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The United States Response to Sex Trafficking Survivors

Patrice Brown

Thesis Adviser: Dr. Rainer Braun

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Abstract

The United States must uphold its international human rights obligations by successfully helping survivors of sex trafficking integrate into society post-trafficking. Sex trafficking is a global issue that violates a multitude of human rights. The United States has an international obligation to uphold and fulfill the human rights of victims of sex trafficking. In the year 2000 the United States enacted the Trafficking Victims Protection Act which effectively sought to define the human trafficking problem in the United States and set guidelines for addressing the matter as a national concern. The TVPA frames human trafficking in all forms as a criminal issue, ignoring the human right obligations that the United States holds towards victims. Although the TVPA lacks a human rights framework the United States does make provision for human trafficking survivors in through legislation. These provisions are deemed the most critical post-trafficking needs as defined by legislators with no input from sex trafficking survivors. The goal of thesis project is to understand whether the United States methods of redress for sex trafficking survivors is sufficient for their successful integration into society. The human rights that are violated by sex trafficking if left unaddressed allow for the continued victimization of survivors. Only through the restoration of those violated human rights can survivors of sex trafficking successfully integrate into society.

Chapter 1: Introduction

Attention to sex trafficking increased in recent years as the international community and individual states work to combat trafficking. The number of trafficked people is difficult to track, yet the International Labor Organization estimates that there are 21 million victims of forced labor internationally.¹ In the 2016 Trafficking in Persons report the U.S. State Department notes that human trafficking is a \$150 billion dollar industry.² Sex trafficking takes place in environments where multiple human rights violations exist concurrently. Victims frequently experience physical, emotional and psychological abuse. In a 2012 address, President Barack Obama declared that human trafficking "ought to concern every person, because it's a debasement of our common humanity. It ought to concern every community because it tears at the social fabric. It ought to concern, every business because it distorts markets. It ought to concern every nation because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name—modern slavery."³ In recent years there has been an influx of trafficking victims in the U.S. coming from less developed countries in Southeast Asia and South America.⁴ Sally Stoecker suggests that the four factors contributing to this growth in human trafficking are "the globalization of the economy, the increased demand for personal services in the developed

¹ "Forced Labour, Modern Slavery and Human Trafficking," ILO, 2016, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

² United States Department of State, 2016 Trafficking in Persons Report - United States of America, 27 June 2016, available at: <http://www.refworld.org/docid/4e12ee393c.html>

³ Obama, B. (2017, April 20). Remarks by the President to the Clinton Global Initiative. Speech presented in Sheraton New York Hotel and Towers, New York City. Retrieved April 20, 2017, from <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>

⁴ Sun, P., & Xie, Y. (2014). Human Trafficking and Sex Slavery in the Modern World. Albany Government Law Review. Retrieved April 19, 2017, from http://www.albanygovernmentlawreview.org/Articles/Vol07_1/7.1.093-Sun%20and%20Xie.pdf

world, the continuing rise in unemployment among women, and the rapid and unregulated enticement and movement of human capital via the Internet.”⁵

Sex trafficking is one form of human trafficking. The majority of trafficked people are forced laborers.⁶ States have the task to regulate the flow of migrants, prosecute traffickers and restore rights to trafficking survivors. International dialogue centers around human migration and prosecuting traffickers lacking the necessary attention on victim rehabilitation and rights restoration. The international community identifies human trafficking in all forms as a violation of human rights and criminal law. Considerably less acknowledgment is given to the economic systems that perpetuate trafficking and survivor assistance. Women and girls are disproportionately trafficked due to gender discrimination and limited access to education and employment opportunities. States have a three-pronged responsibility in regards to human rights; they are required to respect, protect and fulfill human rights for all individuals. States must work to end sex trafficking and restore the violated rights of trafficked people.

Although the concept of human rights has a long history in many societies, their universal codification and inclusion in policy continues to challenge the way that states recognize their responsibility towards individuals. Neither sex trafficking or ‘inherent human dignity’ are new phenomena. Codifying human dignity in the form of the Universal Declaration of Human Rights is, however, a more recent occurrence. Sex trafficking represents an immense violation of human rights and is a transnational issue that threatens economic, social and political systems by undermining their legitimacy. To ensure that all humans walk in the inherent dignity and equality declared in the Universal Declaration of Human Rights, all levels of legislation and

⁵ Stoecker, Sally. (2000). The Rise in Human Trafficking and the Role of Organized Crime. 8 Demokratsiizatsya: J. Of Post-Soviet Democratization 129, 129. Retrieved April 21, 2017.

⁶ ILO. (2012, June 01). 21 million People are now Victims of Forced Labour, ILO says. Retrieved April 24, 2017, from http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--it/index.htm

policy must be created with an acknowledgment of human rights. To effectively combat sex trafficking, it must be treated as both a criminal and human rights issue. Failure to recognize the human rights violations suffered by victims of sex trafficking ensures that the demand for sexual exploitation will continue to be fulfilled by vulnerable populations left unprotected by the state. Only by incorporating a human rights framework in sex trafficking legislation can the United States fulfill its international human rights obligations.

Right restoration must be a prominent focus of sex trafficking legislation in the United States because only through this targeted lens can the cycle of sex trafficking be prevented and ended. Sex trafficking is a cyclical phenomenon. The same factors that create vulnerabilities for victims perpetuate sex trafficking and sustain the demand for the sexual exploitation of victims. Sex trafficking requires a loss of bodily autonomy for victims. It feeds into a market for sexual objectification that results in gender-based violence. Women and girls comprise the majority of sex trafficking victims around the world because of a belief in gender inequality that permeates many different cultures and societies. Gender inequality reinforced through law ensures that women and girls cannot participate in the economic, social and political sectors of society to the same degree as their male counterparts. Gender inequality legitimized through law and social customs also reinforces the low perceived value of females. When individuals are devalued within a society their access to human rights are diminished.

Freedom from discrimination is a civil and political right as well as an economic and social right. Discrimination alters the fulfillment of all other human rights by reducing the social status of individuals. Vulnerability to sex trafficking is created by systematically marginalizing populations. When individuals are deprived of legitimate opportunities for social mobility through education and employment underground economies become a necessary and viable

option. The violation of freedom from discrimination is the foundation on which sex trafficking thrives.

Even if international instruments do not appropriately frame the issue of sex trafficking as a human rights violation with obligations for states, it is the responsibility of the United States to prioritize the restoration of human rights. Neglecting to recognize violations is a violation in itself. If right restoration is not a priority in domestic sex trafficking legislation, survivors remain vulnerable to re-trafficking. Failure to address the human right violations that enable and are caused by sex trafficking allows for a domestic policy that only addresses the symptoms of sex trafficking but fails to address sex trafficking itself.

The United States must include human rights rhetoric in domestic legislation concerning sex trafficking. When the United States acknowledges human rights in topic-specific domestic legislation, it will reaffirm the possibility of using human rights claims to affect social change. The dismissal of human rights claims in domestic sex trafficking legislation makes criminal law the most powerful tool for gaining victim assistance. Criminal law that places contingencies on the legal status of victim makes post-trafficking aid and integration a matter for civil societies and advocates rather than a duty owed to survivors by the United States.

Successful human right restoration is the only method by which victims of sex trafficking can integrate into U.S. society. Without a comprehensive understanding of victim needs as defined by survivors who have suffered human rights abuses the United States will not be able to fulfill its international human rights obligation.

Chapter 2: Objective

The purpose of this thesis project is to answer the question: Are the U.S. methods of redress for sex trafficking survivors sufficient for their successful integration into society? Sex trafficking is symptomatic of multiple human rights violations. Once freed from the bondage of sex trafficking successful integration is necessary to prevent re-victimization. The U.S. monitors human trafficking globally, releasing the Trafficking in Persons (TIP) report every year. The report is used to rank states efforts to combat human trafficking. The rankings are “based not on the size of the country’s problem but on the extent of governments’ efforts to meet the TVPA’s minimum standards for the elimination of human trafficking.”⁷ As a monitor of human rights abroad the United States must hold itself to a high standard.

Methods of redress refer to the actions of the U.S. government through legislation and government-funded programs to provide assistance to survivors of sex trafficking. Aid must be holistic since integration from sex trafficking occurs on multiple levels. For this project, the term *integration* refers to “the process of recovery and economic and social inclusion following a trafficking experience.”⁸ Absolute and successful integration is made up of many different components including but not limited to “...living in a safe and secure environment, access to a reasonable standard of living, mental and physical well-being, opportunities for personal, social and economic development, and access to social and emotional support.”⁹ The supplemental protocol to the United Nations Convention on Transnational Organized Crime (UNTOC), the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

⁷ US Department of State, *2017 Trafficking in Persons Report*, 2017 (Washington, DC: U.S. Department of State, 2017), www.state.gov/j/tip/rls/tiprpt/2017/271113.htm.

⁸ Surtees, R., Johnson, L., Zulfahary, T., & Caya, S. D. (n.d.). Going home. Challenges in the reintegration of trafficking victims in Indonesia (Rep. No. 1). Nexus Institute. Retrieved April 10, 2017, from <https://nexushumantrafficking.files.wordpress.com/2017/03/going-home-english-final.pdf>

⁹ Ibid.

(also referred to as a Palermo Protocol) has obligations for all United Nation member states. It questions “what steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.”¹⁰ The United States is a destination country for trafficked people from around the world. The United States is also a source country for people trafficked domestically. Deeply rooted discriminatory stereotypes towards females have caused women and girls to be unequally affected by cycles of poverty both in the United States and internationally.

Despite the forms of assistance available to victims through the United States Victims of Trafficking and Violence Protection Act of 2000 (TVPA) access to funding is still determined by political factors and does not demonstrate a thorough understanding of the effect of human trafficking on individuals. In the United States, there is a gap between funding provisions made for victim assistance and the actual services received by victims. As a signatory of the UNTOC and its supplemental protocols, the United States is committed to upholding the spirit of the convention.

¹⁰ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

Chapter 3: Literature Review

Today there is an estimated 20 million to 30 million people enslaved globally.¹¹ The International Labor Organization (ILO) reports that human trafficking has continued to increase over the past few decades.¹² The factors contributing to massive waves of migration both voluntary and forced also contribute to an increase in human trafficking. Since human rights are intrinsically linked, human trafficking violates many human rights. International dialogue and domestic legislation focus on human migration and prosecuting traffickers with little attention given to victim rehabilitation. The international community identifies human trafficking in all of its forms as a criminal act that violates human rights. Current international law prioritizes criminal prosecution lacking sufficient attention on the prevention of human trafficking and integration of victims. States must respect, protect and fulfill the human rights of individuals and groups. States response to human trafficking should have a criminal component, since human trafficking violates international criminal law. However, a human rights approach is necessary to ensure that human right violations are rectified. It is also necessary to keep victims from being criminalized through domestic legislation. There has been considerably less attention given to acknowledging the economic systems that perpetuate trafficking and victim assistance post-trafficking.

In many instances, human trafficking occurs in a wider system of social inequality and injustice. The underlying causes of these injustices are socioeconomic and rooted in the fabric of societies. If United States domestic law neglects certain human rights, the future of eliminating human trafficking and integrating victims remains unclear. Without eradicating the factors that

¹¹ International Labor Organization, "Forced Labour, Modern Slavery and Human Trafficking," ILO, 2016, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

¹² Ibid.

increase the risk of victim vulnerability, human trafficking will continue to occur. The United Nations Convention against Transnational Organized Crime (UNTOC) and its supplemental protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) were created to address human trafficking and establish a method for states to prosecute traffickers. The covenant recognizes the disproportionate effect of “risk factors” for trafficking on women and children stating:

“I believe the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing. It is rooted in social and economic conditions in the countries from which the victims come, facilitated by practices that discriminate against women and driven by cruel indifference to human suffering on the part of those who exploit the services that the victims are forced to provide. The fate of these most vulnerable people in our world is an affront to human dignity and a challenge to every State, every people and every community.”¹³

Human trafficking is a difficult subject to codify through international and domestic legislation due to differing definitions of human trafficking. A precise definition of human trafficking is essential to determine successful methods of redress. Definitions are needed to identify victims and perpetrators. Different characterizations of victimhood require different methods of redress. Relevant literature on human trafficking in the United States did not begin to appear until the 1990’s.¹⁴ Current literature on this topic centers on the issue of definition clarity and international standards for addressing human trafficking from a political and criminal framework. The 2000 Palermo Protocol to the UNTOC defines human trafficking as:

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

¹³ 40 ILM 335 (2001) / UN Doc. A/55/383 at 25 (2000)/ [2004] ATS 12

¹⁴ Sun, P., & Xie, Y. (2014). Human Trafficking and Sex Slavery in the Modern World. Albany Government Law Review. Retrieved April 19, 2017, from http://www.albanygovernmentlawreview.org/Articles/Vol07_1/7.1.093-Sun%20and%20Xie.pdf

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;”¹⁵

This definition, however, is still contested by NGO’s, and many other states in their own domestic definition of human trafficking. Definitions of trafficking and victimhood dictate how countries respond and to whom. The Palermo Protocol was the first of its kind in attempting to create a human trafficking policy inclusive of multiple forms of human trafficking. The Palermo Protocol includes both sex trafficking and forced labor as components of human trafficking.

Prior to the UNTOC the Convention to Suppress the Slave Trade and Slavery was used to address slavery and slave labor. In this convention slavery is defined as "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.” The United States also relied on the 13th Amendment.¹⁶ Historically these laws were insufficient for prosecuting modern human trafficking cases.¹⁷

At the same time that the UNTOC and Palermo Protocol were created the Victims of Trafficking and Violence Protection Act of 2000 (TVPA) was enacted in the United States. Like the UNTOC and Palermo Protocol the TVPA was created to provide a comprehensive set of standards for prosecuting traffickers, and protecting and assisting victims. The purpose of the TVPA “is to combat trafficking in persons, a contemporary manifestation of slavery whose

¹⁵ Ibid

¹⁶ The Constitution of the United States, Amendment 13 Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.)

¹⁷ Hyland, Kelly E. "The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." *Human Rights Brief* 8, no. 2 (2001): PP 30-31, 38.

victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹⁸ The TVPA defines trafficking 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.¹⁹

The foreword of the UNTOC notes that “with the signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement.” This limiting definition of trafficking neglects to acknowledge the existence of trafficking of citizens and immigrants both legal and undocumented which does not cross state borders. This is an important denotation since state obligations for victim assistance are contingent upon the definition of trafficking and victimhood. Author Carol Vance argues that there are two different distinct motives behind the UNTOC and the TVPA. Vance argues that these goals are evident not just implicitly in the text of the two documents but also “in the legislative process behind the drafting and passage of the US law, the TVPA, and the drafting process and ratification behind the UN Protocol.”²⁰

The drafting of the UNTOC also known as the “Vienna Process” was the center of debate for two varying views of trafficking. Janie Chuang notes that the debates centered on whether the definition of trafficking should include voluntary prostitution. Opposing groups debated whether trafficking should be regarded as an issue of border control or a state’s responsibility to uphold the human rights of the trafficked.²¹ Some believe that all forms of prostitution are

¹⁸ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101(a)

¹⁹ *Ibid.* 8 U.S.C. § 1101

²⁰ *Ibid.*

²¹ Chuang, Janie. “Beyond a Snapshot: Preventing Human Trafficking in the Global Economy.” *Indiana Journal of Global Legal Studies*: Vol. 13 Iss. 1, Article 5. 2006.

trafficking. They assert that prostitution can be a voluntary and legitimate form of employment that should not be confused with sex trafficking or sexual exploitation. The opposing side argues that all types of prostitution are sexual slavery. The operative words in the Palermo Protocol and TVPA definitions of human trafficking are *force* and *coercion*. Usman Mikail Usman acknowledges Kathleen Barry as the founder of the contemporary anti-prostitution movement. Barry, Usman notes, rejects the idea that sex trafficking is rooted in profound economic and social issues that disproportionately affect women due to discrimination. Instead, Barry asserts that trafficking is about sexual domination and a violation of the human rights of women.²² Barry argues that the victims of human trafficking are exclusively women. She further contends that trafficking is a result of the supply and demand nature of sexual exploitation in which traffickers fulfill demand through the oppression of women. Although some of the drafters of the UNTOC share the same anti-prostitution viewpoint (stemming from the Feminist Legal theory) as Barry, her argument is problematic in the framework of the UNTOC and the TVPA. Her definition of sex trafficking is misaligned with the definitions presented in the two instruments in multiple ways. First, it restricts victims to women only. It also makes methods of redress about political and civil rights ignoring economic and social rights violations. Barry's argument roots human trafficking in a criminal framework ignoring human rights violations that perpetuate the flow of human trafficking.

The counter argument to Barry is one represented by the Global Alliance against Trafficking in Women (GAATW).²³ This position is rooted in the second wave of feminism and argues that migration for the purpose of prostitution is a method of escaping poverty for many

²² Ibid.

²³ Ibid.

since prostitution is a legitimate form of sex work.²⁴ Usman contends that this position is rooted in the belief that trafficking only occurs “where the use of force or deception is present.” This assertion is consistent with the definitions of trafficking in the UNTOC and TVPA where the terms “coercion, force, and fraud” exist in both definitions. Proponents of this counter-argument believe that human trafficking of women is an issue of structural inequalities within states exacerbated by economic and social institutions where discrimination is perpetuated. Hugh Johnston furthers this argument adding “global capitalism has warped the lives of third world women from marginalized communities by feminizing poverty and migration and by criminalizing migrants.”²⁵ Acknowledging the human right violations that occur as a result of human trafficking is necessary for two reasons. The human rights violations that allow human trafficking to happen are the same human rights that must be restored for individuals attempting to integrate into society after being trafficked. Human trafficking is symptomatic of recurring human rights violations. Freedom from discrimination and the right to education both play an essential role liberating trafficked people.

Gender discrimination is a human right whose violation increases the susceptibility of human trafficking for women and girls. Gender discrimination contributes to the existence and prevalence of human trafficking. Discrimination towards women and girls results in limited access to education and employment opportunities. Women and girls are vulnerable to human trafficking due to the manifestation of a belief of male superiority manifested through a patriarchal government system. Gender discrimination internationally has limited access to education and economic opportunities for women. The International Covenant on Economic

²⁴ Ibid

²⁵ Johnston, Hugh and Sona Khan eds. *Trafficking in Persons in South Asia: Final Report of a Workshop with Participants from Bangladesh, Sri Lanka, India, Nepal, Pakistan, and Canada* New Delhi: Shastri Indo-Canadian Institute. 1998.

Social and Cultural Rights (ICESCR) recognizes that the right to education is necessary for the full expression of all other human rights as well as enabling individuals to participate “effectively in a free society.”²⁶ Education prepares individuals to participate in a society economically and earn the necessary income to support themselves financially. Knowledge is essential in empowering individuals to make informed decisions and engage socially. There are economic, cultural and communal benefits in communities with high levels of education. Education is exponentially vital for vulnerable populations. Historically women and children have experienced vulnerability due to legislation and cultures that assign them a low value. The ICESCR recognizes the vulnerability of children and mothers noting that “special protection” should be afforded these two groups.²⁷ The 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC) were adopted to address consistent discriminatory practices that prevent women and children the full and equal enjoyment of rights including the right to education. Individuals of multiple violations can be vulnerable to exploitation because of their lack of protection by states. The existence of this supplemental protocol acknowledges the continued need for special protection for women and children against trafficking.

Discrimination can be reinforced by domestic legislation that creates economic and social inequality between genders. Gender inequality amplifies the effect of social ills such as poverty and causes them to be disproportionately experienced by women.²⁸ The ILO estimates that women and girls account for 55% of today's forced labor victims at nearly 11.4 million.²⁹

²⁶ International Covenant on Economic, Social and Cultural Rights. The United Nations. 16 Dec 1966.

²⁷ International Covenant on Economic, Social and Cultural Rights. Article 10. The United Nations. (16 Dec 1966).

²⁸ Heyzer, Noeleen. “Combating Trafficking in Women and Children: A gender and Human Rights Framework.” The Human Rights Challenge of Globalization: Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children. 13-15 November 2002, in Honolulu Hawaii

²⁹ ILO. “ILO 2012 Global Estimate of Forced Labour Executive Summary.”

Gender discrimination exacerbates existing human rights violations and has disproportionate effects on females. The feminist legal theory asserts that laws legalize and perpetuate the continued subordination of women in society which results in the unequal enjoyment of human rights. Feminist legal theorist argues that social structures must be challenged when they coincide with dominant cultural or social beliefs that women are inferior to men in both public and private spheres. Theorist Catharine Mackinnon argues that "...injustices experienced by women flowed not mainly from gender-based distinctions in the law, but from subordination to men in society and its parallel legal culture of patriarchy."³⁰ Women and girls are frequently lured by the pursuit of economic stability and a better quality of life. Forced marriages, prostitution, and substandard working conditions often result from the willingness of women and girls to migrate in pursuit of economic progress. The United States must fulfill its obligation to eliminate discrimination and promote equality in the social status of women and girls to efficiently reduce vulnerability for trafficking and help trafficked people reenter society with the ability to participate in beneficial ways.

The Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) call for equality amongst individuals in recognition of rights. Historically the right to education has been denied to many women and girls due to discriminatory gender biases they relegate specific roles in public and private life exclusively for females.

The UDHR, ICESCR, and ICCPR call for equality amongst individuals in the recognition of rights. Inequality between genders or any other social status significantly distorts rights

³⁰ Project, The Bridge. "Feminist Legal Theories." Berkman Klein Center. Retrieved November 10, 2017, from, cyber.harvard.edu/bridge/CriticalTheory/critical3.htm.

fulfillment. Freedom from discrimination is intertwined with the right to education. Freedom from discrimination must be guaranteed as a condition of the right to education. The right to education holds significant positive obligations for states. The primary positive responsibility for countries is to establish a quality and equitable education system that is accessible to all. A free education system that provides primary education must be developed. States must take progressive actions to make secondary and post-secondary education free. The policy and practice of states must consistently promote the continuous improvement of the education system as a means to promote human rights. Education prepares individuals to participate in the economic realm of a society and earn the necessary income to live and compete in a capitalist economy. "The Vienna Declaration and Programme of Action calls on states to eradicate illiteracy, linking such efforts to greater respect and protection for human rights and personal liberties; it also emphasizes the use of human rights-informed education as a means of combating illiteracy (UNHCHR, 1993)."³¹ Education is essential in empowering individuals to make informed decisions and participate socially. Through education, the risk factors for trafficking are reduced. Individuals become equipped to compete economically, politically and socially in society.

The right to self-determination is also intertwined with the right to freedom from discrimination. The right to self-determination says that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development) and the right to be free from discrimination."³² The ICCPR states "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any

³¹ Education for All Global Monitoring Report. *Chapter 5: Why Literacy Matters*. UNESCO. 2006. 135-145. Print

³² 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967).

discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³³

The former U.N. Special Rapporteur on Violence against Women, Radhika Coomaraswamy argues that gender discrimination alters the experience of women “at the market, state, community, and family levels.”³⁴ Since women’s roles within economic markets are often relegated to traditional gender roles (unpaid childcare, housework, subsistence farming/labor) gender discrimination is the underlying factor limiting their economic opportunities leading to prostitution as a resort for some.³⁵ Coomaraswamy notes that on the community level discrimination causes “uneven division of wage labour and salaries, citizenship rights and inheritance rights.”³⁶ State policies reinforce gender discrimination through particular religious and cultural systems that “perpetuate the cycle of oppression of women.”³⁷

Human trafficking violations are rooted in civil and political rights and economic and social rights. Civil and political rights are more widely accepted in the US and internationally because they are predominantly ‘negative’ rights that don’t require state resources to fulfill. The UNTOC acknowledges that trafficking has its roots in economic and social structures. Critiques of the UNTOC suggest that both domestic and international law fail to address the origins of human trafficking truly. Much of the dialogue around human trafficking is centered on individual motivations for migration and neglects the social and economic forces that cause waves of labor migration. Carole Vance argues that rhetoric

³³ Ibid, Article 26.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

“deemphasize{s} the structural factors that encourage trafficking, subsuming them under a framework of the personal motivations of evil traffickers (greed, power, callousness, and contempt for women). Identifiable actions (and failure to act) by states, as well as global institutions and networks, create and sustain the political economy of trafficking through financial and tax policies; differential regulation of crossborder flows of people, goods, and money; and sanctions (or impunity) for labor exploitation...but the amount of money devoted to even these efforts is laughably small compared to policing and border control.”³⁸

The gap between funding provisions made for victim assistance and the actual services provided for victims is not unique to the United States. The Palermo Protocol has obligations for all United Nation member states, questioning “what steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.”³⁹ The State Department of the United States releases the Trafficking in Persons Report annually with rankings of nations according to the actions taken to prevent trafficking, prosecute traffickers and assist victims as a tool to name and shame countries that have not taken any action. Many instances of trafficking go unreported or misreported as separate crimes. The 2016 Trafficking in Persons Report states that “data on law enforcement efforts was incomplete, as authorities sometimes categorized internal trafficking cases as other crimes, such as induction into prostitution or pimping.”⁴⁰ These challenges in reporting and definition occur globally and inherently limit states ability to identify and prosecute trafficking under domestic law. Without

³⁸ Vance, Carole. “States of Contradiction: Twelve Ways to Do Nothing About Trafficking While Pretending To.” *Social Research: An International Quarterly*. 2011. PP 933-948.

³⁹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

⁴⁰ US Department of State, *2016 Trafficking in Persons Report*, 2016 (Washington, DC: U.S. Department of State, 2016), <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258745.htm>

consistent and precise identification of trafficking victims risk a continued violation of their human rights.

The TVPA's definition of human trafficking does call for multiple government entities to initiate programs to sufficiently carry out all of the requirements. Before the TVPA there had been no thorough assessment of the needs of trafficking victims.⁴¹ These initiatives were implemented to "accelerate and advance the political, economic, social, and educational roles of women in their home countries."⁴² The Federal Department of Justice and Health and Human Services (HHS) works collaboratively to certify victims through the Office of Refugee Resettlement (ORR).⁴³ This collaboration allows victims of trafficking to receive federal and state benefits to the same extent as refugees. Funded assistance includes medical care, housing assistance, some mental health counseling and "supplemental security income."⁴⁴ Additionally, the TVPA protects victims in instances where traffickers are prosecuted through the Federal Witness Security Program. Trafficking victims are also eligible for T-Visa's through the Immigration and Nationality Act. In theory this act allows for victims to be protected from further exploitation regardless of their citizenship status. However, the criteria for the T-Visa has a more stringent eligibility criteria than the TVPA and the UNTOC.⁴⁵ Human trafficking victims must meet the following criteria to be eligible for assistance:

- a) the victim is or has been a victim of a severe form of trafficking in persons as defined in section 7102(8) of the TVPA;
- b) the victim is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking;
- c) the victim has complied with requests for help in the investigation or prosecution of traffickers or has not reached the age of 15; and

⁴¹ Clawson, H, Small K, Go, E. & Myles. Needs Assesment for service Providers and Trafficking Victims. *National Institute of Justice*. Washington DC: Government Printing Office. 2004.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid

⁴⁵ Ibid

d) the victim would suffer extreme hardship involving unusual or severe harm upon removal from the United States.”⁴⁶

Despite these provisions varying political factors still determine the forms of assistance available to victims through the TVPA funding and access to funding. Vance notes that in the United States political rhetoric seeking to villainize immigrant’s limited access to services for victims. In 2000 when the TVPA was enacted the US Congress capped the number of T-Visa’s at 5,000.⁴⁷ This number is disproportionate to the estimated number of trafficked victims reported in the United States. The TVPA asserts that there are 700,000 women and children trafficked per year, 50,000 of which come into the United States. According to the 2010 the United States Attorney General Report only 1,591 of the 40,000 available T-Visa’s were granted between the years of 2002-2009.⁴⁸

The UNTOC and TVPA lack a sense of urgency towards survivors. The UNTOC allows states to make progressive steps towards fulfilling their obligations. Janie Chuang argues that “unlike the criminal justice measures, which are couched as hard obligations, these provisions are mostly framed in programmatic, aspirational terms.”⁴⁹ The UNTOC allows states to fulfill obligations “in appropriate cases and to the extent possible under its domestic law.”⁵⁰ Chuang notes that “the Protocol requires states to consider implementing measures providing for trafficked persons’ physical and psychological recovery and endeavor to provide for their physical safety, among other goals.”⁵¹ Access to TVPA assistance requires victims to fully

⁴⁶ 8U.S.C. §1101(a)(15)(T)

⁴⁷ Vance, Carole. *Innocence and Experience: Melodramatic Narratives of Sex Trafficking and Their Consequences for Law and Policy*. *History of the Present*, Vol. 2, No. 2. University of Illinois Press. 2012. PP 200-218.

⁴⁸ Ibid.

⁴⁹ Chuang, J. (2006). Beyond a Snapshot: Preventing Human Trafficking in the Global Economy. *Indiana Journal of Global Legal Studies*, 13(1), 137-163. doi:10.2979/gls.2006.13.1.137

⁵⁰ Ibid

⁵¹ Ibid.

cooperate with officials in the instance that a perpetrator is prosecuted. Additionally, assistance is also only provided until victims are deported.

Nolan Heyzer argues that while human rights are internationally accepted globalization moves too rapidly for states to efficiently uphold human rights.⁵² Heyzer notes "while persons are deemed to have an inherent human right to cross-border mobility as well as a basic human right to decent work or source of livelihood, the two remain separated in space...so long as capital moves more freely across borders than does labour, vulnerabilities will be created in some countries and demand created in others, thus encouraging trafficking."⁵³ Janie Chuang argues that a criminal justice approach "is far less resource-intensive and politically risky than developing long-term strategies to address the labor migration aspects of the problem."⁵⁴ Chuang asserts that long-term anti-trafficking strategies force states to acknowledge systemic issues including the "...economic need to migrate and the politically motivated restrictions against doing so, not to mention the cycle of poverty, discrimination, and violence that causes these migratory flows."⁵⁵ To adequately reintegrate victims of sex trafficking into society, the United States must first acknowledge the structural systems in place that allow for the continued violation of victim rights.

Integration is one phase of the trafficking process. Successful integration is necessary to end an individual's victimization and prevent re-victimization. Integration and reintegration are explicitly stated as goals in the TVPA, however only in reference to human trafficking victims in other countries. Division A Section 107 states that:

- (a) Assistance for Victims in Other Countries-

⁵² Heyzer, N. (n.d.). Combating Trafficking in Women and Children: A Gender and Human Rights Framework. Address presented at The Human Rights Challenge of Globalization: Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children, Honolulu.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

- (1) IN GENERAL- The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force.
- (2) ADDITIONAL REQUIREMENT- In establishing and conducting programs and initiatives described in paragraph (1), the Secretary of State and the Administrator of the United States Agency for International Development shall take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking, including stateless victims.⁵⁶

Many components of integration are included in the TVPA identified as post-trafficking needs. Integration is a long-term process that should be a goal of domestic policy. It prevents re-victimization because integration requires that risk factors for trafficking be mitigated. Integration also forces policymakers to examine and address systematic social inequalities reinforced (both knowingly and inadvertently) through domestic legislation. Risk factors for women and girls include “poverty, unemployment, membership in an indigenous group, illiteracy, a history of physical or sexual abuse, homelessness, drug use, and gang membership”.⁵⁷ These risk factors are results of the global issue of gender discrimination and a warped patriarchal belief that women are subordinate to men. They also result from the domestic laws in many different countries that reinforce the subordination of women.

Chapter 4: Methodology

This chapter reviews the design of this project and the specific challenges while conducting that limited the collection of data thus refining the scope of this project. The goal of this project

⁵⁶ US Department of State, 2017 Trafficking in Persons Report, 2017 (Washington, DC: U.S. Department of State, 2017), www.state.gov/j/tip/rls/tiprpt/2017/271113.htm.

⁵⁷ Seelke, Ribando, Clare, *Trafficking in Persons in Latin America and Caribbean*, Congressional Research Service, 2011

is to understand whether the United States methods of redress are effective, not from the lens of the state but from the perspective of individuals that work directly with sex trafficking survivors and assist in their integration. This project was conducted using qualitative data. The aim was to gather qualitative data through advocate narratives. To answer the research question the qualitative data consists of responses collected through semi-structured interviews.

Individuals that work directly with human trafficking survivors were selected to participate in this research project. All participants interviewed were selected based on their experience working with a human trafficking NGO purposed to help provide resources in some capacity (mental, physical, financial or emotional) to human trafficking survivors after being trafficked. This population was chosen as interview participants because of the unique space that they occupy as an intermediary between the United States government and human trafficking survivors. Individuals that work directly with survivors are able to perceive patterns in the types of needs consistently surfaced by the survivors themselves. They are also knowledgeable about the most commonly available forms of funding that help to support these needs. Questions were structured in a manner to help participants reflect on the needs communicated by survivors, those anticipated by NGO's, and those which funding allow them to fulfill.

It was equally important to ensure that all participants had significant experience working directly with survivors. All participants have worked directly with survivors for at least a minimum of 2 years in a professional capacity. Individuals working with NGO's were chosen as a sample population rather than government employees. Individuals working with NGO's rather than government employees were chosen because their professional occupation requires that they assist survivors beyond the limits of government services. A primary goal of this project was to

get data from individuals that have ground-level experience working with the needs of trafficking survivors for a significant period of time.

Snowball sampling was used to find participants. To recruit participants for this project multiple NGO personnel were contacted by email using an introductory email. The initial response in potential participants was slow as many individuals noted hesitation in participating in a project that could potentially reveal challenges in their survivor assistance program. After sending an introductory email, introductory phone calls and follow up emails were necessary to provide background information for this project and to communicate the specific aim of the research. Female survivors of sex trafficking over the age of 18 currently living in the United States are the focus of this project. Since women and girls are the majority of trafficking victims, interview questions were designed to elicit data centered on the post-trafficking experience of adult women. Legal status plays an integral part in the allocation of resources to individuals in the United States, whether it is citizenship or minor status. Adults were the focus because minors are often afforded special provisions in domestic law that adult women do not receive.

Participants come from a range of professional occupations all within the network of an NGO. Participants include 2 Lawyers, 1 Case Manager, 1 Program Director and 1 Mental Health professional. It was essential to incorporate people from a range of occupations because integration like human trafficking is not a one-dimensional phenomenon. Survivors often work with a variety of people after trafficking when working towards re-stabilizing their lives. Most human trafficking NGO's are either specialized for one form of assistance or have specialized areas. This led to the incorporation of individuals from a range of professional backgrounds that share the commonality of working with human trafficking survivors post-trafficking. Integration

is a long-term, multifaceted process. It is vital to incorporate people approaching the same issue from a range of disciplines because of the potential that differing perspectives may have on the pursuit of resource assistance.

There are certain states within the United States with higher reported rates of human trafficking. Where human trafficking is a known problem policy makers and NGO's actively work to address an issue that can have significant ramifications for a state's economy, and social stability if unaddressed. New York, Florida, and Michigan are all states with evolving state laws surrounding human trafficking due to the prevalence within their borders. Participants work in one of these three states where the trafficking of US citizens and non-US citizens occur. The federal legislation sets the standard and foundation for state legislation. Participants from various states were incorporated to provide insight on the differences between the effectiveness of state legislation and federal legislation. Due to the continuing evolution of state laws where participants work there was a tendency to focus on the implementation of state law rather than the function and purpose of international and federal human trafficking laws. The use of semi-structured open-ended interviews allowed participants to be questioned for further clarification and to provoke responses in specific to national legislation.

Interviews centered on the perceptions and experiences of participants. Questions sought to understand participant's roles in aiding survivors and their perceptions of survivor needs. Questions were crafted to identify participant's perceptions of the steps towards integration and the role that the United States federal and state governments play in this process.

There are several distinct levels of integration into society. These layers are individual, familial, communal, and social.⁵⁸ Individual occurs within a survivor centering on their recovery immediately post-trafficking. Familial refers to the acceptance and receptivity of one's immediate and extended family. Communal relates to the community where a survivor settles, whether original or new. Social integration refers to the larger society and state, whether civil, political, and economic rights are granted as well as access to state assistance.⁵⁹ The International Organization for Migration notes that reintegration is only complete when the trafficked person is an active member of the economic, cultural, civil and political life of a country.⁶⁰ Interviews were analyzed to find common themes and challenges that exist across the United States where components of integration necessary for victims yet excluded from legislation exist.

⁵⁸ Surtees, R., Johnson, L., Zulfahary, T., & Caya, S. D. (n.d.). Going home. Challenges in the reintegration of trafficking victims in Indonesia (Rep. No. 1). Nexus Institute. Retrieved April 10, 2017, from <https://nexushumantrafficking.files.wordpress.com/2017/03/going-home-english-final.pdf>

⁵⁹ Ibid.

⁶⁰ IOM (2007) The IOM Handbook on Direct Assistance for Victims of Trafficking. Geneva: IOM

Chapter 5: Significance

This thesis project contributes to the existing bodies of work focused on sex trafficking survivor integration by focusing specifically on the United States domestic policy and integration efforts. The United States is positioned as a leader in the international community for championing human rights. There is a gap between the United States global commitment to human rights, domestic policy, and practices towards individuals living in the United States. This project seeks to understand, the unmet needs and gaps in survivor assistance, from the perspective of those working directly with survivors. A bottoms-up human rights approach to integration rather than a top-down political approach may prove more efficient for integrating survivors and reducing the vulnerability of people to sex trafficking.

This project recognizes the differences in the terms *victim* and *survivor*. The decision to use the term survivor is an attempt to acknowledge the mental, emotional and physical resolve found in individuals that have been trafficked. As aforementioned post-trafficking integration is a long-term process. Recovery post-trafficking is also a long-term process. Through it, survivors demonstrate strength, resolve, and resilience. The choice to use the term survivor was made to refrain from contributing to a sense of powerlessness often assigned to people that have been trafficked when discussed. The term *victim* is used according to its' definition in the Trafficking Victims Protection Act of 2000 (TVPA):

- (13) VICTIM OF A SEVERE FORM OF TRAFFICKING- The term 'victim of a severe form of trafficking' means a person subject to an act or practice described in paragraph (8).
 - (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.
- (14) VICTIM OF TRAFFICKING- The term 'victim of trafficking' means a person subjected to an act or practice described in paragraph (8) or (9).

- (9) SEX TRAFFICKING- The term `sex trafficking' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.⁶¹

The term *victim* is also a legal status. The designation of the status *victim* entitles individuals to legal protections and certain forms of government aid. These terms are used interchangeably in some sections of this thesis in accordance with the way that other writings use them in reference to people that have been trafficked. The terms are used interchangeably when text is used to discuss the existing forms of assistance available to trafficked people and the issues surrounding that assistance. Many authors use the term *victim* in their writings. However, as the National Sexual Violence Resource Center notes, this does not "connote powerlessness or a lack of resilience, but to convey the acute conditions under which someone who has suffered from trafficking often encounters an advocate, as well as the magnitude of the crime that has been committed against him or her."⁶²

The United States Department of State Trafficking in Persons report assigns a ranking to each United Nation member state based on the steps that they've taken to prosecute traffickers and reduce vulnerability to trafficking. The TIP report outlines the issues surrounding human trafficking in an effort to create universal solutions to a transnational problem. The TIP report acknowledges that internationally more attention is given to female victims of human trafficking. To address the issue the TIP report asserts that a "specialized approach should be given to males to meet their needs, such as housing, medical care, mental health services, legal support, and employment assistance...."⁶³ The TIP report goes on to detail the following as victim needs:

Housing. Access to housing that is safe and has resources to meet their unique needs. The use of homeless shelters is often inadequate for traumatized male survivors.

⁶¹ Ibid.

⁶²Assisting trafficking victims: A guide for victim advocates, National Sexual Violence Resource Center and Pennsylvania Coalition Against Rape, 2012.

⁶³ Ibid.

Health. Access to a wide range of trauma-informed physical and mental health services, including alternatives to traditional care such as peer-to-peer counseling.

Legal Support. Access to legal support to ensure male survivors are aware of their rights, have access to legal proceedings, and are assisted in contacting consular services from their home country and seeking compensation for lost wages and injuries and other forms of restitution.

Employment Assistance. Access to employment assistance that includes education, skills training, and job placement.⁶⁴

Assistance for housing, food, employment, and healthcare are all mandated in the TVPA. These categories are the primary focus of most domestic policy references to victim aid. They align with the rights noted in the UDHR and are established as necessary for ensuring the dignity of all humans. These provisions, however, are insufficient for assisting survivors in their integration and subsequent protection from re-victimization.

The Trafficking Victims Protection Act continues to evolve. The act has been reauthorized multiple times with the last reauthorization occurring in 2017. The reauthorizations extend funding between fiscal years. The primary goal of the TVPA seems to be strengthening the rule of law to promote an end to human trafficking. The reauthorization act of 2017 extended one million dollars of funding annually to the Human Trafficking and Smuggling Center. The Human Trafficking and Smuggling Center was established in the year 2004 in response to the terrorist attacks of September 11th, 2001. Terrorism and national security are two of the primary focuses of the Human Trafficking and Smuggling Center. The Human Trafficking and Smuggling Center views human smuggling, trafficking in persons and terrorist travel as issues that have similar causes and solutions. The inclusion of a center that operates under this philosophy in TVPA funding is symptomatic of the United States limited focus on survivor assistance.

⁶⁴ US Department of State, *2017 Trafficking in Persons Report, 2017* (Washington, DC: U.S. Department of State, 2017), <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/258745.htm>

The Trafficking Victims Protection Act 2000 has three distinct goals for addressing trafficking in persons. These goals are to *prosecute*, *protect* and *prevent* trafficking in persons. As an integral component in addressing human trafficking the United States government recognizes that *protection* is a multidimensional process. There is protection *from* trafficking which is intertwined with prevention. There is also protection that is necessary post-trafficking both from traffickers and the potential to be re-trafficked. Article 2 Section 107 of the TVPA acknowledges the following:

Protection: 2 Sec 107

(C) {Individuals should} be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including--

- (i) Taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and
- (ii) Ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.⁶⁵

The TVPA goes on to acknowledge that “(17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.”⁶⁶ Regardless of citizenship status governments must uphold the human rights of individuals in their territory. The United States gives tier designations to other nations based on “(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.”⁶⁷

In a post-trafficking experience the TVPA takes special measures asserting that:

“(3) States should—

(A) treat minor victims of sex trafficking as crime victims rather than as criminal defendants or juvenile delinquents;

⁶⁵ US Department of State, *2017 Trafficking in Persons Report, 2017* (Washington, DC: U.S. Department of State, 2017), www.state.gov/j/tip/rls/tiprpt/2017/271113.htm.

⁶⁶ Ibid.

⁶⁷ Ibid.

- (B) adopt laws that—
- (i) establish the presumption that a child under the age of 18 who is charged with a prostitution offense is a minor victim of sex trafficking;
 - (ii) avoid the criminal charge of prostitution for such a child, and instead consider such a child a victim of crime and provide the child with appropriate services and treatment; and
 - (iii) strengthen criminal provisions prohibiting the purchasing of commercial sex acts, especially with minors;⁶⁸

There is a significant disconnect "between the views of policymakers and institutions and those of women and children involved in the sex trade. Often, legislation and services provided by governments and institutions do not reflect the demands of sex workers and sex slaves. Instead, women and children in the industry are frequently used to develop and advocate political agendas."⁶⁹ While states have a duty to fulfill human rights they must also be grasped by rights holders. Survivors must be empowered to reclaim their human rights and be fully integrated into society. Although people are not always cognizant of their human rights, or of a state's obligation to ensure them countries must still actively work to uphold their commitments. Survivors of sex trafficking are a diverse population. Trafficked people come from different backgrounds, socioeconomic statuses, ages, religions, nationalities, and origins. Although there are commonalities in the risk factors that increase vulnerability to trafficking the group is still wholly diverse. All survivors cannot be expected to be fully versed in the rhetoric of human rights or the obligations that states should be fulfilling. Survivors also should not be expected to be thoroughly knowledgeable on the needs for integration as defined by the state.

The United States Department of State notes that in a victim-centered approach survivors should be consulted in the creation of policy and assistance programs. The Trafficking in Persons Report notes that

⁶⁸ Ibid.

⁶⁹ Wickham, L. (2009). The Rehabilitation and Reintegration Process for Women and Children Recovering from the Sex Trade (Tech. No. 1)

“the victim-centered approach seeks to minimize re-traumatization associated with the criminal justice process by providing the support of victim service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice. A trauma-informed approach includes an understanding of the physical, social, and emotional impact of trauma on the individual, as well as on the professionals who help them.”⁷⁰

Although a victim-centered approach to policy creation and implementation is a goal of the United States evidence of this goal is not reflected in legislation. It is essential that victim needs are defined by actual survivors. The use of a “victim-centered and trauma-informed approach” is highlighted in the 2017 TIP report as a crucial component of an anti-trafficking program. The 2017 TIP report notes that “all engagement with survivors, as well as all anti-trafficking work, should incorporate a victim-centered and trauma-informed approach to minimize re-traumatization and ensure an understanding of the impact of trauma on the individual.”⁷¹ Legislation should incorporate the perspectives of lawmakers with the experiences of survivors and those who work in the field to support them.

Survivors have played a small role in assisting policymakers in creating legislation on human trafficking. Legislation that surrounds prosecution and the criminalization of traffickers requires less input from trafficking victims because punishing those who break well-defined laws is a different matter than assisting victims. Members of NGO's, politicians and law enforcement played a pivotal role in drafting the Trafficking Victims Protection Act and The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Survivors of sex trafficking were not consulted in the initial drafting of either instrument. It is highly possible that the “needs” specified in these instruments do not align with those expressed by survivors of sex trafficking. The “needs” in the TVPA align with some of the rights

⁷⁰ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101(a)

⁷¹ Ibid

enumerated in the Universal Declaration of Human Rights as well as the International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights yet they do not explicitly outline all rights s victim needs. The United States is a signatory to the ICESCR and the ICCPR. The United States also played a critical role in the drafting of the UDHR. This may be a reason as to why the rights to housing, education, health, and employment are all included as needs. United States policymakers consider these rights to be the most critical and perhaps their provision an equivalent to their fulfillment.

Chapter 6: Data Analysis

Through the data collection process participants surfaced common themes in working with survivors that require closer attention. Individuals working in the field working with survivors

are tethered to the realities of the challenges that survivors encounter in attempting to stabilize post-trafficking. Trying to navigate the rule of law institutions post-trafficking can create more vulnerability for survivors that hinders their integration into society. Survivor identification, a need for mental health care and long-term assistance were the looming themes that participants described as the most pressing challenges in working with survivors.

I. Victim Identification

"My clients are seen as defendants; there is this victim defendant duality."— M. S., Lawyer

One of the primary functions of human trafficking legislation at all levels is to establish a criteria by which human trafficking victims are identified. The international definition of a human trafficking victim is funneled down to federal and state laws. Variations between international and national definitions have narrowed who can be defined as a victim at the federal level. Sex trafficking victim identification is necessary to ensure that the appropriate legal recourse is afforded to victims. A consistent issue brought up by participants is a failure of local municipalities to respond to trafficked people as victims rather than perpetrators. It is legal to buy or sell sex in just one U.S. state, Nevada. Prostitution is illegal in each of the three states where participants work. Four of the five participants mentioned that when sex workers are encountered by law enforcement, they are viewed as criminals first and often arrested for prostitution.

The United States Trafficking in Persons report acknowledges that law enforcement should be trained in proper victim identification. During the semi-structured interview, S. Sandborne discussed her time as a consultant to help local police efficiently train to identify victims. Through Sandborne's work she helped law enforcement understand the psychosocial effects of trafficking on victims. Although suggested in the TVPA, training for law enforcement

does not always translate into the most beneficial treatment of victims. Sandborne noted that law enforcement has a specific role in this process which is why assumptions that they may give consideration to a victim's mental well-being may be unrealistic. Still, policy provides a standard to which rule of law institutions must work to reach.

“I think we’re better off with the policy than without the policy. Policy is always changing. They first modeled it (The Florida Safe Harbor Act) after the TVPA but except they didn’t remove the force, fraud or coercion clause for kids, and then they amended once to give it a little more teeth. Then they had to remove the force, fraud or coercion for kids. Right now our safe harbor act doesn’t say that law enforcement can’t arrest kids for prostitution. That was a compromise. Because law enforcement didn’t want non-law enforcement people to tell them how to run their show.”— S. Sandborne, Program Director

As crucial as it is to correctly identify trafficked minors as victims it is equally imperative that trafficked adults are accurately identified. Identification is an integral step in ensuring that assistance for the purpose of right restoration is given. The Trafficking Victims Protection Act calls for:

“proactive identification efforts and training for first responders, licensed health care practitioners, and other service providers are critically important to a government’s ability to combat human trafficking. After identification, governments should prioritize the rights and needs of victims to ensure that protection efforts are provided in ways that treat victims with dignity and provide them each the opportunity to return to a life of their choosing.”⁷²

To the credit of the United States the Trafficking Victims Protection Act recognizes that creating a plan for assistance is a collaborative effort. It requires input from multiple government agencies, NGO’s and human trafficking victims. The main purpose of the reauthorization of the TVPA is to extend funding for various government agencies. The current method of victim identification can be counterproductive to helping victims receive assistance in the process of integration. Building trust, a quality that is damaged for many survivors is hindered when counterintuitive definitions of victimhood are the only means through which

⁷² Ibid.

victims can receive government-funded aid. Isabelle M. a lawyer that works with victims to apply for immigration status as a means to unlocking other forms of social aid noted that “you have to start somewhere, the clients don’t know you. Clients don’t know you and the clients don’t trust you. But you have to start somewhere so that they know that they can actually get something.” The goal of the United States government should be to continue to evolve in a manner where the full scope of victim needs are revealed and met.

II. Mental Health as a Necessity

“Can we fulfill all these needs? Yes? Then how come they keep running away? It’s about more than just the needs. More than just the tangible needs. Giving them a sense of empowerment in their healing process and engaging them on what they think that process looks like.” — S. Sandborne, Program Director

“Trauma creates a disconnect between the mind and the body.” — K. Simone, Mental Health, and Wellness Practitioner

The Trafficking in Persons Report reiterates the necessity of making the fight against human trafficking multidisciplinary, engaging members from various parts of government and advocates. The TVPA’s heavy focus on criminal prosecution reaffirms law enforcements tendency to focus on illegal behavior without a sufficient understanding of human trafficking as a global issue that disproportionately affects marginalized communities. A policy is necessary to define a problem and establish parameters for dealing with the criminal and social elements of an issue. The Trafficking in Persons Report sufficiently places human trafficking in a global context. The TVPA and TIP acknowledge that human trafficking is complex and multifaceted yet they continue to make victim assistance one dimensional. Needs are defined as a group of short-term resources without acknowledging the role that trauma and mental health play in sustainability and integration. Participants asserted that while there is an issue in the accessibility

of funding for short-term needs the more significant concern is a failure to see mental health and trauma as factors that affect the pursuit and retention of other forms of assistance.

S. Sandborne notes that “the first goal of working with cases as an advocate and a case manager is to first establish that rapport. You have to get their buy-in; their consent to come back to services. You're not going to make a goal until you get that.” Mental health and trauma are not given significant weight in the federal assessment of needs. Each participant firmly explained the importance of building a relationship and establishing trust as a precursor to understanding victim needs and then creating a plan to fulfill those requirements.

“When working with survivors, it's supposed to be it's from a perspective of empowerment so probably the one thing that you can do to turn girls away and not have them engage in your program is to come at them with your goals for them.” —M. S., Lawyer

“I want them to know that they know what they need. Nobody else knows it...when they come in they really do. Even the most off-balance people know what at least in a basic way what might be helpful for them.” —K. Simone, Mental Health, and Wellness Practitioner

The TVPA acknowledges the importance of victim input in the creation of legislation and aftercare programs yet the experiences of the participants suggest the evidence of victim input is absent from policy. It is imperative that resources for the needs defined by trafficking victims are provided for and in the order of priority as expressed by victims.

The TVPA also fails to acknowledge the effects of trauma. Human trafficking is violent and includes physical, mental, verbal and emotional abuse. The TVPA insists that *coercion* or *force* must be present for an act to be legally deemed as human trafficking. Long and short term abuse can have lifelong effects on victims. PTSD is just one of the mental health issues that many human trafficking victims experience. Participants agreed that victims of trauma caused by human trafficking sometimes experience symptoms so severe that they impede victims from

communicating and building meaningful relationships let alone accessing any of the resources mandated by the TVPA. Mental health and wellness Practitioner K. Simone shared that she suffers from PTSD, "*and once you have it, you have it forever.*" Each of the five participants interviewed expressed that trauma undoubtedly altered the manner in which victims pursued forms of assistance and how they were able to maintain the resources received. Both lawyers and the mental health practitioner asserted that this is especially apparent when survivors are attempting gain employment and remain employed. Individuals that have been trafficked frequently experience difficulty building and maintaining new relationships, anxiety, panic attacks and substance abuse. K. Simone went on to assert that "*the most common things are anxiety and panic attacks. Difficulty communicating with people and understanding people.*" Flashbacks, drug abuse, social anxiety when amongst other people or complete disassociation are also exhibited in victims especially if disassociation was used as a method of coping during human trafficking.

"None of those things allow them to be successful in their next steps. Their focus is going to be on trying to deal with their bodily reactions, with their nervous system...and in the world I grew up with, people just tell you that you got to talk yourself into doing things. Or talk yourself into showing up here or there. That doesn't work with trauma. The frontal lobes shut down when we're back in a flashback or back there somehow because our brain doesn't know it's stopped. We can't use our cognitive brain to heal." — K.Simone, Mental Health, and Wellness Practitioner

It is imperative that policymakers demonstrate that they have an understanding of how mental health impacts integration through the programs and forms of assistance mandated through legislation. A clear understanding or even knowledge that trauma and mental health have an impact on the process of integration is missing from the TVPA. S. Sandborne noted that an "understanding of the recovery process, which is really another important thing {—} the system has a really hard time with that [understanding the recovery process], they just kind of shuffle

you from place to place.” Sandborne’s response was in reference to the treatment of minor victims of trafficking that are routinely moved between crisis housing facilities based on their behavior. Sandborne asserted that survivors often have outbursts of aggression and other violent reactions. When housing facilities are segregated based on victim behavior and recovery status with diminished attention on mental health suddenly moving an individual between facilities based on their behavior can cause a regression in their progress. Time, stability and a steady environment are necessary factors for victims that already experience difficulty in establishing new relationships and exhibiting trust.

Still, in aiding in the mental health of victims, the United States must be cognizant of the connotations of ‘trauma’ and ‘sex-trafficking victim.’ Sex-trafficking is dynamic, and each government agency working with victims must be efficiently trained on how trauma will affect their interaction with survivors. Sandborne mentioned that trafficking survivors need “...an opportunity to not be solely defined by abuse and trauma. And when we’ve systematized the whole human trafficking thing we definitely are not doing that very well. As soon as they get labeled as a human trafficking survivor it’s on every record, everybody knows, and it can be very damaging.” Mental health care should be just as dynamic as sex-trafficking and incorporate modes of therapy that are culturally appropriate. When asked about the most beneficial forms of mental health aid available to survivors Isabelle M responded “sometimes I’m not positive that psychiatrist or psychologist is the best way. Especially when you come from other cultures where you don’t necessarily go to see a psychologist. I mean it’s not the way you would deal with suffering.”

“The conclusion that I’ve found is that nobody is ready yet for resources, mental health resources. Right, and so they’re still trying to figure out what they’re doing and if anything is figured out, I mean they’re still struggling here to find a few

beds. But resources and particularly mind-body resources, evidence-based mind-body resources are essential for them (victims) to reintegrate.” —K. Simone

The TVPA is missing a fundamental recognition of mental health and the effects of human trafficking on psychological health. The programs created to assist victims need to be developed under the assumption that trauma will affect a victims ability to sustain a job, attend school, or even feel like they have a place to belong within a community. Programs should be dynamic and reflect the understanding that integration and the recovery of mental health are a process.

III. Long-Term Assistance

“There is a gap in long-term needs not covered through legislation.” —L. Anderson, Case Manager

The TVPA does not acknowledge integration as a primary goal of victim assistance. Integration is a process that occurs over a span of years. Acknowledgement that integration is a long-term process would require the United States to mandate sufficient funding to ensure that victim needs are provided until integration can be sustained solely by survivors.

A challenge in the argument for extended victim assistance is the difficulty in measuring successful integration quantitatively. A victim-centered approach to drafting legislation requires that success is defined by survivors. Each participant indicated that their first priority is to allow victims to determine their own goals. Participants then work with each victim to attain tangible and intangible goals as defined by the victims themselves.

“Success is indicated through victim narratives—It is more quantitative than qualitative. Success is when a woman trafficked in many different states can break the cycle of trafficking by connecting with multiple NGO's that can meet all of their needs.” —Alice M, Case Manager

When asked if there was ever an instance that participants were unable to help a survivor participants unanimously agreed that resources have prevented them in assisting survivors. In

some instances due to the specialized nature of their work participants had to refer survivors to other NGO's or forms of legal aid. Participants then work with each victim to attain tangible and intangible goals as defined by the victims themselves. This however is just one step in the process of recovery. Three of the five participants said that although they work with a single survivor from between 2-4 years there are many instances where their services are needed well beyond that time. The United States focus on short term tangible needs affirms that integration is not a priority of domestic policy.

Chapter 7: Conclusion

Perhaps the most crucial goal of advocates working with human trafficking survivors is to assist in helping them to regain stability. Stability requires that the needs of victims are met and sustained. When the denial of those needs indicates human right violations, it is the responsibility of the state to fulfill them. Individuals in the United States are rights holders. Discourse and legislation on human trafficking must posit human trafficking as an issue of human rights violations. Human trafficking is not consistently framed as an issue of human rights. The Palermo Protocols supplement the United Nations Convention against Transnational Organized Crime. The UNTOC was created under the United Nations Office on Drugs and Crime. Even in the international context human trafficking is not framed as a human rights issue. It is framed as a larger criminal concern, transnational organized crime. Generally, advocates and lawyers use a different approach in achieving retribution for victims in criminal issues. The Trafficking Victims Protocol Act of 2000 was created during the same year as the Palermo Protocols and shares a similar criminal focus. By contextualizing human trafficking as a criminal issue, the perceived duty held by the United States becomes convoluted. By framing human trafficking as a predominately criminal issue, human rights claims are in some ways undermined.

The United States appropriately recognizes human trafficking as a threat to national security and border control. Human trafficking has significant effects on border security and immigration. The Office of Victim Assistance created under the TVPA works mainly with the Department of Homeland Security and the U.S. Immigration and Customs Enforcement. There is a place for protecting national security and regulating immigration as both a method of prevention and as a resolution for human trafficking. These issues should not be the only focus of United States policy.

The TVPA does not present victim needs as claims to be grasped. The International Covenant on Economic Social and Cultural Rights allows for the progressive realization of rights. Although the United States has continued to expand funding for victims through the TVPA victim assistance is not ensured in a manner where they hold legal claims that can be grasped. Based on the responses from participants in this study advocates rely on resources from donors and other NGO's as a primary source to acquire assistance for survivors. Although the TIP continues to expand the United States priorities including creating a victim-centered approach, there is still a failure to appropriately recognize human rights claims. The United States recognizes that there must be a collaboration between multiple government agencies, civil societies, law enforcement and survivors. Since the United States government has positioned human trafficking within a criminal framework policy advocates from NGO's, lawyers and law enforcement are inclined to operate within that framework as well.

By approaching human trafficking as a criminal issue advocates prioritize the legal status of victims. Although by international standards legal status should not affect the ability of victims to access state-funded resources it is a determining factor in the future of a victim. When victims are criminalized as prostitutes or illegal immigrant's advocates, focus first on changing this status. When victims are cleared of criminal charges or apply for a T-visa or U-visa they immediately qualify for social benefits such as food assistance and healthcare. The claims to these benefits, however, do not differ significantly from those available to individuals that have not been trafficked but are still in need of social welfare assistance. The forms of social assistance available to human trafficking victims, excluding the T-Visa's which were explicitly created for trafficking victims, exist within the current system of social aid available in the United States. It is problematic to refrain from establishing a system of social assistance

explicitly created for human trafficking victims because the existing social welfare programs fluctuate based on political agendas at any given point in time. This is also problematic because advocates for trafficking victims realize that they must operate within the already challenging paradigm of economic and social rights that exists within the United States. Advocates use the claims proven most effective for social welfare programs that already disregard economic, health and social rights as claims to be grasped. State legislators have a higher degree of knowledge to the nuances in the way that human trafficking affects industries and populations within their jurisdiction. Policy does not cover the long-term needs of victims at any level legislation signed and ratified by the United States government. Advocates and NGO's do not have the resources or capacity to sufficiently assist victims to the degree necessary for their permanent integration. Advocates themselves do not grasp the human rights claims owed to victims because there is little to no legal benefit in doing so.

Advocates used state human trafficking laws as a barometer for the types of assistance available for victims. State laws are derivative of the laws mandated at the federal level, in the same way, that the TVPA is a derivative of international conventions. Advocates rely more heavily on state laws because they are closer in proximity to the issue of human trafficking plaguing a particular region. Approaching survivors post-trafficking needs as a matter of human rights restoration is not found in the rhetoric or approach of NGO's in the United States. All of the participants in this study acknowledged that they have very little knowledge of the international conventions that apply to human trafficking. As the preamble of the United Nations Charter states, the United Nations was created to "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law

can be maintained.”⁷³ The UNTOC and Palermo Protocol codified a set of international standards by which nations should create domestic law. The issue with international covenants and human trafficking victims in the United States is that the UN covenants occupy a realm far above the level that human trafficking exists. Human trafficking is a multilayered phenomenon and the relevant policy is multilayered as well. Human trafficking policy is multilateral. Human trafficking policy is layered similar to rungs on a ladder. It exists vertically with the highest layer being international covenants. There is a disconnect between the policy created at the global level, the policy drafted and implemented at the national level and the work being done by advocates at the ground level. The United States is now focusing on a victim-centered approach where victim perspectives and experiences are considered in the drafting and implementation of policy.⁷⁴

“From the perspective of people working in the field...because I have it in both right I have the academic background, but I also have the field work, in the field, they never talk about the UN stuff...rarely.” — S. Sandborne

Participants in this study affirmed that they neither refer to nor consider the United Nations conventions on human trafficking because they are so far removed from the micro realities that human trafficking victims face. The TVPA, in the same way, is disregarded outside of the provision for visas because of its failure to recognize concrete human rights claims through their fulfillment. The current structure of human trafficking policy is top down. A bottoms-up approach would allow advocates and victims to express the needs and challenges in access to those needs that they experience. Only by allowing needs as expressed by those

⁷³ “Role of the United Nations in International Law Fact Sheet #5.” 2011 Treaty Event Towards Universal Participation and Implementation, United Nations, treaties.un.org/doc/source/events/2011/Press_kit/fact_sheet_5_english.pdf.

⁷⁴ US Department of State, *2017 Trafficking in Persons Report*, 2017 (Washington, DC: U.S. Department of State, 2017), www.state.gov/j/tip/rls/tiprpt/2017/271113.htm.

attempting to ensure their fulfillment to be incorporated on the ground level of policy development can the United States truly fulfill its human right obligation to victims. The United States 3P (Prevention, Protection, Prosecution) structure of policy must include advocate and victim input because prevention and protection are matters of criminal and human rights law. The United States consistently fails to assist victims in their integration because of its failure to give legal status to all economic and social rights. The United States should be focused on ending the cycle of abuse for victims.

Appendix A

Interview Questions

1. Can you describe your back ground?
2. Can you describe your current work?
3. When working with clients what are the goals that you have for them? Both short-term and long-term
4. How do you achieve them?
5. How does they compare to what clients request?
6. What needs are most commonly emphasized by clients?
7. How do you achieve them?
8. How do you communicate goals?
9. Do you have a vision for clients futures?
10. Do you ever feel that you are unable to assist a client?
11. Do you feel that the needs of clients that you work with are met?
12. When meeting with clients do you ever discuss federal aid?
13. What role does federal aid play in your work?

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