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THE FIRST MODERN ANTI-SLAVERY LAW: THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

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INTRODUCTION: THE SCOPE AND SEVERITY OF THE WORLD'S TRAFFICKING PROBLEM

The United States recently passed the largest anti-slavery bill since the end of the Civil War, the Trafficking Victims Protection Act of 2000.¹ Although both slavery and involuntary servitude were outlawed in the United States in 1865, over one million people remain in forced prostitution, sweatshop labor, and domestic servitude throughout the United States.² Most of these individuals are held captive, physically beaten, sexually abused, and psychologically intimidated. They are not paid for their services, nor are they free to leave.

Few Americans are aware of the scope and severity of the human trafficking industry and the extent to which this phenomenon occurs within our own borders.³ Trafficking is generally defined as the transportation of individuals across international borders by means of fraud, coercion or deception.⁴

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¹ 146 CONG. REC. S10137 (2000) (statement of Sen. Brownback).

² David France, Sarah Downey & Craig Nelson, *Slavery's New Face*, NEWSWEEK, Dec. 18, 2000, at 61 (citing estimated statistics according to an on-going Johns Hopkins study). See also Melissa Lambert & Josh Meyer, *House Oks Crackdown on Trafficking in Sex*, L.A. TIMES, Oct. 7, 2000, at A20 (stating that there are "tens of thousands being forced to work in sweatshops, restaurants, mom-and-pop stores and even underground brothels" in Southern California alone). See also Catherine Edwards & James Harder, *Sex-Slave Trade Enters the U.S.*, INSIGHT ON THE NEWS, Nov. 27, 2000, at 17 (the number of women and children trafficked for sexual exploitation in the last 10 years is already equal to the minimum number of Africans enslaved in the United States during the 16th and 17th Centuries, approximately 5 to 6 million).

³ See generally 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, 74-75 (1998) (stating that most Americans do not view slavery, forced labor, domestic servitude and forced prostitution as practices occurring within the United States).

⁴ *Id.* See also EXECUTIVE OFFICE OF THE PRESIDENT, INTERNATIONAL CRIME THREAT ASSESSMENT 24, n.1 (2000) (hereinafter INTERNATIONAL CRIME THREAT ASSESSMENT). The United Nations defines "trafficking in persons" as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of

As indicated by this definition, trafficking in persons can take many forms, with the most prevalent and fastest growing being the commerce of women and children for sexual exploitation.⁵ Typically foreign women are offered jobs in the United States as au pairs, waitresses or models.⁶ Once they arrive they are stripped of their passports and other identifying documentation, then threatened, beaten, raped, and forced into prostitution.⁷ Each year fifty thousand women and children are trafficked into the United States to serve in the sex industry,⁸ and worldwide between one and two million women are trafficked annually.⁹

Trafficking is the world's fastest growing criminal activity¹⁰ producing at least \$7-\$10 billion per year,¹¹ ranking third only behind drugs and arms

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 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...." G.A. Res. 55/25, Annex II, 55, U.N. GAOR, Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001).

⁵ Gillian Caldwell et al., *Capitalizing on Transition Economies: The Role of the Russian Mafia in Trafficking in Women for Forced Prostitution*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 42, 42-3 (Phil Williams ed., 1999).

⁶ *Trafficking of Women and Children in the International Sex Trade: Hearing Before the Subcommittee on International Operations and Human Rights of the Committee on International Relations*, 106th Cong. 77 (1999) [hereinafter *Loar Testimony*] (testimony of Theresa Loar, Director of the President's Interagency Council on Women and Senior Coordinator for International Women's Issues, U.S. Dept. of State). See also Sarah Shannon, *Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 119, 122 (Phil Williams ed., 1999); see also *INTERNATIONAL CRIME THREAT ASSESSMENT*, *supra* note 4, at 27. Women are also lured into immigration with promises of jobs as teachers, domestic workers, factory workers, sales clerks and dancers. *Loar Testimony*, *supra* note 6, at 77.

⁷ Shannon, *supra* note 6, at 122. See also Emma Dorothy Reinhardt & Charles Jacobs, *A Secret Slave Trade Survives in US*, *THE BOSTON GLOBE*, Nov. 27, 2000, at A15.

⁸ Lambert, *supra* note 2, at A20. See also 146 CONG. REC. S10,164, at S10,168 (2000) (stating that the Immigration and Naturalization Service found 250 brothels in twenty-six different U.S. cities where trafficking victims were being held).

⁹ Laurie Hauber, *The Trafficking of Women for Prostitution: A Growing Problem Within the European Union*, 21 B.C. INT'L & COMP. L. REV. 183 (1998). See also White House Fact Sheet: Migrant Smuggling & Trafficking in Persons Coordination Center, Dec. 18, 2000, 2000 WL 26852130.

¹⁰ Zoran Kusovac, *People trafficking: Europe's new problem*, *JANE'S INTELLIGENCE REVIEW*, Sept. 2000, at 53. See also Ian Peck, *Removing the Venom from the Snakehead: Japan's Newest Attempt to Control Chinese Human Smuggling*, 31 VAND. J. TRANSNAT'L L. 1041, 1044 (1998) (stating that the worldwide profits for smuggling immigrants was estimated at \$3 billion in 1995 and had risen to \$7 to \$10 billion by 1997). See also

trading as the most profitable world industry.¹² Indeed, it is estimated that four million people are trafficked around the world annually¹³ and that virtually no country is left unaffected.¹⁴ Most trafficking victims come from Southeast Asia, the former Soviet Union and Eastern Europe. North America, Western Europe and Japan commonly serve as their destinations.¹⁵

Nearly one-third of the world's total trafficking originates in Southeast Asia where traffickers lure women and children into Thailand, Hong Kong, Singapore, Japan, Australia, and the United States.¹⁶ In addition, depressed economic conditions in the former Soviet Union and Eastern Europe are causing many to flee to Western Europe, mainly Germany, Italy, Austria,¹⁷ Greece, and the Netherlands.¹⁸ Victims entering the United States, however, are primarily from Southeast Asia, Latin America, and the Middle East.¹⁹ Women from Southeast Asia are forced into the underground brothel industry while those from Latin America and the Middle East labor in fields, factories, or hotels, as well as domestic servants in affluent homes.²⁰

Trafficking in persons is a large and growing industry²¹ that many immigrant-receiving nations, including the United States, have tried to

Caldwell et al., *supra* note 5, at 42 (stating that the sex trade is one of the fastest growing trafficking enterprises).

¹¹ France, *supra* note 2, at 62 (citing President Clinton's Inter-Agency Council on Women's estimate valuing the global slave trade as a \$9 million per year industry). *See also* Peck, *supra* note 10, at 1044.

¹² Lambert, *supra* note 2, at A20.

¹³ 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 (1998).

¹⁴ Shannon, *supra* note 6, at 120 (estimating 1,380,000 children in Southeast Asia and Pacific Islands, at least 702,000 in Latin America and between 100,000 and 300,000 are involved in the commercial sex trade industry). *See also* Peck, *supra* note 10, at 1044 (stating that seventy countries are used by smugglers to conduct their activities); Reinhardt & Jacobs, *supra* note 7, at A15 (stating that there are victims in the United States from every continent).

¹⁵ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 27 (estimating that 225,000 women and children from Southeast Asia were victims of trafficking in 1997, with approximately 30,000 victims entering the United States).

¹⁶ *Id.*

¹⁷ Kusovac, *supra* note 10, at 53.

¹⁸ *Id.* *See also* INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 27.

¹⁹ *Id.*

²⁰ Reinhardt & Jacobs, *supra* note 7, at A15.

²¹ Phil Williams, *Human Commodity Trafficking: An Overview*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 1, 2 (Phil Williams ed., 1991).

combat by enacting more restrictive immigration policies.²² However, such laws generally reduce an immigrant's options for entering a destination country legally, thereby increasing the demand for traffickers' services.²³ Many fear they will be unable to successfully complete an illegal border crossing alone; thus, traffickers alleviate much of an immigrant's anxiety by arranging travel, housing and employment in the destination country.²⁴ Upon arrival, however, immigrants are informed that they must pay for the smuggling services and are forced into criminal activity, slave labor or prostitution to pay off the debt.²⁵ As a result, stricter immigration laws benefit traffickers by increasing the demand for their services, which in turn raises their profits.²⁶

Instead of fighting trafficking through immigration policy, the Trafficking Victims Protection Act of 2000 ("the Act") treats this problem as a human rights issue.²⁷ This Article provides an analysis of the ways in which the Act adequately addresses the world's trafficking crisis, as well as where the Act's provisions fail to provide appropriate solutions. Section II provides a background on human trafficking, discussing various types of traffickers, how victims are smuggled into destination countries and the abuses they endure upon arrival. This section also addresses the disparity of current law, which punishes trafficking victims for their immigration violations and prostitution activities more harshly than their captors, thereby making human trafficking a low risk and high profit industry.

The Trafficking Victims Protection Act is summarized in Section III. Subsection A describes the provisions dealing with the prevention of human trafficking, Subsection B details the protections and assistance the Act provides to trafficking victims, and Subsection C outlines the increased penalties for those who commit trafficking offenses. A critique of the Act is then set forth in Section IV, focusing on four particular areas. Subsection

²² Brunson McKinley, *There are Ways to Curb the Worldwide Traffic in Migrants*, TRAFFICKING IN MIGRANTS Q. BULL., Summer 2000, at 1.

²³ Kevin Tessier, *The New Slave Trade: The International Crisis of Immigrant Smuggling*, 3 IND. J. GLOBAL LEGAL STUD. 261, 264 (1995).

²⁴ Peck, *supra* note 10, at 1043.

²⁵ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 24. See also *International Trafficking in Women and Children: Hearings Before the Subcomm. on Near Eastern and South Asian Affairs of the Comm. on Foreign Relations*, 106th Cong. 81 (1999) [hereinafter *International Trafficking*] (statement of Williams R. Yeomans, Chief of Staff, Civil Rights Division, U.S. Department of Justice) (stating women who have been smuggled are told they must work in prostitution or some other form of labor to pay off the debt of their transportation, and are given no choice in the matter). A witness described at the hearing, through an interpreter, how bosses intimidated, beat, and threatened retaliation against the women in forced servitude. *Id.* at 91-92.

²⁶ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 24.

²⁷ See generally *Loar Testimony*, *supra* note 6.

A analyzes the provisions dealing with the elimination of world trafficking through international cooperation. Subsection B discusses how the Act aims to prevent trafficking by increasing economic opportunities in countries of origin and establishing public relations campaigns to inform and deter potential victims from resorting to trafficking. Subsection C asserts that the Act's provisions, which allow the imposition of economic sanctions on countries that fail to make sufficient efforts to eliminate trafficking, are counterproductive to the Act's goal of combating trafficking. Finally, Subsection D analyzes the provisions that aim to provide victims with benefits and protections while subjecting traffickers to greater penalties. Section V concludes that the Act is an important piece of legislation, yet the elimination of world trafficking is currently unattainable due to the high demand and extreme profits those in the trafficking industry enjoy.

I. BACKGROUND: AN OVERVIEW OF TRAFFICKING

Human trafficking is associated with many social problems such as organized crime, document fraud, and corruption.²⁸ Furthermore, trafficking perpetuates various human rights violations including involuntary servitude, forced prostitution, and the buying and selling of human beings.²⁹ Yet many turn to traffickers to escape poverty, war, ethnic cleansing or political persecution.³⁰ The traffickers promise attractive jobs in prosperous countries, luring immigrants into virtual slavery.³¹ Traffickers also abduct victims off the streets to sell them for commercial purposes.³² Other victims, mostly young girls, are forced into the industry after a family member sells them to a trafficker for desperately needed cash.³³

²⁸ Susan F. Martin, *Best Practices to Combat Smuggling and Protect the Victims of Traffickers*, at http://migration.ucdavis.edu/rmn/changingface/cf_apr2000/susanmartin.htm. See also *Loar Testimony*, *supra* note 6, at 73-74 (stating that trafficking also poses socioeconomic, public health and transnational crime problems).

²⁹ Martin, *supra* note 28.

³⁰ Williams, *supra* note 21, at 2.

³¹ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 27. See also Reinhardt & Jacobs, *supra* note 7, at A15. One method traffickers use to obtain "clients" is to dress as upscale businessmen and use this legitimate looking front to entice potential immigrants with promises of respectable employment opportunities in attractive countries. Victims are also lured into trafficking through the urging and support of relatives.

³² Shannon, *supra* note 6, at 121. Girls have been taken off the streets of Paris, London and Frankfurt and sold to individuals in Africa or the Arab world; also, teenagers and young women are taken off the streets in Laos, Burma, Vietnam and China and forced into the sex industry in Thailand. When abducting individuals, traffickers discriminate as to age, social class, or nationality.

³³ *Id.* at 122. See also *Loar Testimony*, *supra* note 6, at 77.

Traffickers tend to fall within one of three categories. First are the "amateur smugglers" who live near international borders and occasionally transport individuals across for a small fee.³⁴ The second type are comprised of small but well-organized groups that form in response to a high demand for their smuggling services.³⁵ This type specializes in trafficking along well-established travel routes and is responsible for most of the world's trafficking.³⁶ Third are the large and well-established organized crime rings believed to have diversified their illegal activities in recent years to include trafficking in persons.³⁷ Such crime syndicates, including the Russian Mafia, expanded their operations into the highly profitable trafficking industry because there is less overhead cost than in the drug and arms smuggling industries, and humans are a reusable commodity that can be sold and resold.³⁸

Traffickers act as "travel agents" to arrange the migrants travel through a variety of methods.³⁹ Often migrants are provided with either legal or illegal travel documents,⁴⁰ however, hiding individuals in trucks, boats and shipping containers are also common practices. Travel or work visas allow immigrants to cross borders legally, but these documents have expiration dates, which are often overstayed causing the immigrants to violate immigration laws.⁴¹ False documents are also frequently used to aid immigrants in crossing borders, and increased technology makes it easier for traffickers to make or obtain high quality counterfeit documents.⁴² Additionally, traffickers often bribe government officials and law

³⁴ Kusovac, *supra* note 10, at 53. See also Hanni Heikkinen & Reinhard Lohrmann, *Involvement of the Organised Crime in the Trafficking in Migrants*, available at <http://migration.ucdavis.edu/cmpr/oct98/lohrmann.html>.

³⁵ Heikkinen & Lohrmann, *supra* note 34. See also Williams, *supra* note 21, at 2.

³⁶ Heikkinen & Lohrmann, *supra* note 34.

³⁷ *Id.*

³⁸ Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women from Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221, *3 (1999), available in LEXIS, Law Reviews, Combined File. See also INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 28; Edwards & Harder, *supra* note 2, at 14.

³⁹ Williams, *supra* note 21, at 2.

⁴⁰ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 27-28.

⁴¹ *Id.*

⁴² Martin, *supra* note 27 (stating that technology has also allowed smugglers and traffickers to communicate quickly and easily with one another from around the globe increasing the success rate of smuggling operations). "Global communications allow smugglers to rapidly change routes, countries of transit and of destination, and schedules." *Id.* See also Pilkerton, *supra* note 38 (discussing the Russian Mafia's trafficking practices).

enforcement personnel to procure false documents and aid them in illegal border crossings.⁴³

Once inside the destination country, immigrants are stripped of their documents and forced to work off their debts.⁴⁴ They are routinely chained, beaten, raped, starved, and tortured.⁴⁵ Victims are kept in isolation and forced to ingest drugs and alcohol to make them more vulnerable to manipulation, thereby increasing the traffickers' control.⁴⁶ Victims are convinced it is dangerous to attempt an escape and that authorities will brutally abuse, imprison and deport them due to their illegal status.⁴⁷ Immigrants feel helpless and eventually succumb to their captors' demands because they are ignorant of the local culture and often don't speak the language.⁴⁸ As the victims perform manual labor or sexual services to pay off their debt, the traffickers add on monetary penalties for uncooperativeness, interest, and housing, which results in a lifetime of servitude.

When authorities discover victims they often suffer greater punishments than their traffickers.⁴⁹ The immigrants are treated as illegal

⁴³ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 24-25. See also Margaret E. Beare, *Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 11, 19 (Phil Williams ed., 1999) (discussing how trafficking in humans is aided by "networks of corruption").

⁴⁴ Pilkerton, *supra* note 38, at *5. See also Reinhardt & Jacobs, *supra* note 7, at A15.

⁴⁵ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 25. See also Edwards & Harder, *supra* note 2, at 14.

⁴⁶ *International Trafficking*, *supra* note 25, at 89 (witness testimony through an interpreter). See also Caldwell et al., *supra* note 5, at 63.

⁴⁷ *International Trafficking*, *supra* note 25, at 91-92 (witness testimony through an interpreter). See also Reinhardt & Jacobs, *supra* note 7, at A15; Caldwell et al., *supra* note 5, at 63 (stating that it is common for traffickers to force women to live and work in the "same place, and to forbid her from leaving the premises without permission. Isolation makes a women vulnerable to additional forms of control, such as withholding pay, physical intimidation, and drug or alcohol dependency").

⁴⁸ Pilkerton, *supra* note 38, at *4-5.

⁴⁹ Young, *supra* note 3. See also Gail Russell Chaddock, *Congress takes aim at modern-day slavery*, THE CHRISTIAN SCI. MONITOR, Oct. 18, 2000, at 2. The tragedy that brought the scope and severity of human trafficking to the attention of the United States was the 1993 accident of the Golden Venture, a Honduran freighter containing approximately 300 Chinese which ran aground in the icy waters off the coast of New York. Many jumped off the ship into the 53 degree water and attempted to swim ashore. Ten Chinese died; the others were apprehended by United States authorities. Peck, *supra* note 10, at 1046. Some of the Chinese victims of the Golden Venture were held in prison for four years, while their smugglers were released in less than one year. *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the Commission on Security and Cooperation in Europe*, 106th Cong. 30 (1999) [hereinafter *The Sex Trade*] (Statement of

aliens and are fined, imprisoned, and deported for the prostitution and other illegal activities they have committed.⁵⁰ Conversely, traffickers escape with light punishments because the law is insufficient to address the types of activities in which they engage.⁵¹ Furthermore, there is no one to testify against the traffickers because victims are typically deported immediately or are afraid that they, or their families, will be retaliated against for offering testimony against their captors.⁵²

This injustice is illustrated by the case of a massage parlor owner in Maryland who forced eight Russian women into prostitution after they answered advertisements for jobs as sales clerks and waitresses.⁵³ The women's passports were confiscated, leaving the premises was forbidden, and they did not receive any money for the services they were forced to perform.⁵⁴ After authorities discovered this operation, the massage parlor owner was punished with a small fine for his failure to pay taxes on the parlor's earnings and restricted him from operating another business in the county.⁵⁵ The kidnapping and forced prostitution of a Chinese woman by traffickers in Los Angeles provides another striking example.⁵⁶ The woman was raped, burned with cigarettes, and her every movement was monitored and controlled by guards.⁵⁷ Here, the lead defendant was sentenced to only four years while the other defendants received two to three year prison sentences.⁵⁸

As these cases demonstrate, the penalties for trafficking are far from severe. Because the penalties for trafficking are so low and the profits so high, such activities can be carried out with very little risk making

Wendy Young, Washington Liaison and Staff Attorney, Women's Commission for Refugee Women and Children).

⁵⁰ Chaddock, *supra* note 49, at 2. See also Joan Fitzpatrick & Katrina Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 HASTINGS INT'L & COMP. L. REV. 47, 103 (1998) (advocating "a more secure immigration status [for trafficking victims] as an inducement to cooperate in smuggling and slavery prosecutions").

⁵¹ Beare, *supra* note 43, at 28 (detailing how many regions lack appropriate laws or the capability to combat a lack of enforcement resources and the widespread indifference to human trafficking). See also Chaddock, *supra* note 49, at 2; *The Sex Trade*, *supra* note 49, at 23 (Testimony of Laura J. Lederer, Director, The Protection Project) (anti-trafficking laws enacted in various nations between 1912 and 1960 address earlier waves of trafficking and are poorly, if ever, enforced).

⁵² Pilkerton, *supra* note 38, at *4-5.

⁵³ Caldwell et al., *supra* note 5, at 60.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Charity Crouse, *Slaves in Chicago*, IN THESE TIMES, Jan 8, 2001, at 8.

⁵⁷ *Id.*

⁵⁸ Edwards & Harder, *supra* note 2, at 16.

trafficking an attractive and profitable business.⁵⁹ The money to be made in trafficking is so great that a group of traffickers made \$8 million in six years from forcing women and men to work in sweatshops in California. Another group made \$1.5 million in a little over one year in New York City from enslaved women.⁶⁰ In fact, many large crime syndicates prefer human smuggling to drugs. With the existing networks and personnel in place, the shift from drugs to humans has been easy.⁶¹ In light of this, the Trafficking Victims Protection Act was enacted to turn the trafficking industry into a high risk-low profit enterprise through international cooperation to capture, prosecute and adequately punish those who traffic in persons.

II. SUMMARY OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

The Trafficking Victims Protection Act of 2000 is part of a larger bipartisan crime bill entitled the "Victims of Trafficking and Violence Protection Act of 2000." The bill passed with overwhelming support obtaining a 371-1 vote in the House⁶² and a unanimous 95-0 vote in the Senate.⁶³ On October 16, 2000, President Clinton signed the bill into law.⁶⁴

The purpose of the Act is to combat trafficking in men, women, and children through what has commonly been referred to as the "three P's": prevention, protection, and prosecution.⁶⁵ The Act aims to *prevent* trafficking by fostering international cooperation. Through enhanced cooperation the Act aims to eliminate trafficking by assessing and monitoring nations' attitudes toward trafficking, enhancing economic opportunities in countries of origin, and establishing public relations campaigns to warn potential victims of the dangers of trafficking. Furthermore, the United States will assist countries to meet minimum

⁵⁹ Williams, *supra* note 21, at 4-5. See also Arthur C. Helton & Eliana Jacobs, *Combating Human Smuggling by Enlisting the Victims*, 28(4) MIGRATION WORLD MAG. 1, at 12 (2000); *Loar Testimony*, *supra* note 7, at 78. Furthermore, most countries have very low penalties for smuggling and trafficking and the enforcement of such laws are poor.

⁶⁰ 146 CONG. REC. S10,164, at S10,167 (2000).

⁶¹ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 25. Criminal organizations use the profits made in trafficking to support their drugs and arms trading businesses. *Id.* at 28.

⁶² Lambert & Meyer, *supra* note 2, at A20.

⁶³ *Bill Summary and Status for the 106th Congress*, available at <http://thomas.loc.gov/cgi-bin/bdquerytr/z?d106:HR03244>.

⁶⁴ *Id.*

⁶⁵ White House Fact Sheet re: *President Clinton's Address to the Nation on Legislation to Combat Violence Against Women, Fight Trafficking in Persons, and Assist Victims of Terrorism*, Oct. 28, 2000, 2000 WL 26850463.

standards criteria established under the Act. Nations that do not attempt to meet the minimum standards will be subject to economic sanctions.

The Act also grants *protections* to trafficking victims who aid authorities in investigating and prosecuting their captors. Victims are permitted to remain in the United States temporarily and are given access to public social and health benefits under the new T-visa provision. Additionally, the T-visa allows eligible victims to adjust to permanent resident status. Finally, the Act will *prosecute* traffickers under new criminal felony charges and harsher sentences. Traffickers will also be forced to pay mandatory restitution to their victims.

A. *Prevention of Trafficking*

To prevent trafficking through international cooperation, the Act first requires the U.S. State Department to prepare a report evaluating foreign governments' efforts to combat severe forms of trafficking.⁶⁶ 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.⁶⁷ 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.⁶⁸ Additionally, the governments' cooperation in international investigations, extradition of traffickers, and assistance to trafficking victims must be evaluated.⁶⁹

Second, the Act seeks to curb the appeal of trafficking by enhancing the economic opportunities available to potential victims in their home countries.⁷⁰ To establish appropriate and effective measures, non-governmental organizations must be consulted. The Act lists five general ways this may be carried out:

- (1) microcredit lending programs, training in business development, skills training, and job counseling;
- (2) programs to promote women's participation in economic decision-making;
- (3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;
- (4) development of

⁶⁶ H.R. 3224, 106th Cong. § 103(8) (2000). "Severe forms of trafficking in persons" is defined 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 subjecting to involuntary servitude, peonage, debt bondage, or slavery."

⁶⁷ H.R. 3224, 106th Cong. § 104(a), (b) (2000). This section amends the Foreign Assistance Act of 1961, Section 116(f) (22 U.S.C. § 2151 (f)).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ H.R. 3224; 106th Cong. § 106(c) (2000).

educational curricula regarding the dangers of trafficking; and (5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.⁷¹

Additionally, programs to increase public awareness of the dangers of trafficking and protections available to victims must be created.⁷²

Finally, the Act establishes minimum standards countries should implement to eliminate trafficking.⁷³ These efforts will be monitored and aided by the United States.⁷⁴ If nations fail to comply, or do not attempt to comply with the minimum standards set forth in this Act, economic sanctions may be imposed at the President's discretion.⁷⁵

The minimum standards contained in the Act require countries of origin, transit, and destination to prohibit severe forms of trafficking and prosecute such acts with penalties grave enough not only to fit the crime but also to deter others.⁷⁶ To comply with the minimum standards requirement, these countries should "make serious and sustained efforts to eliminate severe forms of trafficking" by: (1) investigating and prosecuting trafficking acts, (2) protecting victims and encouraging their cooperation in prosecuting their traffickers, (3) informing and educating potential victims, (4) cooperating with other governments in prosecution including extradition, monitoring immigration and emmigration patterns, and (5) investigating and prosecuting governmental authorities who participate in or facilitate trafficking.⁷⁷

To aid nations in the elimination of trafficking, the Act authorizes the President to assist foreign governments in:

(1) the drafting of laws to prohibit and punish acts of trafficking; (2) the investigation and prosecution of traffickers; (3) the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and (4) the expansion of exchange programs and

⁷¹ H.R. 3244, 106th Cong. § 106(a) (2000).

⁷² H.R. 3244, 106th Cong. § 106(b) (2000).

⁷³ H.R. 3244, 106th Cong. § 108(a) (2000) (Minimum Standards for the Elimination of Trafficking).

⁷⁴ H.R. 3244, 106th Cong. § 109 (2000) (Assistance to Foreign Countries to Meet Minimum Standards).

⁷⁵ H.R. 3244, 106th Cong. § 110(d) (2000) (Actions Against Governments Failing to Meet Minimum Standards).

⁷⁶ H.R. 3244, 106th Cong. § 108(a) (2000).

⁷⁷ H.R. 3244, 106th Cong. § 108(b) (2000).

international visitor programs for governmental and nongovernmental personnel to combat trafficking.⁷⁸

Additionally, an Interagency Task Force to Monitor and Combat Trafficking, chaired by the Secretary of State, will be established to collect data, facilitate cooperation among countries of origin, transit, and destination, and measure and evaluate the worldwide progress of preventing trafficking, providing assistance to victims, and punishing traffickers.⁷⁹

Foreign nations that fail to comply with the Act's minimum standards or do not make significant efforts to do so are subject to non-humanitarian and non-trade-related sanctions.⁸⁰ The President has the discretion to deny foreign assistance based on a yearly report prepared by the Secretary of State.⁸¹ The annual report will list the countries in compliance with the minimum standards, the countries not in compliance but making significant efforts to obtain compliance, and the countries not in compliance and not making significant efforts to comply.⁸² The President can withhold non-humanitarian and non-trade-related foreign assistance to nations in the latter category until the minimum standards are met or a significant effort to comply is demonstrated.⁸³ For countries that do not receive such assistance from the United States, the President may withhold funding for participation in educational and cultural exchange programs.⁸⁴ The President will also instruct multilateral development banks and the International Monetary Fund to vote against granting any loans or funds to those countries.⁸⁵

⁷⁸ H.R. 3244, 106th Cong. § 109 (2000) (adding Sec. 134 re: Assistance to Foreign Countries to Meet Minimum Standards for the Elimination of Trafficking to Chapter 1 of Part I of the Foreign Assistance Act of 1961, 22 U.S.C. § 2151 et. seq.).

⁷⁹ H.R. 3244, 106th Cong. § 105(a)-(d) (2000) (Interagency Task Force to Monitor and Combat Trafficking).

⁸⁰ H.R. 3244, 106th Cong. § 110(a)(1)-(2) (2000).

⁸¹ H.R. 3244, 106th Cong. § 110(b), (c) (2000).

⁸² H.R. 3244, 106th Cong. § 110(b)(1)(A)-(C) (2000). The definition of "significant efforts" is provided in § 110(b)(3) and instructs the Secretary of State to consider "(A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking; (B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and (C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government."

⁸³ H.R. 3244, 106th Cong. § 110(d)(1)(A)(i) (2000).

⁸⁴ H.R. 3244, 106th Cong. § 110(d)(1)(A)(ii) (2000).

⁸⁵ H.R. 3244, 106th Cong. § 110(d)(1)(B) (2000) (note that there are exceptions to this provision, *see generally* §§ 110 (d)(1)(B), (d)(2), (d)(3) and (d)(4)).

B. Protection and Assistance for Trafficking Victims

The Act also aims to treat immigrants affected by trafficking as crime victims, instead of as illegal aliens. To accomplish this, the Act calls for the promulgation of regulations that ensure victims are “not detained in facilities inappropriate to their status as crime victims; receive necessary medical care and other assistance; and are provided protection if a victim’s safety is at risk or if there is danger of additional harm by recapture of the victim.”⁸⁶ Victims shall also have access to translation services and information regarding their legal rights.⁸⁷ Additionally, personnel in the Department of State and Department of Justice shall be trained to identify trafficking victims so appropriate services and protections can be provided.⁸⁸

Under the Act, benefits and services are to be provided to victims without regard to their immigration status. Consequently, trafficking victims are eligible for the same benefits provided by federal and state programs to refugees which include, among others, health and social services, English language training, and employment assistance.⁸⁹ Furthermore, the Attorney General is able to make grants to strengthen victim service programs.⁹⁰

In order to be eligible for these benefits, however, the victims must fall within one of the following three categories: (1) the victim must meet the definition requirement of “severe forms of trafficking in persons”⁹¹ *and* be under 18 years of age; *or* (2) the Attorney General must determine that the continued presence of the victim in the United States is necessary to prosecute the traffickers; *or* (3) the victim must be willing to assist in every reasonable way in the investigation and prosecution⁹² of severe forms of trafficking in persons *and* have made a bona fide application for a T-visa.⁹³

⁸⁶ H.R. 3244, 106th Cong. § 107(c)(1)(A)-(C) (2000) (Protection and Assistance for Victims of Trafficking).

⁸⁷ H.R. 3244, 106th Cong. § 107(c)(2) (2000).

⁸⁸ H.R. 3244, 106th Cong. § 107(c)(4) (2000).

⁸⁹ H.R. 3244, 106th Cong. § 107(b)(1)(A) (2000). *See generally* 8 U.S.C. § 1522 (1994) (describing benefits provided for refugees).

⁹⁰ H.R. 3244, 106th Cong. § 107(b)(2)(A) (2000).

⁹¹ The Act defines “severe forms of trafficking in persons” 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.” H.R. 3244, 106th Cong. § 103(8) (2000).

⁹² *See* H.R. 3244, 106th Cong. § 107(b)(1)(E)(iii) (2000) (defining “investigation and prosecution” as “(I) identification of a person or persons who have committed severe forms

The T-visa is a provision the Act adds to the Immigration and Nationality Act.⁹⁴ To be eligible to receive a T-visa, the Attorney General must determine that the applicant has: been a victim of a severe form of trafficking; is physically present in the United States or a port of entry; and has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking.⁹⁵ Victims under 15 years of age who suffer extreme hardship upon removal from the United States are also eligible to receive the T-visa.⁹⁶ However, there is a cap so that only 5,000 T-visas may be issued within any fiscal year.⁹⁷

Once the victim obtains a T-visa he or she will be referred to appropriate nongovernmental organizations for needed resources and granted authorization to work while in the United States.⁹⁸ The Act also allows the spouse, parents or children of victims under age 21 to join the victim in the United States; and the spouse and children of victims 21 years or older to join the victim, provided that the Attorney General considers it necessary to avoid an extreme hardship.⁹⁹

T-visa holders also have the benefit of adjusting to permanent resident status if they have been physically present for at least three years in the United States and have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking *or* would suffer extreme hardship involving unusual and severe harm upon removal.¹⁰⁰ However, due to the T-visa cap, only 5,000 victims per year can be adjusted to permanent resident status under this provision.¹⁰¹

of trafficking in persons; (II) location and apprehension of such persons; and (III) testimony at proceedings against such persons”).

⁹³ H.R. 3244, 106th Cong. § 107(b)(1)(C) (2000).

⁹⁴ H.R. 3244, 106th Cong. § 107(e)(1)(C) (2000) (adding provision (T) to 8 U.S.C. § 1101(a)(15)).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ H.R. 3244, 106th Cong. § 107(e)(2)(B) (2000). This section amends 8 U.S.C. § 1184 by adding § 625(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The cap of 5,000 only applies to the principle applicant and not spouses, children or parents.

⁹⁸ H.R. 3244, 106th Cong. § 107(e)(4) (2000) (amending 8 U.S.C. § 1011 by adding subsection (i)).

⁹⁹ H.R. 3244, 106th Cong. § 107(e)(1) (2000).

¹⁰⁰ H.R. 3244, 106th Cong. § 107(f) (2000).

¹⁰¹ *Id.*

C. *Prosecution of Traffickers*

Finally, the Act sets forth harsher sentences, new criminal charges and mandatory restitution for trafficking offenses.¹⁰² The sentence for placing a person into peonage, kidnapping, inducing an individual into slavery, or holding or selling someone into involuntary servitude was increased from a ten year maximum to twenty years in prison and a fine, or both.¹⁰³ The Act also added a provision making it a crime to employ forced laborers and to traffick individuals into peonage, slavery, and involuntary servitude with punishment of a fine or maximum imprisonment of twenty years, or both.¹⁰⁴

Life sentences are appropriate if death, kidnapping, an attempt to kidnap, aggravated sexual abuse, an attempt to commit aggravated sexual abuse, or an attempt to kill occurs in conjunction with a trafficking violation.¹⁰⁵ Sex trafficking is also made a crime punishable by life imprisonment when force, fraud or coercion is used to cause a person to engage in commercial sex acts.¹⁰⁶

III. ANALYSIS OF THE ACT'S RESPONSES TO TODAY'S TRAFFICKING PROBLEM

The enactment of the Trafficking Victims Protection Act acknowledges that a serious trafficking problem exists in the United States and around the world. The Act attempts to solve this problem by making this currently low risk and highly profitable business¹⁰⁷ into one of low profits and high risk. First, Subsection A proposes that the Act accurately acknowledges trafficking as an international crisis in need of an international solution. The only hope of eliminating trafficking is if all countries work together, employing both legal and non-legal means to prevent trafficking. Second, Subsection B discusses the non-legal means of deterring trafficking by increasing economic opportunities in countries of origin, thereby making a move abroad in search of better work a less attractive option. Also, the Act provides for the implementation of public awareness programs aimed at educating potential victims of the dangers of traffickers. Third, Subsection C critiques the sanction provisions of the Act, concluding that withholding assistance to foreign countries is

¹⁰² H.R. 3244, 106th Cong. § 112 (2000) (Strengthening Prosecution and Punishment of Traffickers).

¹⁰³ H.R. 3244, 106th Cong. § 112(a) (2000).

¹⁰⁴ H.R. 3244, 106th Cong. § 112(a)(1)(B)(2) (2000) (adding to Chapter 77 of title 18 of the United States Code: “§ 1589. Forced Labor” and “§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor”).

¹⁰⁵ H.R. 3244, 106th Cong. § 112(a)(1)(B) (2000).

¹⁰⁶ H.R. 3244, 106th Cong. § 113(a)(1)(B) (2000) (adding to Chapter 77 of title 18 of the United States Code: “§ 1591. Sex trafficking of children or by force, fraud or coercion”).

¹⁰⁷ *Loar Testimony*, *supra* note 6, at 78.

inconsistent with the Act's goal of eliminating trafficking since sanctions discourage international cooperation. Finally, Subsection D, focusing on the new T-visa, analyzes the provisions that afford protections and benefits to trafficking victims and concludes that the requirements to receive the visa are too stringent. In addition, this section argues that the cap of issuing only 5,000 T-visas per year is arbitrary and inconsistent with protecting the immigrants as human rights victims.

A. *International Cooperation*

Human trafficking touches almost all nations of the world. As a result, this serious human rights problem can only be eliminated through international cooperation. Because trafficking presents social, health, economic, and crime problems for every nation, each nation of origin, transit and destination has an incentive to work with the United States to control trafficking.¹⁰⁸ To facilitate international participation, the Act contains numerous provisions that encourage nations to cooperate in eliminating trafficking, prosecuting traffickers, and protecting victims.

The Act first requires the U.S. State Department to assess a foreign government's participation, facilitation or condoning of trafficking along with that government's efforts to cooperate in international investigations.¹⁰⁹ The Secretary of State will also head a committee that works to encourage cooperation among origin, transit, and destination countries.¹¹⁰ A recent arrest of thirty-eight smugglers with 3,500 immigrants from twenty-five different countries is a "testament to the necessity and the effectiveness of international cooperation."¹¹¹ Known as Operation Forerunner, the arrests were a coordinated effort between the United States, Belize, El Salvador, Guatemala, Honduras, Mexico, and Panama.¹¹² Cracking this major smuggling operation involved working simultaneously with all governments and sharing intelligence information to pinpoint times, routes, and the transportation methods traffickers were

¹⁰⁸ "If countries do not effectively prosecute slave traffickers, organized crime assumes a stronger role which in turn corrupts law enforcement and the rule of law – which is not good for the overall economic stability of these countries. . . ." Edwards & Harder, *supra* note 2, at 17 (alteration in original). China's organized crime syndicates profit over \$200 billion per year from illicit activities including trafficking. Peck, *supra* note 10, at 1044. A 1995 estimate stated that organized criminals in Asia earn \$5-\$7 billion per year from immigrant smuggling thereby strengthening their power and influence which is a tremendous threat to the United States. Tessier, *supra* note 23, at 262.

¹⁰⁹ H.R. 3244, 106th Cong. § 104(a), (b) (2000).

¹¹⁰ H.R. 3244, 106th Cong. § 105(c), (d) (2000).

¹¹¹ *INS and Central American Governments Disrupt Alien Smuggling Operations*, FED. NEWS SERVICE, Oct. 17, 2000, available at http://www.fedbuzz.com/govwire/breaking/ins_smuggle.html.

¹¹² *Id.*

using.¹¹³ Due to the success of Operation Forerunner, other countries have begun to cooperate as well.¹¹⁴ China proposed an initiative to work with Europe to combat transnational crime,¹¹⁵ and Turkey suggested that “technical and operational cooperation and communication offices be set up between the countries, [because] the expenses of the burden of the struggle should be shared by all countries.”¹¹⁶

It is important that many nations have recognized solidarity as the foundation to eliminating trafficking. Success, however, will not be achieved without trust among nations. Because government corruption facilitates much of the trafficking industry, many countries have been unwilling to share intelligence, fearing the information will wind up in the traffickers’ hands.¹¹⁷ To reduce this fear, the Act provides that the U.S. State Department prepare a report evaluating government authorities participation, facilitation, and condoning of trafficking activities.¹¹⁸ Furthermore, nations are required to investigate and prosecute government authorities involved in trafficking in order to meet the Act’s minimum standards criteria.¹¹⁹ However, as long as trafficking remains a highly profitable enterprise it is unlikely that participation in trafficking by government authorities will end.¹²⁰

As a result, the goal must be to deter trafficking by making it a high risk, low profit activity. Because many countries do not prohibit trafficking¹²¹ and punish the victims more harshly than the traffickers, the

¹¹³ *Id.*

¹¹⁴ For example, in December 1999 at the United Nations meeting on organized crime eighty countries signed a protocol to protect victims of forced prostitution and to work toward eliminating trafficking by sharing information on trafficking rings. Timothy Pratt, *Sex slavery racket a growing concern in Latin America*, THE CHRISTIAN SCI. MONITOR, Jan. 11, 2001, at 7.

¹¹⁵ *China to Sponsor Anti-Human Smuggling Initiative at Asia-Europe Summit*, AGENCE FRANCE PRESSE, Oct. 11, 2000, available in LEXIS, Nexis Library, AFP File.

¹¹⁶ Justice Minister Hikmet Sami Turk addresses international “human smuggling” conference in Rome (BBC broadcast, Oct. 27, 2000).

¹¹⁷ Tessier, *supra* note 23, at 264.

¹¹⁸ H.R. 3244, 106th Cong. § 104(a), (b) (2000).

¹¹⁹ H.R. 3244, 106th Cong. § 108(a), (b) (2000).

¹²⁰ The trafficking problem is also perpetuated by countries who choose to not participate in eradicating trafficking within their borders. These countries justify not pursuing traffickers or illegal immigrants because “whoever blows the whistle on the aliens ends up having the expense and effort of processing them and taking some form of costly action . . . therefore these parties are allowed to pass through.” Beare, *supra* note 43, at 35.

¹²¹ INTERNATIONAL CRIME THREAT ASSESSMENT, *supra* note 4, at 24 (“Only a handful of source and transit countries have enacted criminal statutes against alien smuggling, and virtually no ethnic group stigmatizes the practice. Most governments – including those in Central America, a primary conduit for smuggling illegal migrants into the US – are lax

risk in the past has been very low. The Act, however, changes this by requiring all nations of origin, transit, and destination to enact anti-trafficking laws with penalties appropriate for the heinous level of the crime in order to meet the minimum standards criteria.¹²² Independent of the Act, each nation must recognize the importance of educating local law enforcement officials, prosecutors, and judges to strictly follow the trafficking laws. Without harsh penal deterrence, traffickers will continue to prosper in nations where trafficking laws are not enforced or do not exist.

B. Increasing Economic Opportunities and Awareness in Countries of Origin

Economic desperation and lack of opportunities are the primary causes of trafficking.¹²³ Under the Act, the President is required to consult with appropriate nongovernmental organizations to create a tailored set of programs to deter trafficking by enhancing economic opportunities for potential victims.¹²⁴ While these programs should apply to all people, it is important to focus on the needs of women and girls by providing them with job counseling, skills training, and organizations that promote the political, economic, social, and educational roles of women in their countries.

Programs targeted at enhancing economic opportunities of women and girls are essential to the elimination of trafficking. Because poverty makes trafficking an appealing option, traffickers prey on women in regions where economic and employment prospects are bleak and females maintain a subordinate role in society.¹²⁵ Often women in such cultures have few options because they do not have access to education, credit, land ownership or inheritance.¹²⁶ Women living in cultures that view females as property, commodities, and sexual objects are especially vulnerable to the trafficking phenomenon.¹²⁷

toward alien smuggling because they view it largely as a US problem and perceive higher bilateral priorities with Washington”).

¹²² H.R. 3244, 106th Cong. § 108 (2000).

¹²³ *Loar Testimony*, *supra* note 6, at 77.

¹²⁴ H.R. 3244, 106th Cong. § 106 (2000).

¹²⁵ *Loar Testimony*, *supra* note 6, at 77. Traffickers have even been known to go into rural areas during droughts or before harvests when money and food is scarce and convince poor families to sell their daughters. Crouse, *supra* note 56, at 7.

¹²⁶ *Loar Testimony*, *supra* note 6, at 77-78.

¹²⁷ Ali Miller & Alison N. Stewart, *Report from the Roundtable on the Meaning of "Trafficking in Persons": A Human Right's Perspective*, 20 WOMEN'S RTS. L. REP. 11, 18 (1998). See also Fitzpatrick & Kelly, *supra* note 50, at 106-07.

In addition to poverty, traffickers prey on ignorance.¹²⁸ An effective and widespread informational campaign warning potential migrants of the dangers associated with trafficking is essential in reducing the number of trafficking victims. Unfortunately, the Act is vague in the implementation and scope with which public awareness programs are to be carried out. The Act only provides that such programs should be established with the assistance of nongovernmental organizations.¹²⁹

To implement an effective campaign, research has been conducted by the International Organization for Migration. This research has shown that offering information regarding both the advantages and disadvantages of migration has proven to be the most effective.¹³⁰ Programs should be designed to meet the local needs of a particular region and should include information on visas, immigration procedures, and protection.¹³¹ In addition, the dangers associated with trafficking should be emphasized. Here, providing testimony of victims has been the most effective communication tool.¹³² The over-arching goal of the awareness campaign should be to help migrants make well-informed decisions.¹³³

Several countries have already begun using information campaigns to deter trafficking. China reports to have initiated a successful information campaign by highly publicizing the smuggling attempt that killed 58 Chinese immigrants in a truck in England during June 2000.¹³⁴ Mexico and the United States have also joined efforts to educate potential victims of the dangers of crossing desert areas with the aid of smugglers, who have been known to abandon immigrants without food or water.¹³⁵ Finally, the United States is working with the European Union to warn women in the Ukraine and Poland of the dangers of responding to employment offers abroad.¹³⁶

C. *Sanctions are Counterproductive to Fighting Trafficking*

Withholding non-humanitarian and non-trade related foreign assistance from countries that fail to make appropriate and sufficient efforts to deter trafficking is inconsistent with the Act's approach to eliminating

¹²⁸ *The Sex Trade*, *supra* note 49, at 15. (Testimony of Steven R. Galster, Executive Director of Global Survival Network).

¹²⁹ H.R. 3244, 106th Cong. § 106(b), (c) (2000).

¹³⁰ *Information Campaigns Against Trafficking*, TRAFFICKING IN MIGRANTS Q. BULL. (International Organization for Migration, Geneva, Switz.), Dec. 1999/Jan. 2000, at 1, at http://www.iom.int/iom/Gov_Body_Docs/entry.htm.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Paul Mooney, *The Impossible Dream*, MACLEAN'S, Dec. 11, 2000, at 20, 21.

¹³⁵ Martin, *supra* note 28.

¹³⁶ *Id.*

world trafficking. Essentially, the Act sets forth four methods to combat trafficking: (1) increase cooperation among nations; (2) increase economic opportunities for potential trafficking victims in countries of origin; (3) increase public awareness of the dangers of trafficking through local nongovernmental organization campaigns; and (4) establish minimum standards criteria and provide assistance to foreign nations in meeting these standards. Because the Act grants the President discretionary power to impose sanctions on governments that fail to satisfy the minimum standards,¹³⁷ the basic foundation of the Act is destroyed.

First, increasing cooperation among nations is essential to eliminating world trafficking. Because almost all countries are nations of either origin, transit or destination of trafficking victims,¹³⁸ it is important to work together to ensure traffickers are captured, prosecuted, and punished. To be successful, the United States must form close working relationships with the enforcement agents in foreign countries and share intelligence information in order to follow traffickers, learn their routes and patterns, and eventually apprehend them. Such cooperation is significantly impeded by sanctions that destroy all efforts to establish an international force to fight the transnational trafficking problem.¹³⁹

Second, a main goal of the Act is to prevent trafficking by increasing economic opportunities for potential trafficking victims. Sanctions serve only to lessen such opportunities, thus causing trafficking to remain an appealing option.¹⁴⁰ Progress in the fight against trafficking can be best accomplished by focusing on increasing economic opportunities in countries with citizens vulnerable to the allure of traffickers. Economic sanctions exacerbate the main cause of trafficking by making the targeted countries poorer and more vulnerable to traffickers.¹⁴¹

Third, the Act proposes to utilize nongovernmental organizations as the vehicle for implementing many of the Act's provisions, including increased public awareness of trafficking dangers. For nongovernmental initiatives to be successful, it is important that these organizations form close working relationships with local populations and activists. Nongovernmental organizations around the world are pushing to combat trafficking and are receiving encouraging responses from governmental leaders who want to join in the fight against trafficking.¹⁴² However,

¹³⁷ H.R. 3244, 106th Cong. § 110(d)(5), (d)(11)(A) (2000).

¹³⁸ Shannon, *supra* note 6, at 120. See also Peck, *supra* note 10, at 1044.

¹³⁹ *International Trafficking*, *supra* note 25, at 91-92.

¹⁴⁰ *Loar Testimony*, *supra* note 6, at 85.

¹⁴¹ *International Trafficking in Women and Children: Hearings Before the Subcommittee on Near Eastern and South Asian Affairs of the Committee on Foreign Relations*, 106th Cong. 15 (2000) (statement of Hon. Frank E. Loy) [hereinafter *Loy Statement*].

¹⁴² *Id.*

sanctions can threaten the progress nongovernmental organizations have made by causing countries to cease working with local nongovernmental organizations.¹⁴³

Finally, the Act imposes sanctions on nations that fail to meet the minimum standards set forth in the Act.¹⁴⁴ While it is critical that all countries prohibit and penalize traffickers, protect trafficking victims, and cooperate with other governments, denying economic assistance does not facilitate this process. Similar to the United States, all countries are in the early stages of addressing trafficking and emerging efforts are fragile.¹⁴⁵ Facilitating and encouraging all nations by helping to expand public awareness campaigns, implement anti-trafficking laws, and encourage international cooperation should be the primary goal of the United States.¹⁴⁶ Economic sanctions not only hinder such efforts, but also punish the local people and governments instead of punishing the perpetrators.

D. Increasing Risk By Prosecuting Traffickers and Benefiting Victims

Another major provision of the Act that significantly increases the risk of trafficking is a provision that aims to alter the current practice of punishing the victims. Trafficking victims throughout the world have been captured, fined, imprisoned, and deported because of their illegal presence or criminal conduct.¹⁴⁷ Deportation is often automatic, with no consideration of whether the criminal activity, for example prostitution, was voluntary or coerced.¹⁴⁸ Employing such swift deportation mechanisms on trafficking victims severely hampers the prosecution's efforts to establish a trafficking case. With no witnesses to testify against traffickers, it is especially difficult for the prosecutor to prove the required element of "coercion" during a forced prostitution trial.¹⁴⁹ As a result, traffickers

¹⁴³ *Loar Testimony*, *supra* note 6, at 78-79.

¹⁴⁴ H.R. 3244, 106th Cong. § 110 (2000).

¹⁴⁵ *Loy Statement*, *supra* note 141, at 15.

¹⁴⁶ *Id.*

¹⁴⁷ Chaddock, *supra* note 49, at 2. Trafficking victims are often treated as criminals in many countries and often treated as multiple offenders for breaking laws such as: being illegally in the country without the proper documentation, working without permission, engaging in illegal activities such as prostitution. Miller & Stewart, *supra* note 127, at 15.

¹⁴⁸ Victims are often arrested and deported, for either their prostitution activities or illegal immigration status, despite the fact that they were coerced into coming to the United States and forced to perform these illegal activities against their will. *Slaves of the Sex Trade*, THE WASHINGTON TIMES, Nov. 8, 2000, at A22.

¹⁴⁹ Edwards & Harder, *supra* note 2, at 17. Trafficking and immigrant smuggling cases are also difficult to prosecute because, as a police officer fighting illegal immigration stated, "Your wares come to you without any need to search or advertise, they stick to a code of

escape punishment, receiving small penalties that fail to match the severity of their crime. This mild risk of punishment results in the perpetuation of the trafficking phenomenon.

Under the Act, victims are provided with the opportunity to testify against their traffickers. Indeed, the Act creates an incentive for victims to do so. The T-visa, a new addition to the Immigration and Nationality Act, allows victims to remain in the United States as long as necessary to "strengthen the ability of law enforcement to detect, investigate and prosecute trafficking offenses, while simultaneously offering a temporary safe haven for victims."¹⁵⁰ So long as the victim assists prosecutors in identifying, locating, and apprehending the trafficker(s), he or she may remain temporarily in the United States.¹⁵¹ The victim must also testify against the trafficker(s) at proceedings.¹⁵² In the rare case where a stay of deportation was granted prior to the Act, victims were reluctant to testify because they were afraid of retaliation to themselves or family members.¹⁵³ To alleviate this fear, the Act places victims in a witness protection program and allows family members to join the victim in the United States under certain conditions.¹⁵⁴

Under the T-visa, victims are also afforded shelter, counseling, health care, and authorization to work in the United States.¹⁵⁵ The counseling and health services are especially important to victims of sex trafficking, often young girls around 14, 15 and 16 years of age who have endured beatings, rapes and psychological abuses. Victims feel totally destroyed by the trafficking experience and have problems trusting others, fear going outside and risking kidnapping, and have flashbacks to the conditions they endured. Some victims also fight drug addictions caused by their captors forcing them to take drugs.¹⁵⁶ Additionally, many victims of forced prostitution suffer sexually transmitted diseases, including HIV or AIDS, while others have been forced by their traffickers to have abortions under unsanitary conditions. The medical services and health benefits provided to victims

silence and if you get caught the evidence against you tries to run away." Kusovac, *supra* note 10, at 53.

¹⁵⁰ *International Trafficking*, *supra* note 25, at 78.

¹⁵¹ H.R. 3244, 106th Cong. § 107(b) (2000).

¹⁵² *Id.*

¹⁵³ Caldwell et al., *supra* note 5, at 70.

¹⁵⁴ H.R. 3244, 106th Cong. § 107(c), (e) (2000).

¹⁵⁵ H.R. 3244, 106th Cong. § 107(c)(1) (2000).

¹⁵⁶ *International Trafficking*, *supra* note 25, at 97 (Testimony of Virginia P. Coto, Director, Florida Immigrant Advocacy Center).

under the Act become an important means of easing victims fears of testifying or being returned to their country of origin.¹⁵⁷

Being sent home places additional hardships on trafficking victims, which the Act attempts to remedy. Previously, victims were deported without consideration of the treatment they would face in their country of origin. For example, in China, victims have received three months in prison and fines equaling two to four years wages for attempting to flee.¹⁵⁸ Communities and families in many countries reject immigrants who return infected with HIV or AIDS and bear the stigma of being a prostitute.¹⁵⁹ Under the Act, victims are provided with assistance in reintegrating into their home countries or elsewhere.¹⁶⁰ Additionally, the option of remaining permanently in the United States is available if victims can show an extreme hardship.¹⁶¹

While the T-visa provides many services and protections to trafficking victims, severe restrictions are placed on those eligible to receive the visa and its benefits. First, it requires the victim to demonstrate an extreme hardship in order to be reunited with family members. To illustrate, a victim over 21 years of age cannot be reunited with his or her spouse or children and a victim under 21 years of age cannot be reunited with parents, except in cases where an extreme hardship can be presented. However, “[g]iven the horrific ordeal victims have faced, it is difficult to understand why we want to prevent them from reuniting with parents and spouses.”¹⁶²

The extreme hardship requirement is also an element of the provision allowing T-visa holders to adjust to permanent resident status.¹⁶³ Victims are eligible to remain permanently in the United States if they have been in the United States for three years and assisted in the prosecution of their traffickers *or* would suffer “extreme hardship” upon removal.¹⁶⁴

The extreme hardship standard is inappropriate to these provisions. Prior to the 1996 revisions to the Immigration and Nationality Act, the term “extreme hardship” was used as a requirement that immigrants had to

¹⁵⁷ See Hauber, *supra* note 9, at 197 (discussing how the European Union should enact similar measures in order to provide trafficking victims with an incentive to testify against their kidnappers and return to their home countries).

¹⁵⁸ *Failed Refugees Now Just Want to Return to China*, THE TORONTO STAR, Sept. 26, 2000, available in LEXIS, News Group File.

¹⁵⁹ 146 CONG. REC. E1239 (2000) (Speech of Hon. Louise McIntosh Slaughter of NY).

¹⁶⁰ H.R. 3244, 106th Cong. § 107(a)(1) (2000).

¹⁶¹ H.R. 3244, 106th Cong. § 107(e) (2000).

¹⁶² H.R. REP. NO. 106-487, pt. 2, at 43-44 (2000).

¹⁶³ H.R. 3244, 106th Cong. § 107(f) (2000).

¹⁶⁴ *Id.*

demonstrate in order to be granted relief from deportation.¹⁶⁵ A determination of whether the immigrant met his or her burden of showing extreme hardship was based on problems that would result from being forced to leave the United States after living here for many years.¹⁶⁶ For example, an immigrant with a young child who is a United States citizen and has a life threatening disease for which the only treatment is available in the United States, would most likely be granted relief from deportation by showing that, as a United States citizen, the child would suffer an extreme hardship if the immigrant was deported. This remains the understood definition of extreme hardship, even for T-visa applicants.

A demonstration of extreme hardship should not be relevant to the T-visa provision of the Act. Most victims applying for adjustment of status have not been in the United States for a significant period of time and often have not established unbreakable ties to individuals in the United States.¹⁶⁷ Because most victims of forced prostitution and involuntary servitude have been isolated and confined, such victims rarely can demonstrate an extreme hardship. If the extreme hardship language, which is undefined by the Act, is intended to relate to a victims' fear of retaliation or persecution upon arrival in his or her home country, it would have been better to allow the Attorney General to grant asylum to victims in such cases.¹⁶⁸

The bill originally introduced, which eventually became the Trafficking Victims Protection Act of 2000, permitted the Attorney General to grant asylum to trafficking victims who could show a well-founded fear of persecution in their country of origin.¹⁶⁹ As originally introduced, the bill also did not place a cap on the number of T-visas available to trafficking victims or on the number of victims that could adjust to permanent resident status during the course of a year.¹⁷⁰ Such a cap is counterproductive to the Act's purposes of prosecuting traffickers and providing services and protections to victims.

The majority, who supported capping the number of T-visas, argued that such a restriction was necessary to prevent persons from fraudulently claiming they were a victim of trafficking, thereby obtaining a visa to remain lawfully in the United States.¹⁷¹ The availability of 5,000 visas per year, they purported, prevents abuse of the system and still provides a

¹⁶⁵ H.R. REP. NO. 106-487, pt. 2, at 42 (2000).

¹⁶⁶ *Id.* at 43.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* (the original bill was proposed by Sam Brownback, R-Kan., Paul Wellstone, D-Minn., Chris Smith R-N.J., and Sam Gejdenson, D-Conn.).

¹⁷⁰ 146 CONG. REC. H7628 (2000) (appointment of conferees on H.R. 3244, the Trafficking Victims Protection Act of 2000).

¹⁷¹ *Id.*

generous number of visas for the estimated 1,500 victims annually.¹⁷² However, this cap is clearly arbitrary and very low. Currently, there are 50,000 women and children being trafficked into the United States every year to work in the forced sex trade and there is an estimated one million persons living in the United States under slave-like conditions. There is no similar arbitrary limit on the number of refugees and asylees permitted to enter the United States. This should be equally true in the T-visa instance, as “it is beneath our dignity as a nation to use an arbitrary cap to shut our doors to victims of slavery and sex trafficking.”¹⁷³

Furthermore, to impose a cap based on worries of fraud is unjustified. T-visa applicants and victims attempting to adjust to permanent resident status must go through an application process where their history as trafficked victims will be carefully evaluated.¹⁷⁴ Even if fraud were a valid concern, the visa cap nullifies the purpose of the Act – to turn trafficking into a higher risk activity and increase protection for victims. This is so because successfully prosecuting traffickers turns on the ability of victims to escape their captors and know they will be given protection and needed health and social services. Trafficking cannot be eliminated without incentives for victims to go to the authorities and feel secure that they will not be placed in further danger. Additionally, victims will not assist prosecutors and serve as witnesses against the traffickers if they are not offered witness protection.¹⁷⁵

IV. CONCLUSIONS

Almost all nations of the world, including the United States, are burdened with increased economic, public health, and domestic and transnational crime problems as a result of trafficking in humans.¹⁷⁶ A lack of laws and enforcement resources addressing trafficking, as well as a failure by governments to acknowledge the severity of the issue, contribute to the spread of trafficking. Thus, the enactment of the Trafficking and Victims Protections Act of 2000 is a crucial step in eradicating this world phenomenon. As evidence of the problem’s severity, the United States has agreed to spend \$95 million dollars over the next two years in both the

¹⁷² *Id.*

¹⁷³ *Id.* (Mr. Watt, a congressman from North Carolina was opposed to the 5,000 cap on visas and discounted fraud as a justification for the arbitrarily imposed cap, stating that “The issue is would we send a woman or child who has been sexually abused and put into slavery in this country back into another country where that activity was going on, so whether the victim is the 499th or the 4,099th, or the 515th or the 5,015th should not be the issue. The issue is what our policy should be, and we should open our arms to these people.”)

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See generally *Loar Testimony*, *supra* note 6.

United States and abroad to combat trafficking.¹⁷⁷ This money will be appropriated to various government agencies to implement the new law¹⁷⁸ in an effort to increase international cooperation, decrease governmental corruption, aggressively punish traffickers, and protect the victims who are coerced into participation in the trafficking industry.

Unfortunately, it is doubtful whether the Act will significantly reduce world trafficking. To deter potential migrants from turning to traffickers, the Act seeks to reduce poverty in countries of origin and alter the social causes that lead migrants to turn to traffickers for assistance in traveling abroad. While it is essential to stop trafficking by eliminating these causes, this goal is lofty and unattainable within the near future. Indeed, controlling poverty in all nations of the world is likely beyond the power of the United States or even several countries working together. Furthermore, altering belief systems and the role of women in society cannot be accomplished in such a short time period.

Publicity campaigns that warn potential migrants of the dangers of trafficking are likely to be a more effective deterrent. These campaigns, however, must be widespread and presented by individuals the potential migrants will rely on and trust as a source of information. Because individuals are willing to risk their lives in order to travel abroad in search of better economic opportunities, the information must be presented in a manner where the benefits greatly outweigh the potential dangers of forced labor and criminal sanctions.

As stressed throughout this Article, the key to reducing trafficking is international cooperation. How responsive and active countries are to working together to fight this problem will have a strong impact on the success of reducing this worldwide problem. Any country that chooses not to take this issue seriously, however, will quickly become a center for trafficking activity. While the sanction provision of the Act will also have some effect on international cooperation, the degree of the effect will depend on *how* and *if* it is implemented by the United States government.

This article advocates the need to turn trafficking into a high risk and low profit industry. Currently the profits from trafficking reach up to \$10 billion per year while the risk to traffickers of being severely punished is low. The Act did raise the punishment for trafficking to twenty years in prison and life sentences in some cases. The United States is also requiring foreign countries to enact laws that punish traffickers to a degree appropriate to the severity of the crime. However, this is unlikely to have a substantial effect on the elimination of trafficking while the industry remains extremely profitable and the demand for its services remain extremely high. The result is that when one large trafficking ring breaks up another immediately sprouts up in its place. In a similar vein, although the

¹⁷⁷ *Slaves of the Sex Trade*, *supra* note 148, at A22.

¹⁷⁸ Edwards & Harder, *supra* note 2, at 16-17.

punishment for dealing in drugs is high throughout the world, drug running continues to be the most profitable world industry. Consequently, even if trafficking were to have more severe, worldwide sanctions, it is highly likely that the continued demand for these services will drive the industry to take greater lengths to maintain the trafficking routes. The fight against trafficking then is extremely analogous to the war on drugs – a war well worth fighting, but one that ultimately may never be won.

