fear of deportation and retribution keeps women from coming forward and reporting their traffickers. *See id.* at n.16.

¹⁹² *Id.*

women to report to law enforcement if they have been trafficked, and should emphasize that they will be protected.¹⁹³

There are few official reports, studies, or statistics available on trafficking women for the sex trade thus indicating a critical need also for intelligence and research.¹⁹⁴ “The international community could benefit greatly from more information on organized crime’s link to trafficking, trafficking routes, and recruitment methods in order to properly inform potential victims of the risks and to eradicate the criminal activity before more women are victimized.”¹⁹⁵

Finally, an increase of economic opportunities for women would allow them to adequately support their families without having to leave their native countries.¹⁹⁶ Scholars suggest that preventive programs should focus on job training and fighting sex-discrimination.¹⁹⁷ Some solutions include ensuring equal access to education and guaranteeing employment promotions within the social classes.¹⁹⁸

B. Prosecution

Essentially, to eradicate the problem of trafficking, law enforcement procedures must be established to ensure the rescue of trafficking victims and the prosecution of traffickers. Laws must decrease the traffickers’ incentives and increase the risk of prosecution and punishment.¹⁹⁹ Tough prison sentences are critical, thus, removing traffickers from further activity, and financial penalties will decrease profits.²⁰⁰

One method of decreasing the profitability of trafficking is to provide victims with a private cause of action.²⁰¹ This allows victims to recover compensatory, punitive, and/or pecuniary damages.²⁰² The

¹⁹³ *Id.* at 46.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 47.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 50.

²⁰⁰ *Id.* “Another way to decrease the profitability of trafficking is through asset forfeiture. In general, asset forfeiture provides for seizing and confiscating assets that result from specific crimes. It is generally applicable to organized crime offenses such as RICO, money laundering, drug trafficking, kidnapping, extortion, and bribery.” *Id.* at 50.

²⁰¹ *Id.*

²⁰² *Id.* Victims possibly find resources to sue from non-profit organizations.

civil method is favorable because it is a victim-centered approach that is a source of vindication.²⁰³ Victims of trafficking should seek punitive damages from their former traffickers.²⁰⁴ These damages are justified because actual damages are inadequate as a means of compensating victims for their traumatizing experiences, and punitive damages financially disable traffickers.²⁰⁵

C. Protection

The prosecution of individual traffickers is dependant upon a victim reporting the crime. Thus, a victim's return to her native country poses a threat to her well-being. Traffickers wait for them at the border, airport, or village.²⁰⁶ For trafficking prevention methods to be effective, victims should be assured a safe return to their countries and the same protection should be offered for victims that remain in the United States as well.²⁰⁷ This is essentially a process of reintegration or a comprehensive approach of re-introducing the victim into society.²⁰⁸ Effective assistance should start as soon as the woman is identified as a trafficking victim.²⁰⁹ Social services should be provided, including medical assistance and counseling for health problems such as sexually transmitted diseases, AIDS, complication from abortions, drug addictions, skin diseases, and physical impairments.²¹⁰ And finally, job training, economic support, and

²⁰³ *Id.* at 51.

A civil proceeding has more likelihood of success than a criminal one because the burden of proof is by a preponderance of the evidence, rather than by reasonable doubt . . . Civil cases have the advantage of being brought and controlled by the victim, whereas criminal cases are brought by the state and controlled by the prosecutor.

Id.

²⁰⁴ *Id.*

²⁰⁵ *Id.* In *United States v. Cadena*, Criminal No. 98-14015, at 18-24 (S.D.Fla. filed May 7, 1999) (unpublished sentencing transcript, on file with Kelly Hyland, *supra* note 10), each victim received compensation from \$6,750 to \$198,000 based on an estimate of ninety clients per woman per week to whom the owner charged twenty-five dollars per sex act.

²⁰⁶ Hyland, *supra* note 10, at 59.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ See Asia Watch Women's Rts. Project, *supra* note 42 (noting that immigration officials, police, and traffickers have an interest in the women's return).

²¹⁰ *Id.*

educational opportunities are critical to re-entering society in order to build self-esteem and establish independence.²¹¹

VI. CONCLUSION

A comprehensive approach that combines prevention, law-enforcement and rehabilitation will be effective in addressing the complex crime of trafficking. A collaborative effort of all nations to individually and collectively increase enforcement efforts regarding domestic and international anti-trafficking provisions is necessary.

A global problem such as trafficking needs a global solution. Women that fall prey to trafficking should not be victimized a second time by the very system designed to protect them. The international exploitation of women for the sex trade is multi-faceted and rapidly expanding. It is essential that a definition of trafficking be consistent throughout domestic and foreign legislation. Without adherence to a harmonious definition, the result is bound to be the inconsistent prosecution of traffickers. Additionally, any effort to combat trafficking must address the complex, social, cultural, and economic factors that contribute to the victimization of women. Corrupt public officials who assist sex traffickers must be identified and removed. There is also a need for increased dissemination of information regarding trafficking to combat the sexual exploitation of women. Although attempts to combat trafficking have been made by the international community through treaties and various domestic laws, the legislation has proven ineffective. Additionally, countries through which women are trafficked must be pressured into enforcement.

The international community must take the protection of women's rights seriously. Governments around the world must continue to pass legislation, hold conferences, issue reports, and sign cooperative agreements. Accordingly, recognition of the equality between men and women along with a respect for human dignity is essential. We can no longer consider women as expendable, reusable, and resalable commodities that offer a highly desirable service of work. Maintaining the dignity of these "pretty faces" is worth far more than "pretty pennies."

²¹¹ Hyland, *supra* note 10, at 60.