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THE STRONG ARM OF THE LAW IS WEAK: HOW THE TRAFFICKING VICTIMS PROTECTION ACT FAILS TO ASSIST EFFECTIVELY VICTIMS OF THE SEX TRADE

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I. INTRODUCTION

Acts that occur in the underbelly of our global community can be shocking to many, but they occur every night and day right in our own neighborhoods. Sex trafficking, a derivative of human trafficking, is occurring in epidemic proportions on a global scale while the victims are suffering in silence. Sexual exploitation has taken the media forefront in recent years.¹ Much legislation has been passed to try to curb this illegal marketing of innocent women and children. Laws in various countries have been evaluated, studied, and researched and lead to the sad conclusion that these laws alone are insufficient in adequately providing the protection and relief so desperately needed by those victimized.² Trafficking in persons is

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, 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.³

† Associate Professor at the Lincoln Memorial University Duncan School of Law. The author would like to thank Rachelle Douglas Breckenridge and Lorraine Elzia for taking the time to read and give feedback on this Article. The author would also like to thank to the entire *Creighton Law Review* editorial staff for all of the time and effort they put into transforming this Article into what you see today. A form of this paper was first presented at the 8th International Conference on Law Sponsored by the Athens Institute for Education and research in Athens, Greece (July 2011). The author would like to thank those individuals at the conference that helped to form and mold the thesis of this Article.

1. See generally U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/>.

2. Margaret A. Healy, Note, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 *FORDHAM INT'L L.J.* 1852, 1884-88 (1995).

3. Ratna Kapur, *Travel Plans: Border Crossings and the Rights of Transnational Migrants*, 18 *HARV. HUM. RTS. J.* 107, 116 (2005) (quoting Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the

Sex trafficking “is the demand for prostitution and commercial sexual services that is a central cause of trafficking for sexual exploitation.”⁴ Experts agree that trafficking patterns flow with “the global supply of and demand for trafficked women.”⁵ Just “like any other capitalist industry,” the sex industry is subject “to the natural pulls of supply and demand.”⁶ Scholars such as Siddharth Kara have focused on the economic aspects of sex trafficking.⁷ Kara espouses the belief that the demand structure and the supply aspect of the worldwide economy make trafficking a profitable business that will be extremely difficult to eradicate.⁸

Too often, however, “the customer’s role in sex trafficking [is] invisible” because the demand side of the equation is never addressed.⁹ Since the mid-1970s, approximately thirty million women and young girls have been subjected to the worldwide trade of sex trafficking.¹⁰

Trafficking victims traditionally came from Latin America and Southeast Asia; now, however, victims originate in Eastern and Central Europe.¹¹ Experts note that “trafficking generally originates in impoverished areas that lack viable economic opportunities for women.”¹² Studies also indicate that wealthier countries are the main

United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc A/55/383 (Dec. 12, 2000)).

4. Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN’S L.J. 137, 164 (2004).

5. 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, 157 (2001).

6. Michelle R. Adelman, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN’S STUD. 387, 391 (2004).

7. See SIDDHARTH ASHOK KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* (2009).

8. John Bowe, *The Economics of Sex Slavery*, MOD. AM. SLAVE LAB. & DARK SIDE GLOBAL ECON. (Jan. 22, 2009), <http://johnbowe.wordpress.com/2009/01/22/the-economics-of-sex-slavery/>.

9. Balos, *supra* note 4, at 165.

10. Norma Hotaling & Leslie Levitas-Martin, *Increased Demand Resulting in the Flourishing Recruitment and Trafficking of Women and Girls: Related Child Sexual Abuse and Violence Against Women*, 13 HASTINGS WOMEN’S L.J. 117, 119 (2002).

11. Corrigan, *supra* note 5, at 156. Many women come from the Far East with the idea of traveling to Britain in order to pay off a family debt. *Police Uncover Human Trafficking Misery*, SCOTSMAN.COM (Dec. 5, 2007), http://www.scotsman.com/news/scottish-news/top-stories/police_uncover_human_trafficking_misery_1_702485. Unfortunately, the women end up in the “sex industry after becoming ‘debt-bonded’ to a relative living in the UK.” *Id.*

12. Corrigan, *supra* note 5, at 157. The following statistics represent the high estimates of men that have purchased sex acts in various countries: United Kingdom—8.8%; Spain—39%; Finland—13%; Norway—12.9%; Sweden—13.6%; Netherlands—21.6%; Switzerland—19%; Japan—37%; Thailand—75%. *Percentage of Men (by Country) Who Paid for Sex at Least Once: The Johns Chart*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=004119> (last updated Jan. 6, 2011).

sources of exploitation and demand.¹³ According to a study released on December 5, 2007, "California is a top destination for human traffickers who coerce people into the sex trade or hard labor through force or fraud."¹⁴ Apparently, California is vulnerable to trafficking due to its nature as an international border of various ports and airports and a popular destination for immigrants.¹⁵

The United Nations estimates that "2.5 million people are in forced labor (including sexual exploitation) at any given time as a result of trafficking."¹⁶ The Polaris Project estimates that the sex trafficking industry generates approximately \$32 billion a year.¹⁷ This industry has turned into a sexually derived industry encompassed by the exploitation of women through pornography, mail-order brides, sex tourism, and forced prostitution.¹⁸

In 2003, the United States government estimated that the number of people annually trafficked was between 800,000 and 900,000.¹⁹ Even more harrowing, it is estimated that 50,000 women and children from all around the world are annually trafficked into the United States "specifically for the sex trade."²⁰ A 2007 study estimated the number of people trafficking within the United States every year is anywhere between 14,500 and 17,500.²¹

[S]ex trafficking [is] a "special evil," a multi-billion dollar "underground of brutality and lonely fear," . . . "[T]hose who create these victims and profit from their suffering must be severely punished and . . . those who patronize this industry debase themselves and deepen the misery of others. And governments that tolerate this trade are tolerating a form of slavery."²²

13. DONNA M. HUGHES, *THE DEMAND FOR VICTIMS OF SEX TRAFFICKING* 7 (2005), available at http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf.

14. *State Top Choice of Human Traffickers*, ASSOCIATED PRESS, Dec. 5, 2007, <http://articles.latimes.com/2007/dec/05/local/me-briefs5.s2>.

15. *Id.*

16. *Human Trafficking: The Facts*, U.N. GLOBAL INITIATIVE TO FIGHT HUM. TRAFFICKING, http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf (last visited Apr. 7, 2012).

17. Handout on Human Trafficking Statistics from the Polaris Project (2009) (on file with author); see also *Ten Years of Impact*, POLARIS PROJECT, <http://www.polarisproject.org/about-us/10-years-of-impact> (last visited Apr. 7, 2012).

18. Corrigan, *supra* note 5, at 152-53.

19. Victoria Zunitch, *Experts Now Focusing on Demand-Side of Sex Trade*, WOMEN'S ENEWS.ORG (Oct. 17, 2003), <http://www.womensenews.org/story/the-world/031017/experts-now-focusing-demand-side-sex-trade>.

20. *Id.*

21. Press Release, FBI Minneapolis Field Office, Minneapolis Man Sentenced on Human Trafficking Charges (Nov. 5, 2007) (available through U.S. Fed. News).

22. Peter Landesman, *The Girls Next Door*, N.Y. TIMES, Jan. 25 2004, <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html?pagewanted=all> (quoting

In 2000, the U.S. Congress determined that sex trafficking is a form of modern slavery, affecting nearly 700,000 women and children yearly.²³ Accordingly, the profits of the trafficking industry are estimated to be around \$9.5 billion, with at least \$4 billion attributed to the brothel and prostitution industries.²⁴ In 2004, one scholar predicted that human trafficking, which ballooned after the fall of the Soviet Union in the 1990s, would become the most profitable criminal activity in the world, surpassing narcotics and weapons trafficking.²⁵ According to research completed in 2008 and sponsored by the U.S. government, "approximately 800,000 people are trafficked across national borders," and this staggering figure is not including those trafficked within their own countries.²⁶

In 2011, the State Department released a report showing numerous countries that were not doing enough to combat trafficking in their countries.²⁷ Some of the countries on the list are Algeria, Cambodia, Bolivia, Curacao, and the Democratic Republic of Congo.²⁸ In some countries trafficking has led to governmental corruption and organized crime.²⁹ This corruption of politicians and law enforcement officials is crucial for mass trafficking of women and children to be successful.³⁰

One might think that our global community would be outraged over the atrocious acts being committed against children, but as a whole, our global community has remained silent. And as such, children continue to be brutalized, beaten, dehumanized, raped, and traf-

President George W. Bush, Address to the United Nations General Assembly (Sept. 23, 2003)).

23. 22 U.S.C. § 7101(b)(1) (2000); Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 FORDHAM INT'L L.J. 721, 721 (2000).

24. NAT'L COALITION AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING FACTS (2006), available at <http://www.ncadv.org/files/HumanTrafficking.pdf>.

25. Tara McKelvey, *Of Human Bondage*, AM. PROSPECT (Oct. 17, 2004), <http://prospect.org/article/human-bondage>.

26. CLARE RIBANDO SEELKE & ALISON SISKIN, CONGRESSIONAL RES. SERV., RL34317, *TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS*, at i (2008), available at <http://fpc.state.gov/documents/organization/99499.pdf>.

27. See generally U.S. DEP'T OF STATE, *supra* note 1.

28. *Id.*

29. See Press Release, *supra* note 21, at 11.

30. Donna M. Hughes, Address at the U.S. Embassy and the Holy See, Pontifical Gregorian University, Rome, *The Demand: Where Sex Trafficking Begins, A Call to Action: Joining the Fight Against Trafficking in Persons* (June 17, 2004). According to Gary Haugen, president of the International Justice Mission, "You can only carry out this trade at significant levels with the cooperation of local law enforcement. In the developing world the police are not seen as a solution for anything. You don't run to the police; you run from the police," and according to a Mexico City official, "[c]orruption is the most important reason these networks are so successful." Landesman, *supra* note 22.

ficked across country lines. There are many reasons that this happens. Two common sources of sexual exploitation of children are exploitation by a family member or exploitation by the country itself through a corrupt government.³¹ One of the main reasons that children are the chosen targets of trafficking is that there is no consensus of the definition of "child" among the countries.³² If countries are not able to determine or verify victims' ages, it is even more difficult to protect children from trafficking because their consent becomes an issue.³³

Another reason trafficking occurs is poverty within a country. The lack of resources within a country harbors vulnerability of persons and the people are not adequately protected.³⁴ Those victims who lack monetary resources to escape their situations are ultimately "stuck" and easy "prey" for the traffickers.³⁵ Poverty is not the only reason for being easy prey. Often times trafficking gangs take advantage of women and children who are traveling by arranging for travel documents, such as passports and visas, to be confiscated.³⁶ The victims are then left stranded in a foreign country without money or proper travel documentation and are forced into prostitution to work off their debt.³⁷ This, many times, is a debt so inflated and fabricated, that it may take years to work off.

Asian countries are particularly popular in the sexual tourism category; countries such as China and Japan are at the top of the sex

31. See U.S. DEP'T OF STATE, *supra* note 1, at 7.

32. Daniel Edelson, Note, *The Prosecution of Persons Who Sexually Exploit Children in Countries Other than Their Own: A Model for Amending Existing Legislation*, 25 *FORDHAM INT'L L.J.* 483, 488-89 (2001).

33. VITIT MUNTARBHORN, REPORT OF THE RAPPORTEUR-GENERAL (1996), http://www.csecworldcongress.org/PDF/en/Stockholm/Reports/Stockholm%20Congress%20General%20Rapporteur%27s%20Final%20Report%201996_EN.pdf. Many times, a pimp/trafficker is able to provide false identification to the underage victim and hope that she will be able to get through the system as an "adult." This is done in hopes that the minor will not get sent to a juvenile facility. If she is sent to a juvenile justice center, she may be "held, investigated, traced, and placed in foster care, mental health facilities, or group homes where . . . [she may] respond to counseling and rehabilitation." *What Is Human Trafficking?*, THE FIFTH STANDARD, http://fifthstandard.com/What_is_Trafficking_.html (last visited Apr. 7, 2012).

34. Mohamed Y. Mattar, *Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated Under the U.S. Trafficking in Victims Protection Act*, 10 *BROWN J. WORLD AFF.* 159, 161 (2003).

35. See Susan Tiefenbrun, *The Saga of Susannah a U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 *UTAH L. REV.* 107, 117 (2002).

36. Kathryn E. Nelson, Comment, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 *HOUS. J. INT'L L.* 551, 555 (2002).

37. *Id.* at 556-57.

trafficking lists for markets for women. Around 225,000 people are trafficked out of South Asia each year.³⁸

Japan provides the largest market for the trafficking of Asian women for sexual purposes.³⁹ Approximately 150,000 non-Japanese women work as prostitutes in Japan.⁴⁰ Accordingly, "[t]he Japanese government disseminated 500,000 copies of a brochure in many languages for trafficking victims seeking help and 25,000 that describe the link between prostitution and sex trafficking."⁴¹

Thailand is another country that has a high rate of women being forced into the sex industry. The difference between Thailand and other Asian countries is the amount of children forced to become prostitutes. Many men, women, and children are trafficked from Cambodia, Laos, and Burma to Thailand for both sexual and labor exploitation.⁴² The Thai government enacted the Prostitution Prevention and Suppression Act⁴³ in 1996 in order to arrest the scourge of forced prostitution and trafficking.⁴⁴ This law criminalized those involved in the sexual exploitation of men, women, and children.⁴⁵ Penalties for trafficking in children ranged according to the victims' ages.⁴⁶ As of 2008, if a child is fifteen to eighteen years old, the penalty ranges from six to twelve years plus a fine.⁴⁷ If the victim is less than fifteen years of age, the offender runs the risk of being jailed for eight to fifteen years plus a fine.⁴⁸ Between September 2005 and February 2007, the Thai government reported eighty-eight arrests in cases against traffickers.⁴⁹ The Thai government provides shelters for

38. FRANCIS T. MIKO & GRACE (JEA-HYUN) PARK, CONGRESSIONAL RES. SERV., RL30545, *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE 2* (2002), available at <http://fpc.state.gov/documents/organization/9107.pdf>.

39. *Facts and Statistics*, COALITION AGAINST TRAFFICKING WOMEN-ASIA PAC., <http://catwap.wordpress.com/programs/research-documentation-publications/facts-and-statistics/> (last visited Apr. 7, 2012).

40. *Id.*

41. *Japan*, HUMANTRAFFICKING.ORG, <http://www.humantrafficking.org/countries/japan> (last visited Apr. 7, 2012).

42. *Thailand*, HUMANTRAFFICKING.ORG, <http://www.humantrafficking.org/countries/thailand> (last visited Apr. 7, 2012).

43. B.E. 2539 (1996), *superseded by* Anti-Trafficking in Persons Act, B.E. 2551 (2008).

44. *Thailand*, *supra* note 42.

45. *Id.*

46. Prostitution Prevention and Suppression Act, B.E. 2539 § 9 (1996), *translation available at* <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/46403/65063/E96THA01.htm>.

47. Anti-Trafficking in Persons Act, B.E. 2551 § 52 (2008), *translation available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81747/91028/F1711230791/THA81747.pdf>.

48. *Id.*

49. *Thailand*, *supra* note 42.

trafficking victims in which the victims can receive board, food, counseling, and medical care.⁵⁰

One of the many positives of the Trafficking in Persons Report, which is produced yearly by the United States government, is the information that it makes available regarding trafficking in various countries around the world. The 2011 Trafficking in Persons Report stated that Afghanistan "is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking."⁵¹ Afghani parents sometimes knowingly sell their children.⁵² In Japan, the trafficking report noted that trafficking is a big problem and Japanese organized crime groups, known as Yakuza, are at the root of the problem.⁵³ The Philippines also has a sex trafficking problem. In the Philippines, which "is a source country and, to a much lesser extent, a destination and transit country for men, women, and children who are subjected to sex trafficking and forced labor. A significant number of Filipino men and women who migrate abroad for work are subjected to conditions of involuntary servitude worldwide."⁵⁴ Additionally, internal trafficking also remains a serious problem.⁵⁵

Millions of women were easily trafficked into the sex industry when the Soviet Union collapsed and an economic depression followed.⁵⁶ According to a 2001 article, "Eastern European countries, particularly Russia, Ukraine, and the Czech Republic, became the predominant source countries from which traffickers procure women."⁵⁷ Over 100,000 women from Ukraine alone have been forced into the sex trade in the last ten years.⁵⁸

Before the statutory analysis is commenced, it must be noted that until 2000, many countries, including the United States, had failed to address this global issue. In the landmark legislation, the Trafficking Victims Protection Act of 2000,⁵⁹ the United States addressed these crimes against humanity in the form of prevention, prosecution, protection, and partnership. And while this first of its kind legislation is a step in the right direction, there is still much room for improvement and even more work to be done.

50. *Id.*

51. U.S. DEP'T OF STATE, *supra* note 1, at 62.

52. *Id.*

53. *Id.* at 205.

54. *Id.* at 295.

55. *Id.*

56. See Corrigan, *supra* note 5, at 158 n.23.

57. *Id.* at 156.

58. *Factbook on Global Sexual Exploitation: Ukraine*, UNIV. R.I., <http://www.uri.edu/artsci/wms/hughes/ukraine.htm> (last visited Apr. 7, 2012).

59. Pub. L. No. 106-386, 114 Stat. 1464.

II. THE UNITED STATES CONGRESS ADDRESSES HUMAN TRAFFICKING IN LANDMARK FEDERAL LEGISLATION

A. THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

The Trafficking Victims Protection Act of 2000⁶⁰ ("TVPA") defines "sex trafficking" as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."⁶¹ The TVPA is considered modern anti-slavery legislation in the United States.⁶² This law recognizes the fact that trafficking in humans is concurrently a problem within the United States as well as a crisis internationally.

The TVPA has three levels: prevention, protection, and prosecution.⁶³ Prevention is governed by the TVPA's promise to put out an annual report assessing the efforts of governments in meeting minimum standards in preventing trafficking.⁶⁴ For those countries that did not meet minimum standards, President Bush made specific requirements regarding United States funding.⁶⁵ The TVPA also incorporates protection measures.⁶⁶ Assistance programs provide medical services and housing to victims.⁶⁷ The Department of Homeland Security, Bureau of Immigration and Customs Reform, and Department of Justice handle prosecution. These departments ultimately identify and prosecute sex traffickers.

The TVPA created three tiers in which to place countries based on their efforts to reduce sex trafficking.⁶⁸ Tier one is for those countries whose governments fully comply with the Act's minimum requirement standards for eliminating sex trafficking in their country.⁶⁹ Tier two is comprised of those countries whose governments do not fully comply with government standards but that are "making significant efforts to bring themselves into compliance."⁷⁰ Tier three is reserved for those

60. Pub. L. No. 106-386, 114 Stat. 1464.

61. 22 U.S.C. § 7102(9) (2006).

62. Kara C. Ryf, *First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT'L L. 45 (2002).

63. LeRoy G. Potts, Jr., *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 GEO. WASH. INT'L L. REV. 227, 239 (2003).

64. See 22 U.S.C. § 7107(b)(1) (inferring importance of reporting requirement).

65. Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons, 68 Fed. Reg. 53,871 (Sept. 9, 2003).

66. See generally U.S. DEP'T OF STATE, *supra* note 1, at 40-42.

67. Jim Lobe, *Exploited Girls in U.S. Seek Same Protection Afforded Foreign Women*, COMMON DREAMS (Mar. 5, 2004), <http://www.commondreams.org/headlines04/0305-07.htm>.

68. U.S. DEP'T OF STATE, *supra* note 1, at 13.

69. *Id.*

70. *Id.*

countries that are “not making significant efforts” to comply with the minimum governmental standards for reducing and eliminating sex trafficking.⁷¹ When determining whether a particular country is bringing itself within the standards, the government considers certain factors, such as “(1) the extent of trafficking in the country; (2) the extent of governmental noncompliance . . . and (3) what measures are reasonable to bring the government into compliance with the minimum standards.”⁷²

**B. THE PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE
EXPLOITATION OF CHILDREN TODAY ACT OF 2003**

In 2003, Congress passed the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003⁷³ (“PROTECT Act”). The PROTECT Act targets U.S. citizens entering other countries to exploit children and individuals exploiting children in the United States. The PROTECT Act amends a portion of Title 18 of the United States Code and imposes harsher sentences for American sex tourists and is the first initiative to make it illegal to travel abroad with the intent of taking pornographic images of children.⁷⁴ “Sex tourism” is the act of Americans traveling abroad, exploiting children, and then returning to the United States.⁷⁵ The PROTECT Act makes it a crime to commit an illegal act outside the United States. “Congress has the authority to enforce its laws beyond the territorial boundaries of the United States.”⁷⁶ Therefore, a person who commits an illegal act outside of the United States can be prosecuted for the commission of that crime here in the United States. Committing heinous acts outside of U.S. borders does not allow a person to escape prosecution, thanks to the PROTECT Act.

**III. A CRITICAL ANALYSIS: WHY THE TRAFFICKING
VICTIMS PROTECTION ACT OF 2000 FAILS TO
ADEQUATELY PROTECT THE VICTIMS OF
HUMAN AND SEX TRAFFICKING**

Despite what appears to be a strong legal framework within which to prosecute perpetrators and effectively assist victims, enforcement of anti-trafficking laws such as the Trafficking Victims Protec-

71. *Id.* at 14.

72. 22 U.S.C. § 7107(b)(4).

73. Pub. L. No. 108-21, 117 Stat. 650.

74. 18 U.S.C. § 2251 (2006).

75. Meril Eugene Anthes, Jr., *Regarding Women & Children: Using International Trade Relations to Stem the Growing Tide of the Sexual Exploitation of Children*, 14 CURRENTS: INT'L TRADE L.J. 69, 73 (2004).

76. *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991).

tion Act of 2000⁷⁷ ("TVPA") and the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003⁷⁸ ("PROTECT Act") has been apathetic. Given these laws have been passed by the United States Congress and remain on the books, it is questionable why these laws are not operating to effectively protect the targeted victims. Nine years after the initiation of the TVPA, only 1,300 trafficking victims had benefitted from the "T-Visa" status.⁷⁹ Compare this to the tens of thousands of victims that are still illegally transported into this country on a yearly basis and one will quickly realize that this is not an effective enforcement policy.

A. KEY PROVISIONS OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

In October 2000, the United States government crafted a way to assist the victims of severe forms of human trafficking by allowing them to receive relief under United States immigration law via the "Victims of Trafficking in Persons (T) nonimmigrant visa." This visa status, if granted, allows a victim to be able to remain in the United States if he or she agrees to help the United States government investigate and prosecute the perpetrators of the crime. This visa, while assisting victims, is designed to strengthen the government's ability to investigate and prosecute those that traffic humans.

Some of the qualifications for the T-nonimmigrant visa are (1) according to the laws of the United States, the individual has to be defined as a "victim of sex trafficking;" (2) the individual must be in the United States or any other recognized country as defined by the law; (3) the individual, unless seventeen years old or younger (or physically incapable or if so traumatized psychologically), must agree to cooperate fully with law enforcement in regards to the inquiry and trial of the traffickers; and (4) the individual must be able to demonstrate that he or she would "suffer extreme hardship involving unusual and severe harm" if forced to return to her country of origin.

Another method created under the Trafficking Victims Protection Act of 2000⁸⁰ ("TVPA") to help trafficking victims was to allow them to also qualify for the "continued presence" visa.⁸¹ This section of the TVPA provides relief in the form of allowing work authorization for individuals who are possible witnesses in the government's cases

77. Pub. L. No. 106-386, 114 Stat. 1464.

78. Pub. L. No. 108-21, 117 Stat. 650.

79. Joycelyn M. Pollock & Valerie Hollier, *T Visas: Prosecution Tool or Humanitarian Response?*, 20 WOMEN & CRIM. JUST. 127, 127 (2010).

80. Pub. L. No. 106-386, 114 Stat. 1464.

81. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 107(c)(3), 114 Stat. 1464, 1477 (codified at 22 U.S.C. § 7105(c)(3) (2006)).

against the traffickers.⁸² In 2010, “continued presence” visas were given to “186 potential victim-witnesses” and victims of sex trafficking received 447 “T-Visas.”⁸³

In order for a victim to receive assistance under the TVPA, the victim must first be certified as a “severe trafficking victim.” Severe trafficking is defined under the TVPA as

(A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁸⁴

In order to receive the offered benefits, a victim must first be given approval, or certification, by the Department of Health and Human Services (“DHHS”), that she meets the standard of a “severe trafficking victim.”⁸⁵ Once a victim receives the “approval” from DHHS, she is then eligible for governmental assistance with food, legal assistance, shelter, in some situations visas, and restitution. Many problems arise in this process. One of the main issues in this “certification” process is being able to properly identify victims of the sex trafficking industry and then somehow figure out who is a victim of a *severe* form of sex trafficking.

B. THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000'S
CLASSIFICATION OF “SEVERE VICTIMS” FAILS TO ACCOUNT
FOR THE VICTIMS’ REALITY

Perhaps the main problem with identifying victims is the subversive and hidden nature of the industry. Many, if not most, of the victims are transported into the host country illegally and it is this component—immigration status—that helps the trafficker hide the victim. Many victims do not speak the language of the host country and are not familiar with the laws or their rights in that country. Victims are kept isolated and in squalid conditions and have their movements completely controlled by the trafficker. Many do not realize that they are victims and are being exploited and come to rely on the trafficker because of these factors. Fear is a major factor that helps to keep the victims trapped and enslaved. The victim often legitimately

82. 22 U.S.C. § 7105(c)(3)(A)(i).

83. U.S. DEP’T OF STATE, *supra* note 1, at 374.

84. 22 U.S.C. § 7102(8).

85. *Id.* § 7105(b)(1)(A). This certification process does not apply to children 17 and younger. *Id.* They are not required to go through this process in order to receive the offered benefits. *Id.*

fears the trafficker and anyone in authority, as well as fears that harm may be done to their families.

Some victims are trapped through fear relating to cultural beliefs and superstitions. Author David Batstone tells the story of a young lady who was being rescued by a government worker employed as an advocate for victims of crime.⁸⁶ The young lady's trafficker had been arrested and was no longer in the home where she was being held captive.⁸⁷ The young lady refused to leave the premises because the trafficker had taken a lock of her hair and, because of her superstitious beliefs, she believed that he could harm her and her family as long as he had the lock of her hair.⁸⁸ She would not leave the home until the government worker retrieved the hair from the trafficker.⁸⁹

Another problem that makes identification of victims less feasible is a general lack of awareness of the scope of the problem of sex trafficking. This lack of knowledge and understanding exists within the ranks of governmental officials tasked with assisting these victims. Many have a stereotypical image of what a victim of sex trafficking looks like and often these preconceived notions are inaccurate. It is evident that even though awareness of sex trafficking has increased, there is still not a full and complete comprehension of what victims look like and who they are. This ignorance causes many victims to remain unidentified and prevents them from receiving help.

C. VICTIMS' FAILURE TO SELF-IDENTIFY

Prostitution cannot be viewed as a "victimless" crime if we seriously intend to see changes for the good of those victimized. The main rationale for why victims contacted by agencies tasked with helping victims go unassisted is that first, the victims do not specify or identify themselves as victims and second, the agencies are unable to identify the victims as victims. Many victims do not perceive themselves as "victims" because many do not know that what they have been subjected to is a crime. The trafficker has convinced the victims that they, the victims, are the criminals and are somehow deserving of their situation. Simply put, victims do not *know* that they are *victims*. Many tasked with identifying the victims have a view in their minds of what a victim looks like. When an individual comes and they do not *look* like a sex trafficking victim, the helper is not able to assist because they have not recognized the individual as a victim. This only

86. DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE—AND HOW WE FIGHT IT 242 (2007).

87. *Id.*

88. *Id.*

89. *Id.*

operates to reinforce in the minds of victims that the trafficker is right: that they are to blame for what has happened to them and that no one is going to help them. Many governmental officials see the victims as criminals (prostitutes) and find that the easiest thing to do is have the person arrested and charged with a crime (and where applicable, deported). These acts strengthen the traffickers' position.

Education and awareness are crucial for officials to be able to adequately assist victims of sex trafficking. Agencies assisting victims must know how to properly identify victims so that the victims will be provided the help that is mandated by law. The Trafficking Victims Protection Act of 2000⁹⁰ ("TVPA") provides funding for this kind of training, but the agencies must use the funding effectively. The way that victims and the sex industry are viewed must be a priority for officials seeking to make a dent in this field.

D. THE FALSE DICHOTOMY BETWEEN VOLUNTARY AND INVOLUNTARY VICTIMS

Another issue with the certification process is the way the law was written. The certification process delineates between those victims that are subjected to a "severe" form of trafficking and those that are not. Only a certain number of victims will receive assistance. The law dichotomizes between victims that are brought into the sex industry through "force, fraud or coercion" and those who "voluntarily" come into the industry. Victims who are brought into the sex trafficking industry through "force, fraud or coercion" are considered victims of a severe form of trafficking and can receive assistance. Victims who are not brought into the industry via "force, fraud, or coercion," however, are *not* considered to be under a severe form of sex trafficking. These "voluntary" victims include victims who "knew" that they were going to be prostitutes but were unaware of the barbaric and slave-like conditions in which they would reside and to which they would be subjected. The Trafficking Victims Protection Act of 2000⁹¹ ("TVPA") does not provide help or assistance to voluntary victims.

The problem is exacerbated by a victim (who may have been tortured, brutalized, and abused) having to explain to an official that they were brought into sex trafficking through "force, fraud or coercion." The determination as to whether a victim will receive the help afforded them via the TVPA is contingent upon the victim being able to convince an official that she meets the specified standards. The determination must be evaluated with the fact in mind that many victims have been taught not to trust government officials, and many do

90. Pub. L. No. 106-386, 114 Stat. 1464.

91. Pub. L. No. 106-386, 114 Stat. 1464.

not speak the language or understand the culture of the host country. Many victims have been physically beaten and emotionally abused to the point of where they are unable to speak up for themselves. And without a voice, they go unheard and will be placed back into a system that is ill equipped to help them.

E. THE REQUIREMENT TO ASSIST IN PROSECUTION

Perhaps one of the biggest impediments to the Trafficking Victims Protection Act of 2000⁹² ("TVPA") actually assisting victims is the requirement that the victim assist in the prosecution of her trafficker. The law specifies that in order to receive the social benefits, a victim must be willing to cooperate with the state in the prosecution of the trafficker.⁹³ The treatment that these victims have endured cannot be understated. These women (not children as this requirement does not apply to those seventeen and younger) have been traumatized and brutalized to the point of what one author equates to post-traumatic stress disorder.⁹⁴ These same victims are then expected to assist, cooperate, and testify in a court of law against the perpetrators that have inflicted this atrocious harm on them. To say that we, as a civilized society, will not afford the victims the services they need to function in our society unless they face the individual that enslaved them is a re-victimization all unto itself.

One of the problems with the TVPA's requirements for receiving benefits is the unwillingness of the victim to testify. There are many reasons a victim may choose not to testify against her perpetrator. Fear of retaliation is perhaps the greatest reason a victim would not want to assist in the prosecution. The victim, in most cases, has been beaten and brutalized and is in real fear. This fear extends not only to herself but also to her family and friends.

Many victims of sex trafficking (as well as rape) feel that they are being re-raped by the criminal justice system in being forced to testify and speak out against the trafficker. Some victims have issues recalling the details of what transpired due to the trauma sustained, as well as long periods of forced drug use.

There are ways to get around the fact that a victim may be too terrified or unwilling to cooperate with the state in the prosecution of the perpetrator. In domestic violence and assault cases where a vic-

92. Pub. L. No. 106-386, 114 Stat. 1464.

93. 22 U.S.C. § 7105(b)(1)(E) (2006).

94. MELISSA FARLEY, PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS xi, xii (2003). The book is a compilation of essays. In the preface to the book, Ms. Farley opines "the internal ravages of prostitution" are not understood in psychology. She equates the psychological damage done to the victims of war and its effects to those undergone by those used as prostitutes. *Id.*

tim who once was willing to testify against her abuser has changed her mind, the state has other routes to proceed. In cases where the state has witnesses to the violence, the state can call these witnesses to testify to their version of the assault. A witness can testify to what the witness saw (a punch, a slap, a kick) and what the witness heard (a scream, a thud, breaking glass). A witness will be able to testify to anything he or she experienced with any one of the senses. This will assist the trier-of-fact in assessing what occurred during the crime even if the victim is unwilling to testify.

The state may also have physical evidence from the crime, photographs of the victim's bloody face, a bloody footprint on the floor, a broken beer bottle, or a knife with blood on it. The police officers might be able to collect an array of items that will assist in the prosecution of the defendant for assault. These items will then be entered into evidence to prove the guilt of the defendant for the crime of assault.

Often, the state will have the victim's own statements immediately after the crime when she is angry, hurt, embarrassed, and desirous of prosecution of the defendant. These very statements can then be used to illustrate the victim's state of mind at the time of the assault, helping to prove the defendant's guilt. Along these same lines, there may also be medical evidence showing what injuries the victim sustained as a result of the assault. The kind of items that would be helpful in establishing a victim's medical condition would be a rape test kit, x-rays, doctor's notes, and blood and urine tests. All of these items could be used to help prove the defendant's guilt. Finally, the state will have the testimony of the officer that was on the scene during or immediately after the assault. The officer will be able to testify to the victim's demeanor, her physical injuries, any comments she made to the officer, and what the officer saw in the location where the assault took place.

The hope is that we can create ways in which the state can prosecute cases of sex trafficking even when the victim is unable or unwilling to assist and cooperate. The evidence used in cases of domestic violence and assault can similarly be used in sex trafficking cases. The state can have witnesses testify and can introduce medical evidence and any statements made by the victim at the time of the arrest. Additionally, the arresting officers can testify as to what they witnessed at the scene of the crime and any evidence they gathered. There are ways to get around not having a victim testify.

IV. SUGGESTIONS FOR INCREASING EFFECTIVENESS IN PREVENTION, PROSECUTION, PROTECTION, AND PARTNERSHIP

There are no easy answers to the problems presented in global sex trafficking. One school of thought believes that legalizing prostitution will help alleviate the undesirable demand for women and children who do not enter prostitution voluntarily. In fact, the result is the exact opposite. Decriminalizing prostitution has resulted in a greater explosion of "local, legalized prostitution industries, an increase in illegal activities in these areas, and stepped-up trafficking of women and children from other countries to meet the new demand."⁹⁵ For example, in Victoria, Australia, as well as in Sydney, Australia, both places where prostitution has been legalized, the number of establishments with prostitutes has doubled (Victoria) and tripled (Sydney).⁹⁶ Legalizing prostitution is not (and should never be) the answer to resolving problems involving sex trafficking.

Perhaps the best way to get through the apparent issues surrounding identification of victims and the inherent flaws in "certifying" victims is education. Educate the personnel of law enforcement agencies, first responders, and government offices as to what sex trafficking entails. Teach them what sex trafficking looks like, what it does not look like, and how to properly and appropriately identify a victim of sex trafficking.

Trafficking thrives in the shadows. And it can be easy to dismiss it as something that happens to someone else, somewhere else. But that is not the case. Trafficking is a crime that involves every nation on earth, and that includes our own.⁹⁷ What must be done to educate and address these woeful inadequacies in our legal system?

There are numerous organizations that have honorably taken on the task of bringing awareness and education to this heinous industry. One such organization is The No Project. This organization is an "independent anti-slavery [and anti-human trafficking] public awareness initiative that focuses on the role of demand and specifically targets youth awareness through MUSIC, the ARTS, EDUCATION and SOCIAL MEDIA."⁹⁸ The group aims to present a realistic picture of the

95. JODY RAPHAEL, *LISTENING TO OLIVIA: VIOLENCE, POVERTY, AND PROSTITUTION* 203 (2004).

96. *Id.* at 203-04.

97. Press Conference, Hillary R. Clinton, U.S. Sec'y of State (June 16, 2009).

98. *About the NO Project*, NO PROJECT, <http://thenoproject.org/english/the-no-project/about-the-no-project-2/> (last visited Apr. 7, 2012). The founder of this non-governmental organization is a modern day abolitionist who fights trafficking and slavery in Greece and other parts of Europe.

reality of human trafficking by way of visual media throughout the world.⁹⁹

Another group that is doing a great job of educating the public is The Polaris Project. This organization is an advocate for stronger federal and state laws, and it operates a resource hotline for human trafficking.¹⁰⁰

Not For Sale is a non-governmental organization (“NGO”) that “equips and mobilizes smart activists to deploy innovative solutions to re-abolish slavery” globally.¹⁰¹ Ending slavery around the world is the mission of another NGO, Free the Slaves. Free the Slaves believes in attacking the systems that allow slavery to flourish. Their goal is to see the eradication of slavery in our lifetime and to educate the public as to the atrocities of twenty-first century slavery.¹⁰²

An additional resource for education involving human trafficking (including sex trafficking) is “Stop Trafficking! Anti-Human Trafficking Newsletter.” This newsletter offers invaluable information regarding awareness, advocacy, and action. The group promotes awareness in regards to human trafficking and the exchange of best practices in advocacy. It also encourages the empowerment of human trafficking survivors in addition to recommending actions to counter human trafficking.¹⁰³

Each of these organizations, and many more like them, is actively engaged in raising awareness and educating others about the aspects and characteristics of sex trafficking. The key to solving many of the dilemmas faced in the enforcement of the laws currently on the books is education. If we are able to raise awareness and educate those in positions to make a difference for those bound by the chains of slavery, we can make a dent in this multi-billion dollar industry. If we can educate, we can make a difference. If we can make a difference, we can end slavery. If we can end slavery, we can save lives.

V. CONCLUSION

This Article has offered viable suggestions to increase the effectiveness of current anti-human trafficking laws, such as educating vic-

99. *Id.*

100. *Polaris Project*, POLARIS PROJECT, <http://www.polarisproject.org/about-us/introduction> (last visited Apr. 7, 2012). The Polaris Project has been working to assist victims of human trafficking since 2002. *Id.* The hotline (1-888-3737-888) operates to assist Polaris’ clients as well as victims of human trafficking. *Id.*

101. *Vision, NOT FOR SALE*, <http://www.notforsalecampaign.org/about/vision/> (last visited on Apr. 7, 2012).

102. *About Us*, FREE THE SLAVES, <https://www.freetheslaves.net/SSLPage.aspx?pid=285> (last visited Apr. 7, 2012).

103. *Id.*; see also *Stop Trafficking Newsletter*, STOP TRAFFICKING!, <http://stopenslavement.org/> (last visited Apr. 7, 2012).

tims on their status as victims, educating first responders as to the status of victims, ending the distinction between voluntary and involuntary victims, and reevaluating the requirement that victims assist in the investigation and prosecution of the trafficker. While the suggestions made in this Article are not all encompassing, they do seek to deal with the problems involving the way the government enforces the Victims of Trafficking Victims Protection Act of 2000¹⁰⁴ ("TVPA"). Slavery is alive and flourishing. It happens everywhere. Wherever there are people, there is sex trafficking. Unfortunately the laws that are on the books designed to prosecute, protect, and prevent sex trafficking are woefully inadequate. The TVPA, in its current form, is not effectively assisting victims of sex trafficking. More must be done if we truly desire to eradicate this industry. If our government is serious about protecting these victims, it must re-evaluate the law's structure and how it is enforced. Lawmakers have to examine the specific characteristics of victims of this industry in order to tailor the law to meet the victims' needs, while simultaneously addressing the parameters of justice for all. That is a fine balancing act that is not currently being achieved.

104. Pub. L. No. 106-386, 114 Stat. 1464.