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INTERNATIONAL PUNISHMENT OF SEX TRAFFICKING VIOLATORS:
CONGRUENT CHANGES FROM THE TOP DOWN AND THE BOTTOM UP

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ABSTRACT

Women and children around the globe are exploited daily for the gain of sex buyers. These buyers care not for the human being that is being sold to them, nor the physical, mental and emotional trauma being inflicted on such a victim. Rather, these buyers use them up, empty them out, and find a replacement. Many of these women and children are held captive, either economically, physically, or mentally. They are forced to prostitute themselves out in forms of street-walking, illicit massage parlors, strip clubs, sex videos, family and friend circles, as well as in criminal syndicates. Yet, the States of this international community offer no relief. While there are international and domestic laws in place that criminalize and penalize sex trafficking, these laws are almost never enforced, creating a de facto acceptance and endorsement of such trafficking and slavery practices. Despite sex trafficking being a form of slavery and, therefore, jus cogens, no international actor has taken initiative to initiate a change in the world community, likely due to this criminal industry being at over a one-billion-dollar profit. However, the United States is in a prime spot politically, legally, and internationally to create this change by both beginning to enforce their own domestic laws criminalizing sex trafficking, as well as pushing for sex trafficking to be officially condemned as an act violating international customary law. This would create an avenue for offending States to be held liable in international criminal courts by other States. The laws are in place to end sex trafficking; now, it is a matter of finding ways to enforce them, as this paper will demonstrate.

I. INTRODUCTION

A young homeless girl who was placed in the foster care system was raped by a man thirteen years older than her, leaving her pregnant at the age of fifteen.¹ Her abuser used pornography to groom her from the age of fourteen and created pornography of her.² This grooming of a young girl led to a life of being sexually abused and raped. As she grew into her late teens and was kicked out of her abuser's house, out of desperation to retain custody of her children, she was coerced into selling her body for money.³ From thereon out, she was a victim of sexual abuse, rape, emotional manipulation, and sex trafficking. She was sold across ten different states by numerous traffickers, brutally beaten when she did not comply immediately with what they demanded, and suffered extreme violence regularly—including torture—to coerce her to engage in prostitution.⁴ She was forced to walk the streets in Las Vegas and was starved, confined, tortured, and threatened with her life if she did not make enough money to satisfy her trafficker.⁵

She escaped only to be trafficked by a “Romeo” pimp who exploited her and other women through means of romance, affection, and instilling a sense of family obligation.⁶ She was trafficked in casinos, executive offices, truck stops, brothels, agencies, hotels, underground business pubs, restaurants, and massage parlors.⁷ She was frequently physically assaulted, even being threatened with a gun.⁸

When she was required to obtain a Sheriff's work card from a Nevada county Sheriff's office to be prostituted at a legal brothel in Nevada, the Sheriff's office did not ask for identification or attempt to verify her age, nor did it attempt to determine if she was under the control of a trafficker.⁹ Her trafficker took away her identification to keep her from leaving and threatened to locate and harm her family and children.¹⁰ The brothel she was forced to “work” at knew many girls there, including minors not yet in their teens, were under the control of traffickers.¹¹ She was not permitted to have visitors, and her arrival and departure times were

¹ Complaint at 37, *Williams v. Sisolak*, (D. Nev. 2021), Case No. 2:21-cv-01676, [hereinafter *Williams Complaint*], available at https://endsexualexploitation.org/wp-content/uploads/Williams-v.-Sisolak_First-Amended-Complaint_11.10.2021.pdf.

² *Id.*

³ *Id.* at 37–38.

⁴ *Id.* at 38.

⁵ *Id.* at 38–39.

⁶ *Id.*

⁷ *Id.* at 39.

⁸ *Id.*

⁹ *Id.* at 40.

¹⁰ *Id.*

¹¹ *Id.* at 40–41.

controlled.¹² She was required to give the brothel 50% of what she earned, pay \$250 per week for room and board, \$50 per week for transportation, \$120 per month for weekly medical exams, and gave any remaining money to her two pimps.¹³ She was not permitted to leave during her two-week shifts, and the women were locked inside without keys.¹⁴ If she owed the brothel money, she was not permitted to leave, instead being subjected to debt bondage to be paid off by making money through performing or being subjected to sexual acts.¹⁵

Another woman's account at a strip club was gruesome, but not uncommon. She was sexually harassed and assaulted.¹⁶ Being in the commercial sex industry required her to "smilingly accommodate customers' verbal abuse."¹⁷ Buyers and customers often gripped and pinched intimate parts of her body, sometimes resulting in physical harm including bruises and scratches.¹⁸ "Customers squeezed her breasts until she was in severe pain, and they humiliated her by ejaculating on her face."¹⁹ Both her traffickers and her strip club customers physically battered her, brutally bruising her from beatings, frequently resulting in black eyes.²⁰ Pimps pulled her hair as a means of control and torture.²¹ Pimps and customers repeatedly and savagely punched her head resulting in unconsciousness, a damaged eardrum, and a dislocated jaw that remains years later.²² Cut with knives and burned with cigarettes by customers while raping her, she was subject to inhumane treatment.²³ Men gang-raped her.²⁴ At least twenty men individually raped her, sometimes resulting in internal bleedings.²⁵

A. Psychological Damage of Sex Trafficking and Sexual Exploitation

Despite the unimaginable physical and sexual abuse, this woman described the psychological damage of prostitution (aka sex trafficking) as far worse than the

¹² *Id.* at 41.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in *PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS* 33, 34 (Melissa Farley ed., Haworth Maltreatment & Trauma Press 2003).

¹⁷ *Id.*

¹⁸ *Id.* at 34–35.

¹⁹ *Id.* at 35.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

physical violence.²⁶ She explained that prostitution “is internally damaging. You become in your own mind what these people do and say with you.”²⁷ Prostituted women are used like perpetually-smiling objects into which men masturbate, causing acute psychological harm to the person forced to be the receptacle.²⁸ In nine countries, across widely varying cultures, one study found that two-thirds of 854 prostituted women had symptoms of PTSD²⁹ at a severity that was comparable to treatment-seeking combat veterans,³⁰ battered women seeking shelter,³¹ rape survivors,³² and refugees from state-organized torture.³³

B. Contemporary Sex Slavery

Sex trafficking is a contemporary form of slavery that violates women's, children's, and even men's fundamental human rights.³⁴ Both nationally and internationally, sex trafficking has remained one of the fastest growing and most lucrative industries, earning billions annually for international crime syndicates.³⁵ Neither the United Nations Security Council, nor the United States' enforcement of their legislation, have substantially impacted this growing criminal industry. In order to rectify this gross violation of basic women's and men's rights, the United States needs to take action as a global leader to propose an international agreement on how our global community will move forward in enforcing the current laws and treaties to formally and efficiently eliminate sex slavery. Each nation must take

²⁶ Melissa Farley, *Prostitution Is Sexual Violence*, 21 PSYCHIATRIC TIMES, Oct. 1, 2004, at 2.

²⁷ *Id.* at 58.

²⁸ See CECILIE HØIGÅRD & LIV FINSTAD, BACKSTREETS: PROSTITUTION, MONEY, AND LOVE (1986).

²⁹ Farley, *supra* note 16, at 44.

³⁰ Frank W. Weathers, et al., *The PTSD Checklist (PCL): Reliability, Validity, and Diagnostic Utility* (1993),

https://www.researchgate.net/publication/291448760_The_PTSD_Checklist_PCL_Reliability_validity_and_diagnostic_utility.

³¹ See generally Beth M. Houskamp & David W. Foy, *The Assessment of Posttraumatic Stress Disorder in Battered Women*, 6 J. INTERPERSONAL VIOLENCE 367 (1991); Anita Kemp, Edna I. Rawlings & Bonnie L. Green, *Post-Traumatic Stress Disorder (PTSD) in Battered Women: A Shelter Sample*, 4 J. TRAUMATIC STRESS 137 (1991).

³² See generally I.T. Bownes, E.C. O’Gorman & A. Sayers, *Assault characteristics and posttraumatic stress disorder in rape victims*, 83 ACTA PSYCHIATRICA SCANDINAVICA 27 (1991).

³³ Rosalind Ramsay, Caroline Gorst-Unsworth & Stuart Turner, *Psychiatric Morbidity in Survivors of Organised State Violence Including Torture: A Retrospective Series*. 162 BRIT. J. PSYCHIATRY 55 (1993).

³⁴ Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law to Stop It Here and Abroad*, 11 WM. & MARY J. WOMEN & L. 317, 317 (2005).

³⁵ Susan Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 38 CASE W. RES. J. INT’L L. 249, 250 (2007).

responsibility for their own lack of enforcement, recognize that sex trafficking exists in every single nation, and dedicate domestic resources to eradicating this perverse disease from within each nation's borders. The United States can begin enforcing domestic and international law in order to set the standard for all to follow, including what can and should be utilized to implement an actual change, both nationally and internationally. As this is an international issue, the various domestic laws enacted as well as the international agreements need to be efficiently enforced by global leaders if we are to ever be free from such gross violations of human rights.

Part II of this Article will catalog the different methods of trafficker manipulation³⁶ and describe how sex trafficking is international sex slavery.³⁷ Then, this Article will posit that prostitution is a form of sex slavery,³⁸ as well as illicit massage businesses,³⁹ stripping,⁴⁰ and familial pimping.⁴¹

In Part III of this Article, the United States' role in sex trafficking is enumerated with a historical background that summarizes the different agreements and laws that have been implemented by both the international community and the United States to fight violence against women and children that is inherent in sex trafficking.⁴²

Part IV of this Article explains what has been done internationally to solve this all-encompassing issue, including how a lack of international enforcement leads to increased trafficking of women and children,⁴³ the international declarations and protocols currently in place,⁴⁴ and the United States' legislation on such issues.⁴⁵

Part V of this Article will posit that sex trafficking is against international customary law and is a *jus cogens*.⁴⁶ This Article proposes that the United Nations Security Council should begin to adamantly stand against sex trafficking by sanctioning nations that are grossly negligent in their enforcement of their domestic laws, *jus cogens*, and customary international law.⁴⁷

³⁶ See *infra* Part II(A).

³⁷ See *infra* Part II(B).

³⁸ See *infra* Part II(C).

³⁹ See *infra* Part II(D).

⁴⁰ See *infra* Part II(E).

⁴¹ See *infra* Part II(F).

⁴² See *infra* Part III.

⁴³ See *infra* Part IV(A).

⁴⁴ See *infra* Part IV(B).

⁴⁵ See *infra* Part IV(C).

⁴⁶ See *infra* Part V.

⁴⁷ See *infra* Part V.

II. SEX TRAFFICKING BACKGROUND

In 2014, the International Labor Organization (“ILO”) released a report that provided statistics on global sex trafficking: approximately 4.5 million people internationally were victims of forced sexual exploitation, yielding an annual profit of \$99 billion dollars for sex traffickers worldwide.⁴⁸

A. Methods of Manipulation

The previous experiences given of the women trafficked in strip clubs and street prostitution are typical of trafficked women.⁴⁹ Women who are forced, coerced, or threatened to perform sexual acts do not benefit in any way, including monetarily. Rather, the women, children, and occasional men who are sold for sex are not monetarily compensated for their “work,” nor are they given a safe and happy place to live. These human beings are not provided with stable work, health benefits, 401(k)s, or even enough money to buy their own meals. Rather, these individuals are coerced into a new environment, often a new country, where they are threatened with their lives and the lives of those they love. They are told that if they do not comply with exactly what their trafficker says, they will be beaten, burned, raped, their identity documents will be taken, their families will be murdered, or their traffickers will report them to the authorities so that they are thrown in prison for the rest of their lives.⁵⁰ On the off chance that they are not threatened with physical harm, they are emotionally manipulated and threatened that their sexual exploits, and sometimes even sex videos, will be sent to their friends and families who will then alienate them from the only support system they have.⁵¹ These manipulation tactics run deep and strong.

B. Sex Trafficking Today Is International Sex Slavery

Sex trafficking is defined as a crime that includes benefiting, either financially or by receiving anything of value, from participation in a venture which

⁴⁸ INT’L LAB. OFF., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOR 13 (2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

⁴⁹ Farley, *supra* note 16, at 34.

⁵⁰ Williams Complaint, *supra* note 1, at 42; See Press Release, The U.S. Attorney’s Office, E. Dist. of N.Y., 31 Korean Nationals Arrested Throughout the Northeastern United States in Federal Human Trafficking Case (Aug. 16, 2006) [hereinafter Press Release], <https://www.justice.gov/archive/usao/nye/pr/2006/2006Aug16.html>.

⁵¹ See *Human Trafficking in Massage Businesses: A Deeply Manipulated Sense of “Choice,”* POLARIS (June 1, 2018), <https://polarisproject.org/blog/2018/06/human-trafficking-in-massage-parlors-a-deeply-manipulated-sense-of-choice/> (last visited Nov. 29, 2022).

knowingly recruits, entices, harbors, transports, provides, obtains, maintains, patronizes, or solicits by any means a person for commercial sex, where the person is under eighteen years old, or induced by force, fraud, or coercion.⁵²

Each of these types of sexual exploitation are utilized to perpetrate these inhumane crimes on powerless victims of trafficking worldwide, constituting international sexual slavery.

As President Obama stated, such acts of forced violence and paid rape should distress every person because “it is a debasement of our common humanity. It ought to concern every community, because it tears at our 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.”⁵³ With all of these forms of sex trafficking happening internationally, and often over borders, it is an injustice that the leaders of the world need to stand against, starting with the United States.

Sex trafficking includes pornography; in 1999, the United States Department of Justice found that pornographers had recorded the abuse of more than one million children in the United States alone.⁵⁴ These vile videos and images of violent sexual assaults on children are shared repeatedly on the internet where the child is revictimized with each view.⁵⁵

C. Prostitution Exists Internationally and Involves Sex Trafficking

It is important to recognize that sex trafficking exists in prostitution.⁵⁶ Despite some arguments that not all prostitution is sexual exploitation, it is indisputable that there are women being prostituted by a pimp through coercive and forceful means. Regardless of the disputed proportion of prostitution that is voluntary or coerced, it is clear that prostitution, to some degree, is included in the chain of sex trafficking. This is important to recognize going forward because prostitution exists in every single nation, whether legalized or not.

⁵² 18 U.S.C. § 1591(a)(1).

⁵³ President Barack Obama, *Remarks by the President to the Clinton Global Initiative* (Sept. 25, 2012), (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>).

⁵⁴ ROGER J.R. LEVESQUE, *SEXUAL ABUSE OF CHILDREN: A HUMAN RIGHTS PERSPECTIVE* 66 (Ind. Univ. Press 1999).

⁵⁵ U.S. DEP'T JUST., *THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION: A REPORT TO CONGRESS* 3 (2010), <https://www.justice.gov/psc/docs/natstrategyreport.pdf>.

⁵⁶ Neda A. Deshpande & Nawal M. Nour, *Sex Trafficking of Women and Girls*, 6 REV. OBSTETRICS & GYNECOLOGY e22, e22 (2013) (saying sex trafficking involves some form of forced or coerced sexual exploitation that is not limited to prostitution, but is involved in prostitution).

In India, it is reported that there are 2.5 million women engaged in prostitution.⁵⁷ In Mumbai it is estimated that more than 100,000 women are prostituted 365 days a year, averaging six sexual buyers a day at \$2 for each sex act.⁵⁸ The red-light district in Mumbai, Dharavi, generates at least \$400 million in revenue annually.⁵⁹

In Germany, the government decided to legalize prostitution which has given rise to “flat-rate” brothels, allowing sex buyers to have as much sex as they want with any of the women in the brothel for one price.⁶⁰ One such club’s management advertised, “Sex with all the women as long as you want, as often as you want and the way you want. Sex. Anal sex. Oral sex without a condom. Threeways. Group sex. Gang bangs.”⁶¹ On opening night, about 1,700 sex buyers paid money to have such a night, and as many as 700 men waited outside the brothel in line to participate.⁶² Later that night, sex buyers complained to management that “the women were no longer fit for use after a few hours.”⁶³

The United States is not immune from such dehumanizing treatment of women by men. In 1980, Rhode Island decriminalized indoor prostitution.⁶⁴ Later, in 1998, Providence Police raided an Asian brothel disguised as a health club.⁶⁵ The commander of the Providence Police stated, “This was like slavery [The women] worked 16- to 18-hour days. They didn’t get paid. They just got tips.”⁶⁶ Following a raid on the brothel, he said:

“We went in yesterday There were six girls, three of them I knew from past encounters there. Three of them I didn’t, and I learned they had only been there for three days. One was from

⁵⁷ Lisa Thompson, *The Global Supply Chain of Sexual Exploitation and the Necessity of Combating the Demand for Commercial Sex*, 2 DIGNITY: J. ANALYSIS EXPLOITATION & VIOLENCE, 2017, at 1, 7.

⁵⁸ *Id.*

⁵⁹ Geetha Suresh, L. Allen Furr & Aylur Kailasom Srikrishnan, *An Assessment of the Mental Health of Street-Based Sex Workers in Chennai, India*, 25 J. CONTEMP. CRIM. JUST. 186, 187 (2009) (describing the revenue generated in the red-light district in Mumbai, India).

⁶⁰ Thompson, *supra* note 57, at 7.

⁶¹ *Id.*

⁶² *How Legalizing Prostitution Has Failed*, SPIEGEL (May 30, 2013), <http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533-2.html> (last visited Mar. 19, 2017).

⁶³ *Id.*

⁶⁴ *Rhode Island*, DECRIMINALIZE SEX WORK, (last updated Feb. 15, 2020) <https://decriminalizesex.work/advocacy/state/ri/>.

⁶⁵ Melanie Shapiro, *Sex Trafficking and Decriminalized Prostitution in Rhode Island* 54, n. 102 (Apr. 2009) (unpublished Senior Honors thesis, University of Rhode Island), <http://digitalcommons.uri.edu/srhonorsprog/135>.

⁶⁶ *Id.*

Georgia; others were from NY, New Jersey. One had no ID; one had Korean currency mixed in with her American, U.S. currency. They all have their bags packed—they're always ready to go. They don't set up residence or stay for a long time. So they move from place to place. Is that trafficking? It seems to me [it is]."⁶⁷

Later in 2005 when commenting on what he had seen in the brothel, the head of the investigative division stated, "When I see girls that are watched over, transported, told what to do, provided for, I think there is some restraint there."⁶⁸

When writing about women in prostitution, the Providence Journal Deputy editor wrote:

"[They are] trapped in dirty brothels, day and night, fearful of being beaten or killed if they try to leave . . . [T]hey serve men with their bodies from the time they get up until they go to sleep. They sleep on filthy mattresses and cook from Sterno cans in a back room. They are essentially slaves."⁶⁹

Traffickers coerce women into prostitution and other forms of sex slavery, including illicit massage businesses and even stripping.⁷⁰ Traffickers target women who want to come to the United States, want to work and support their families, or are in need of a way to obtain basic necessities to live.⁷¹ For foreign women, the traffickers use legal or fraudulent documents to get the women into the United States through immigration and sometimes smuggle the women into the country.⁷² The traffickers keep the women in the brothels in squalid conditions and charge them inflated fees for travel, food, and rent.⁷³ The U.S. Attorney's Office stated, "In some instances, the women [are] threatened or led to believe that if they left the prostitution business before paying off their debts, they would be turned over to United States law enforcement or immigration authorities, or that their families . . . would be harmed."⁷⁴

These forms of coercion, manipulation, and control are utilized by most traffickers in prostitution, illicit massage businesses, and stripping. While some

⁶⁷ Rebecca Johnson, Sex Trafficking and Prostitution in Rhode Island: Brothels Busted 19–20 (Fall 2005) (unpublished student course paper, University of Rhode Island) (on file with author).

⁶⁸ *Id.*

⁶⁹ Shapiro, *supra* note 65, at n. 85.

⁷⁰ See Press Release, *supra* note 50; Yoon Aff. 7, United States v. Kim, No. 1:06-cr-00605-CBA-RLM (E.D.N.Y. Aug. 14, 2006).

⁷¹ See Press Release, *supra* note 50.

⁷² See Press Release, *supra* note 50; Yoon Aff., *supra* note 70, at 6.

⁷³ Shapiro, *supra* note 65, at 60–61.

⁷⁴ See Press Release, *supra* note 50.

prostitution may not be completely involuntary, it is indisputable that the majority of prostitution is slavery.⁷⁵

Furthermore, prostitution is against federal policy in the United States as a form of sexual exploitation that is inextricably linked to sex trafficking.⁷⁶ The United States policy is consistent with international law. Under the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person.”⁷⁷ The UN Convention forbids prostitution related activities, including exploiting “the prostitution of another person, even with the consent of that person.”⁷⁸

D. Illicit Massage Businesses Are Sex Trafficking

Illicit massage businesses include when women, typically from Asia, are trafficked to another country, typically the United States, to perform sex acts.⁷⁹ These women are promised a stable job with real pay that they intend to send back to their families, but rather than being provided with a cleaning job or another form of legal paid labor, they are threatened and told to perform sexual acts on men or they will never be allowed to go back home.⁸⁰ In the United States alone, over 9,000 locations are open for illicit massage business, including, as seen in the below graphic, in every single state, accruing over \$2.5 billion annually.⁸¹

⁷⁵ Bureau of Public Affairs, *The Link Between Prostitution and Sex Trafficking*, U.S. DEP’T OF STATE (Nov. 24, 2004), <https://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.

⁷⁶ *See e.g.*, 22 U.S.C. § 7601 (“Prostitution and other sexual victimization are degrading to women and children and it should be the policy of the United States to eradicate such practices.”).

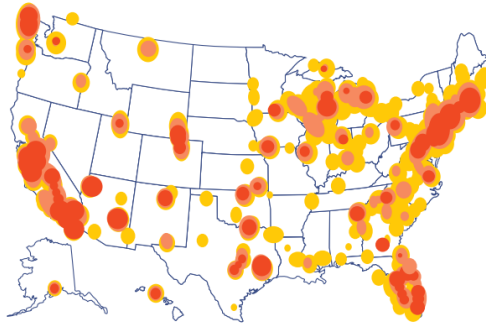
⁷⁷ G.A. Res. 317 (IV), at 1, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Dec. 2, 1949), <https://www.ohchr.org/en/professionalinterest/pages/trafficinpersons.aspx>.

⁷⁸ *Id.*

⁷⁹ Polaris Project, *Human Trafficking in Illicit Massage Businesses* (January 2018) (on file with author).

⁸⁰ *Id.* at 5.

⁸¹ *Id.*



MAP OF ALLEGEDLY ILLEGAL MASSAGE PARLORS⁸²

One woman, named Min, moved to Southern California from the Fujian province in China.⁸³ She dropped out of school in the ninth grade to support her family and eventually married a man who gambled their family into severe debt.⁸⁴ She came to the United States to look for work and found an ad for women to work as massage therapists with a promised salary of \$6,000 per month and free housing.⁸⁵ After taking a bus to the location on the ad, a driver took her to an apartment with other women to stay the night.⁸⁶ The next day she was told she would have to engage in commercial sex.⁸⁷ Min had no idea where she was or how to contact the first driver to get back to the bus station.⁸⁸ Feeling deeply ashamed because of the things she had been coerced to do, she refused to tell her family that she was in danger.⁸⁹ When she tried to get help from a customer, her manager threatened to call the police on her, promising they would deport her and tell her family of the “shameful” things she had done.⁹⁰ Every few weeks, Min was moved to a new apartment and business.⁹¹ After months of being trafficked, she believed she was somewhere in Los Angeles, California, but when the police raided an illicit massage business she was trafficked to, they arrested her trafficker and informed her that she was actually in Illinois.⁹² Those victimized by illicit massage schemes are victims of sex trafficking.

⁸² *Id.* at 8.

⁸³ *Human Trafficking in Massage Businesses: A Deeply Manipulated Sense of “Choice”*, *supra* note 51.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

E. Strip Clubs Inevitably Lead to Trafficking

Stripping inevitably leads to trafficking. In one FBI case, the victim was a teen missing from Boston for six months.⁹³ She was being held against her will by an escaped convict.⁹⁴ She had a large quantity of condoms in her purse, and it was determined that the convict was likely forcing her to engage in prostitution in the private booths in the strip club in addition to her dancing.⁹⁵ When the police and medical technicians found her, she was suicidal.⁹⁶ One police officer commented on the violence and exploitation by saying, “It leads to societal breakdown These are just little girls.”⁹⁷

In another case, Jane was trafficked from March 2017 until September 2018.⁹⁸ She was groomed by traffickers through social media apps who advertised her for sex before she turned eighteen on platforms such as Backpage.com.⁹⁹ She was induced to travel to Las Vegas, Nevada where her traffickers pressured her to engage in stripping, claiming that the women who did so led glamorous lives and never had to do “extras.”¹⁰⁰ She was forced to work at three separate strip clubs which used between 100 and 500 girls a night as dancers.¹⁰¹ Her traffickers threatened to expose her to the police in order to control her.¹⁰² They took her identity documents, preventing her from leaving Nevada without their permission, and holding her in debt bondage.¹⁰³

While being trafficked, she was subjected to a number of charges and fees including: entry house fees (\$80-\$200 per night); exempt from dancing on the stage (\$50 per night because it was the least profitable); leaving early (\$50-\$100 per night); a tip for the house mom so she would help in case of an emergency (\$10-\$40 per night); locker rent to avoid property from being stolen (\$80-\$250 per month); 2-3% of any card transaction from buyers; \$25 per ATM use; \$25 for makeup, shoes, or clothes at the club’s store to be replaced daily; \$20-\$30 per night for food; \$25-\$100 per night for drinks (many dancers relied on this to get through

⁹³ Press Release, F.B.I. Bos., Innocence Lost Task Force and Providence Police Recover Missing Juvenile (June 9, 2009) [hereinafter FBI Press Release], <https://archives.fbi.gov/archives/boston/press-releases/2009/bs060909.htm>.

⁹⁴ *Id.*

⁹⁵ Melanie Shapiro & Donna M. Hughes, *Decriminalized Prostitution: Impunity for Violence and Exploitation*, 52 WAKE FOREST L. REV. 533, 553 (2017).

⁹⁶ PROVIDENCE POLICE DEP’T, PROVIDENCE INCIDENT REPORT DETAIL CASE No. 2009-00060104 1 (2009).

⁹⁷ Shapiro & Hughes, *supra* note 95, at n. 198.

⁹⁸ Williams Complaint, *supra* note 1, at 42.

⁹⁹ *Id.*

¹⁰⁰ *Id.* (“Extras” refers to commercial sex acts beyond dancing).

¹⁰¹ *Id.* at 43.

¹⁰² *Id.*

¹⁰³ *Id.* at 44.

their shifts); \$50 for missing stage call; 20-28% of VIP and private area house deduction; DJ tip so he would play good music to encourage patrons to tip (\$15-\$25 per night); staff tip (\$20-\$100 per night); floor host tip (\$40-\$200 per night) to be introduced to patrons; VIP staff tip (\$20-\$50 per night); manager tip (\$20-\$50 per night); security and bouncer tip (\$10-\$30 per night) to be kept safe; and, restroom attendant tip (\$5-\$10 per use).¹⁰⁴ These charges ensured that dancers were in debt to the strip clubs, giving reason to the strip clubs to force the girls to stay and work even after their two-week shifts were completed as a form of debt bondage.¹⁰⁵

Jane was expected to work eight to twelve hours a shift, six to seven days a week.¹⁰⁶ She sometimes was forced to work fifteen to twenty-four hour shifts when the club changed their hours.¹⁰⁷ The dancers were paid for VIP room services where bed-like pieces of furniture were kept, of which the club would automatically take a portion.¹⁰⁸ The most expensive VIP rooms were \$1000-\$5000 per hour and dancers who engaged in sex for money were expected to pay the house at least a 40% tip—beyond that described previously—or else they would be fired and put on the blacklist.¹⁰⁹ Jane almost never had enough money to cover her fees, and when she did, she was forced to turn over the rest of her money to the sex traffickers.¹¹⁰ Some sex buyers would rape the dancers, and the clubs would still insist on collecting tips from the dancers.¹¹¹ When the girls were allowed to leave because they paid off their debt, their traffickers would be waiting for them and require them to continue selling sex and giving the trafficker all the money they made.¹¹² Stripping, often, leads to sex trafficking. It needs to be monitored closely to ensure women's basic human right to live freely is never taken away for others' monetary benefit through her sexual exploitation and paid rape.

F. Familial Trafficking

One of the most prominent forms of sex trafficking is happening in every nation: those close to the victim traffic the child or woman by selling him or her out to friends, family, neighbors.¹¹³ Forty-one percent of child trafficking

¹⁰⁴ *Id.* at 45–46.

¹⁰⁵ *Id.* at 46–47.

¹⁰⁶ *Id.* at 47.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 47–48.

¹¹⁰ *Id.* at 48.

¹¹¹ *Id.*

¹¹² *Id.* at 48–49.

¹¹³ Office to Monitor and Combat Trafficking of Persons, *Navigating the Unique Complexities in Familial Trafficking*, U.S. DEP'T OF STATE (July 1, 2021), <https://www.state.gov/navigating-the->

experiences are facilitated by family members or caregivers, whether the child is sold to friends of the trafficker or to a third-party trafficker.¹¹⁴ These pimps could be the fathers, brothers, uncles, and sometimes mothers and grandmothers who sell the minor for personal monetary benefit to be used and sexually abused, sometimes from the young age of four.¹¹⁵

When the family member is the trafficker, often the exploitation is normalized and even accepted within the family dynamic, sometimes spanning generations.¹¹⁶ Often an incentive exists to ignore such exploitation so as not to cause disharmony in the family unit, all at the child's expense.¹¹⁷ Children are especially vulnerable because often they have not mentally developed enough to identify coercive tactics used by individuals with whom they have a familial bond of trust and love.¹¹⁸ These children still require their basic needs be met by others and can therefore be manipulated to comply with the trafficker in order to survive and be provided food, shelter, clothing, and more.¹¹⁹

The effects of familial trafficking are severe and complex, creating childhood trauma and developmental delays in education, social skills, physical health, and psychological well-being.¹²⁰ These effects can be felt no matter which nation the trafficking occurs in or who does the trafficking. Children across the globe are being trafficked by family members and caregivers, resulting in emotional, physical, and psychological devastation with no recourse and no understanding of their rights and protections. This injustice must be met internationally with strict liability and swift punishment in order to protect children from being abused in such inhumane and cruel ways.

III. THE UNITED STATES' ROLE

President Trump made it clear that human trafficking, including sex trafficking, is a gross violation of human rights across the world, and he implemented strategies to ensure the United States would be a global change leader

[unique-complexities-in-familial-trafficking/](#) (noting family members are involved in nearly half of child trafficking cases) (last visited on Nov. 29, 2022).

¹¹⁴ *Id.*

¹¹⁵ See *Prostitution: "The Zone" of Raw Male Physical and Sexual Violence*, NAT'L CTR. ON SEXUAL EXPLOITATION (2015), http://endsexualexploitation.org/wp-content/uploads/NCOSE_ViolenceInProstitutionBooklet_rv3.pdf (last visited Oct. 3, 2022).

¹¹⁶ *Navigating the Unique Complexities in Familial Trafficking*, *supra* note 113.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

in fighting such exploitation of basic human rights.¹²¹ On January 31, 2020, President Trump signed Executive Order #13903, entitled “Combating Human Trafficking and Online Child Exploitation in the United States.”¹²² Executive Order #13903 defined human trafficking as a “form of modern slavery [t]hroughout the United States and around the world” that “tears apart communities, fuels criminal activity, and threatens national security.”¹²³ It also stated that millions are estimated to be “trafficked around the world each year—including into and within the United States.”¹²⁴ Technology only makes such trafficking easier and more pervasive than ever, including the sexual exploitation and trafficking of young children.¹²⁵

The United States has held itself out as a leader in the fight against both human trafficking and sex trafficking due to both these codified laws enacted by the government to criminalize and penalize such acts,¹²⁶ as well as speeches made by past presidents of the United States. In 2012, then President Obama gave a speech in New York and promised that “the United States will continue to be a leader in this global movement”¹²⁷ against human trafficking, touting a comprehensive internal strategy to end human trafficking domestically as well as to “[help] other countries set up their own efforts.”¹²⁸ He proudly proclaimed that the United States is “doing more than ever—with our annual trafficking report, with new outreach and partnerships [that help women and children escape the grip of their abusers]—to give countries incentives to meet their responsibilities and calling them out when they don’t.”¹²⁹ He announced that there were “renewed sanctions against the worst abusers, including North Korea and Eritrea,” and that “more nations have passed and more are enforcing modern anti-trafficking laws.”¹³⁰ However, the worst abusers are not the only abusers, and these threatened sanctions did not stop sex trafficking in such locations.¹³¹

¹²¹ *The Trump Administration Is Committed to Combating Human Trafficking and Protecting the Innocent*, THE NAT’L ARCHIVES (Oct. 20, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/trump-administration-committed-combating-human-trafficking-protecting-innocent/>.

¹²² Exec. Order No. 13903, 85 Fed. Reg. 6721, 6721–23 (Jan. 31, 2020).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Obama, *supra* note 53.

¹²⁸ *Id.*

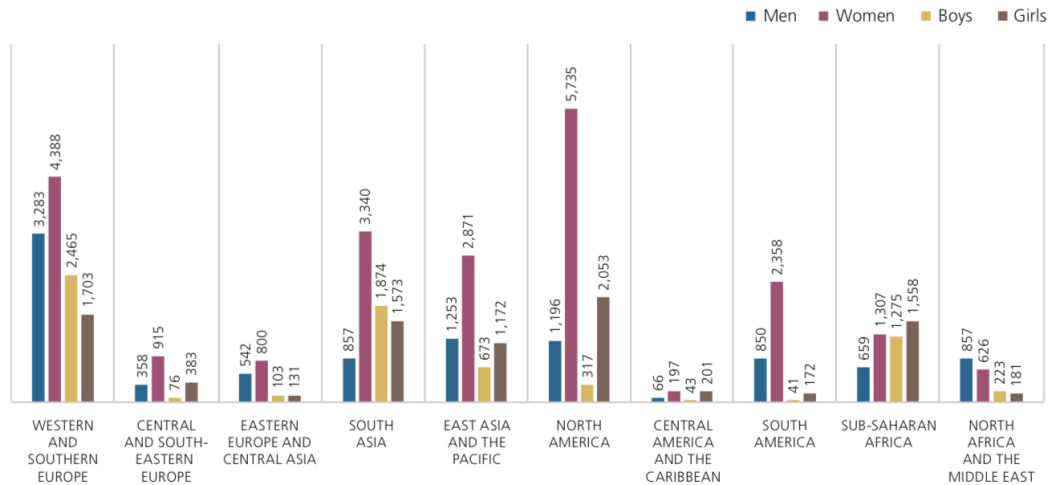
¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See Office to Monitor and Combat Trafficking of Persons, *2022 Trafficking in Persons Report: Eritrea*, U.S. DEP’T OF STATE (2022), <https://www.state.gov/reports/2022-trafficking-in-persons-report/eritrea/> (stating that sex trafficking remains a problem in Eritrea due to its strict exit procedures, its military’s frequent sex abuse of women, and its governmental inaction); Office to Monitor and Combat Trafficking Persons, *2022 Trafficking in Persons Report: North Korea*, U.S. DEP’T OF STATE (2022), <https://www.state.gov/reports/2022-trafficking-in-persons-report/north->

Furthermore, as seen in the subsequent graph, North America had the highest number of trafficked women in one continent in 2018.¹³²

FIG. 1 Number of detected victims of trafficking in persons, by age group and sex, by region of detection, 2018 (or most recent)



Source: UNODC elaboration of national data.

FIGURE 1 FROM GLOBAL REPORT ON TRAFFICKING IN PERSONS¹³³

As seen in the following graph, these women are being trafficked almost exclusively for sexual exploitation.¹³⁴ Therefore, because the United States is dealing nearly exclusively in sex trafficking, it has a special responsibility to its citizens and its partnership in the United Nations to take a lead in eradicating sex trafficking both within its own nation as well as internationally.

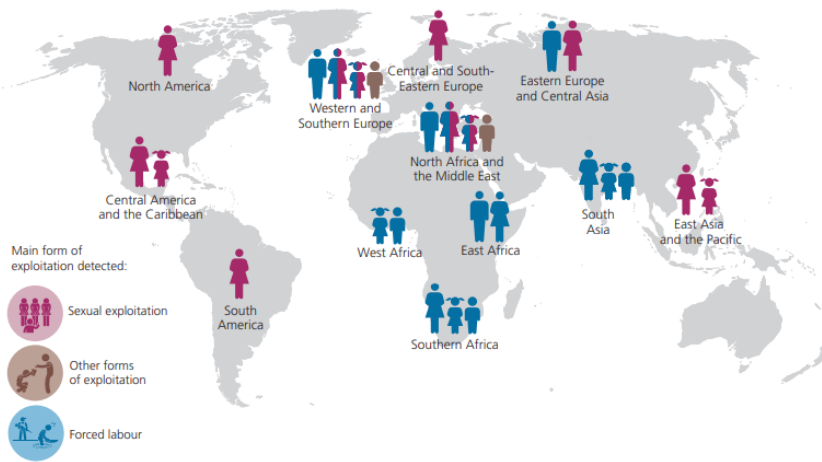
[korea/](#) (stating that sex trafficking in North Korea remains a problem due to its lack of transparency, its unclear laws regarding trafficking, and the financial hardships of its citizens).

¹³² U.N. OFF. ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 31 (United Nations 2021), https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

¹³³ *Id.*

¹³⁴ *Id.* at 37.

MAP 6 Main forms of exploitation and profiles of detected victims, by subregions, 2018 (or most recent)



Source: UNODC elaboration of national data.

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

MAP 6 FROM GLOBAL REPORT ON TRAFFICKING IN PERSONS¹³⁵

IV. WHAT HAS BEEN DONE TO SOLVE THIS?

Many methods of helping to prevent human trafficking have been implemented: online technologies that imitate young girls to help law enforcement officers find child molesters and pornographers;¹³⁶ cities and states requiring posters be hung in major travel ways—like airports, bus stations, and train stations—to inform the public who to contact when they suspect trafficking;¹³⁷ human trafficking units being established in police stations, attorney general’s offices, and district attorney’s offices nationwide;¹³⁸ countries and international organizations implementing laws and treaties to try and stem the flow of young women and children being sold off;¹³⁹ websites like slaveryfootprint.org that

¹³⁵ *Id.*

¹³⁶ Angus Crawford, *Computer-Generated ‘Sweetie’ Catches Online Predators*, BBC NEWS (Nov. 5, 2013), <https://www.bbc.com/news/uk-24818769>.

¹³⁷ Kris Janisch, *States with Human Trafficking Posters*, GOVDOCS (Sept. 27, 2022), <https://www.govdocs.com/states-with-human-trafficking-posters/>.

¹³⁸ See *Department of Justice Components*, Subsection of *Human Trafficking*, U.S. DEP’T OF JUST. (Sept. 28, 2022), <https://www.justice.gov/humantrafficking/departments-justice-components>.

¹³⁹ Office to Monitor and Combat Trafficking in Persons, *International and Domestic Law*, U.S. DEP’T OF STATE <https://www.state.gov/international-and-domestic-law/> (last visited Nov. 29, 2022).

inform citizens which clothing, food, and products are produced by forced labor;¹⁴⁰ faith based communities educating their congregations about the dangers of sex trafficking;¹⁴¹ businesses being held liable as third-parties for benefiting financially from sex trafficking as a part of their global supply chain;¹⁴² and much more.

As discussed below, many nations have enacted domestic laws, the United States has enacted the TVPRA, there are various international treaties banning slavery, and the U.N. Security Council Resolutions are doing the same. Through all of these means, it is clear that both internationally and domestically, the increase in trafficking is not due to a lack of legislation; rather, the continual increase in sexual exploitation and trafficking in each nation is due to a lack of enforcement and punishment so as to sufficiently deter the multi-billion-dollar industry of criminals sexually exploiting women.

A. The United States' Legislation: The Trafficking Victims Protection Act

Under the Thirteenth Amendment, and with the exception of penal punishment, no state in the United States can create circumstances under which slavery or involuntary servitude flourish, including in the form of sex trafficking.¹⁴³

In 2000, both American and international leaders were driven by the growing plight of human trafficking to take a stand against modern-day slavery.¹⁴⁴ In the United States, Congress passed the Trafficking Victims Protection Act (“TVPA”), which was the first comprehensive law that penalized and criminalized the entire spectrum of human trafficking activity,¹⁴⁵ including the trafficking of children under the age of eighteen for sex and the sex trafficking of adults by force, fraud, or coercion.¹⁴⁶ This trafficking was occurring not only within the United States borders, but also included international trafficking of foreign nationals to and

¹⁴⁰ See *How Many Slaves Work for You?*, SLAVERYFOOTPRINT.ORG, <https://slaveryfootprint.org/> (last visited Nov. 29, 2022).

¹⁴¹ See Blue Campaign, *Faith-Based & Community Toolkit*, FED. EMERGENCY MGMT. AGENCY, https://www.fema.gov/sites/default/files/2020-03/fema_faith-communities_community-toolkit-eng.pdf (last visited Nov. 29, 2022).

¹⁴² William Sullivan, Jr. & Fabio Leonardi, *Prosecuting Corporations that Benefit Financially from Human Trafficking*, PILLSBURY L. (July 24, 2019), <https://www.pillsburylaw.com/en/news-and-insights/prosecuting-corporations-that-benefit-financially-from-human-trafficking.html>.

¹⁴³ U.S. CONST. amend. XIII; Williams Complaint, *supra* note 1, at 3.

¹⁴⁴ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §102(a), 114 Stat. 1464, 1467 (2000) (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., and 22 U.S.C.) [hereinafter TVPA].

¹⁴⁵ *Id.*; *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, ACLU, <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states> (last visited Feb. 27, 2023).

¹⁴⁶ See 18 U.S.C. § 1591(a).

from the United States, making this issue both domestic and international in scope.¹⁴⁷

At the same time in 2000, as the United States' laws and policies fueled the controversy over anti-trafficking strategies internationally, the United States took a lead position in the negotiations over a new international law to ban trafficking¹⁴⁸ called the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.¹⁴⁹

Both the U.N. Trafficking Protocol and the TVPA defined trafficking as the movement or recruitment of men, women, or children, using force, fraud, or coercion, for the purpose of subjecting them to involuntary servitude or slavery in one or more of a wide variety of sectors, including commercial sex.¹⁵⁰

In 2003, Congress recognized that just criminalizing this activity was not enough of a barrier to impede such criminality, so the Trafficking Victims Protection Reauthorization Act ("TVPRA") was implemented,¹⁵¹ creating both criminal and civil liability for such actions, codified under 18 U.S.C. § 1595.¹⁵² This means that legally, under the TVPRA, criminals who choose to knowingly participate in modern-day slavery and deal in the business of selling another human being for monetary gain or other benefits can be held not only criminally liable by the United States of America for their crimes and participation in a sex trafficking venture,¹⁵³ but also civilly liable by the victim of such crimes, as well as by third-party organizations, such as the National Center on Sexual Exploitation, an organization that acts on victims' behalf to ensure the freedom of all peoples.¹⁵⁴

Under the TVPRA, anyone who "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means" or "benefits[] financially" from sex trafficking can be held criminally guilty.¹⁵⁵ Commercial sex act means "any sex act, on account of which anything of value is

¹⁴⁷ *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, *supra* note 145.

¹⁴⁸ Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PENN. L. REV. 1655, 1662 (2010).

¹⁴⁹ G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000) [hereinafter U.N. Trafficking Protocol].

¹⁵⁰ See TVPA, *supra* note 144, at 1642 (codified at 22 U.S.C. § 7102 (2006)); U.N. Trafficking Protocol, *supra* note 149, at 2.

¹⁵¹ See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2875, 2878 [hereinafter TVPRA], <https://www.congress.gov/bill/108th-congress/house-bill/2620>.

¹⁵² See 18 U.S.C. § 1595(a).

¹⁵³ *Id.*

¹⁵⁴ *Walking Alongside Survivors*, NAT'L CTR. ON SEXUAL EXPLOITATION, <https://endsexualexploitation.org/walking-alongside-survivors/> (last visited Oct. 4, 2022).

¹⁵⁵ 18 U.S.C. § 1591(a).

given to or received by any person.”¹⁵⁶ Coercion includes “threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law.”¹⁵⁷ Serious harm refers to:

“[A]ny harm whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.”¹⁵⁸

Section 1595 of the TVPRA authorizes civil claims against sex trafficking perpetrators, as well as anyone who “knowingly benefits, financially or by receiving anything of value” from participating in what the “person knew or should have known” was a sex trafficking venture.¹⁵⁹

In addition, the Justice for Victims of Trafficking Act of 2015 calls on the United States Department of Justice to utilize the TVPRA to prosecute those who “solicit or patronize” victims of human trafficking and trafficked children for the purpose of commercial sex acts.¹⁶⁰

B. International Declarations and Protocols

i. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights¹⁶¹ was written under Eleanor Roosevelt’s far-seeing leadership and set forth the inalienable and indivisible rights of each human being born in this world, including the right of each individual to be free and equal, as well as the right to personal security.¹⁶²

¹⁵⁶ *Id.* at § 1591(e)(3).

¹⁵⁷ *Id.* at § 1591(e)(2).

¹⁵⁸ *Id.* at § 1591(e)(5).

¹⁵⁹ 18 U.S.C. § 1595.

¹⁶⁰ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, § 203(b)(1)(D), 129 Stat. 3 (codified in scattered sections of 6 U.S.C., 18 U.S.C., 22 U.S.C., 28 U.S.C., 29 U.S.C., 31 U.S.C., 34 U.S.C., 39 U.S.C., and 42 U.S.C.).

¹⁶¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

¹⁶² Taina Bien-Aimé, *Why We Must Oppose the Full Decriminalization of Prostitution*, 2 DIGNITY: J. ANALYSIS EXPLOITATION & VIOLENCE (2017), at 1, 6.

ii. *The International Covenant on Civil and Political Rights*

Under the International Covenant on Civil and Political Rights, the State parties to the Covenant signed on to recognize that “the inherent dignity and . . . the equal and inalienable rights of all members of the human family” rests on “freedom, justice and peace in the world.”¹⁶³ The Parties to the Covenant, including most States, recognized that “the ideal of free human beings enjoying . . . freedom from fear . . . can only be achieved if conditions are created whereby everyone may enjoy his [and her] civil and political rights, as well as his [and her] economic, social and cultural rights.”¹⁶⁴ These Parties are “obligat[ed] . . . under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedom.”¹⁶⁵

iii. *The International Covenant on Economic, Social and Cultural Rights*

In addition, under the International Covenant on Economic, Social and Cultural Rights, “all people[] have the right of self-determination,”¹⁶⁶ while the Universal Declaration of Human Rights states that,¹⁶⁷ “no one shall be held in slavery; slavery and the slave-trade shall be prohibited *in all their forms*.”¹⁶⁸ It further enumerates that each State party to the “Covenant undertakes to respect and to ensure to all individuals within its territory . . . the rights recognized in the present Covenant” and to “adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant,” including ensuring an effective remedy to “any person whose rights or freedoms . . . are violated.”¹⁶⁹ Therefore, States that are party to this International Covenant have not only a duty to respect and ensure the individuals in its territory are free from slavery—including sex slavery—but also have a duty to ensure an effective remedy to those whose rights are violated.

¹⁶³ G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, at 1 (Dec. 16, 1966) [hereinafter ICCPR].

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, at 1 (Dec. 16, 1966) [hereinafter ICESCR].

¹⁶⁷ *Id.*

¹⁶⁸ UDHR, *supra* note 161, at 2.

¹⁶⁹ *Id.* at 2.

iv. *The Palermo Protocol*

From an international legal perspective, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children¹⁷⁰ (“Palermo Protocol”), which the United States ratified in 2005, explicitly explains how traffickers operate, their means of power over women and children—including abuse and exploiting vulnerabilities—and implies that consent of victims to trafficking is not a defense as such alleged consent very likely included exploitation of vulnerabilities.¹⁷¹ The Palermo Protocol implores international governments to criminalize, penalize, and punish the “demand” side of trafficking, meaning the men that are violating women’s basic human rights by both buying and selling them for sex.¹⁷²

v. *It Is Time to Implement These Existing International Anti-Trafficking Resources*

Both the United States and other world leaders, including the United Nations, need to implement the original visionary goals of the founders of the UDHR in the legal protections afforded the women and children of this world.

They can do this by ensuring that all people, including trafficked people, are protected from their basic human rights being violated. The human rights of prostituted and trafficked women are indistinguishable from those of non-prostituted and non-trafficked women and those of the men who violate those rights by buying their bodies.¹⁷³

C. A Lack of International Enforcement Leads to the Increase of Trafficked Women and Children

i. *The U.N. Trafficking Protocol*

As the law stands, the U.N. Trafficking Protocol is the only international law in place to stop sex trafficking, but it is insufficient: while it is binding on parties who sign it, the Protocol and its resulting domestic laws are not being enforced. Under the Protocol, those parties that ratify this treaty must criminalize human trafficking and develop domestic anti-trafficking laws in line with the

¹⁷⁰ U.N. Trafficking Protocol, *supra* note 149, at 2.

¹⁷¹ Bien-Aimé, *supra* note 162, at 1–2.

¹⁷² *Id.*

¹⁷³ *See* Bien-Aimé, *supra* note 162.

Protocol's legal provisions.¹⁷⁴ These countries must provide protection and assistance to victims of human trafficking.¹⁷⁵

Since the U.N. Trafficking Protocol was established in 2000, over 90% of the United Nations Member States have established a specific offense for the criminalization of trafficking, and the definition of trafficking in persons is almost universally based on the U.N. Trafficking Protocol.¹⁷⁶ However, it is clear by the increasing number of those who are forced into sex slavery that the States are not enforcing their domestic criminal laws as they should. Despite 90% of U.N. Member States implementing their own domestic laws to criminalize sex trafficking, and the existence of an international treaty to develop anti-trafficking laws, trafficking is increasing. The logical conclusion is that these laws are, therefore, not being enforced.

ii. *The United National Convention against Transnational Organized Crime*

In addition to such domestic criminalization, the Global Report states that the U.N. Trafficking Protocol is supplemented by the United Nations Convention against Transnational Organized Crime (“UNTOC”), the main international legal instrument in the fight against transnational organized crime.¹⁷⁷ However, the UNTOC does not make a large impact on sex trafficking because only a minority of sex trafficking is organized-crime related.¹⁷⁸ Specifically, as documented in a review of active federal sex trafficking cases in 2019, 23.3% of sex trafficking that occurred in the United States involved a pre-existing relationship, whereas only 3.5% were organized crime-directed.¹⁷⁹ In other words, sex trafficking is not the stuff of Liam Neeson thrillers.¹⁸⁰ A greater percentage of trafficking occurs through intimate partners and relatives.¹⁸¹

iii. *Security Council Resolutions*

The U.N. Security Council has made resolutions that condemn trafficking; however, none have been specific enough to make a lasting impact on sex

¹⁷⁴ See U.N. Trafficking Protocol, *supra* note 149.

¹⁷⁵ *Id.*

¹⁷⁶ See Bien-Aimé, *supra* note 162.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 41–42.

¹⁷⁹ Dawn Hawkins, #*TraffickingTruths: Realities of child sex trafficking!*, NAT'L CTR. ON SEXUAL EXPLOITATION (Aug. 13, 2020), <https://endsexualexploitation.org/articles/traffickingtruths-realities-of-child-sex-trafficking/> (last accessed Oct. 5, 2022).

¹⁸⁰ *Id.*

¹⁸¹ GLOBAL REPORT ON TRAFFICKING IN PERSONS, *supra* note 132, at 42, 44.

trafficking. In 2016, the Security Council made Resolution 2331 which condemned all acts of trafficking, particularly the sale or trade of persons undertaken by the “Islamic State of Iraq and the Levant.”¹⁸² It called on Member States to prioritize the ratification and complete implementation of the U.N. Trafficking Protocol to prevent the trafficking in persons, as well as all relevant international instruments.¹⁸³

Furthermore, the Security Council made Resolution 2338,¹⁸⁴ a continuation of 2331, which requested analytical support and a sanctions monitoring team for their discussions on trafficking in the areas of armed conflict and the use of sexual violence in armed conflict.¹⁸⁵ Besides the U.N. Trafficking Protocol, which has proven insufficient due to a lack of enforcement, these two resolutions are the only two that touch on human trafficking; however, even they are insufficient because they apply to armed conflict and the Middle East rather than trafficking in general. While human trafficking is prevalent in the Middle East, sex trafficking is a scourge on every single nation in the world¹⁸⁶ and must be addressed properly through adequate enforcement of the above cited legislation enacted domestically and treaties agreed to internationally. The first step to achieving this aim can be done by taking the U.N. Trafficking Protocol under Chapter VII of the U.N. Charter. This would enable the Security Council to take coercive action with respect to the breach of peace and acts of aggression that inherently go hand-in-hand with sex slavery and human trafficking.

iv. *What Remains? A Lack of Enforcement.*

Despite all of these efforts, the profits of the globalized crime of sex trafficking have soared exponentially in the last two decades, both domestically and internationally. The 2022 UNODC Global Report on Trafficking in Persons confirmed that human trafficking is only increasing,¹⁸⁷ despite the U.N. Trafficking Protocol being enacted since 2000.

¹⁸² See G.A. Res. 2331, at 6 (Dec. 20, 2016).

¹⁸³ See S.C. Res. 2331 (Dec. 20, 2016).

¹⁸⁴ See S.C. Res. 2388 (Nov. 21, 2017).

¹⁸⁵ *Id.*

¹⁸⁶ GLOBAL REPORT ON TRAFFICKING IN PERSONS, *supra* note 132, at 23.

¹⁸⁷ *Id.* at 55, 63, 76.

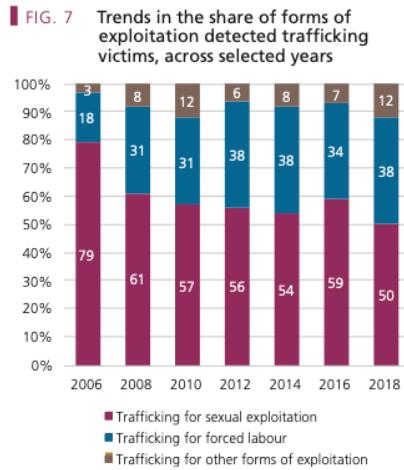


FIGURE 7 FROM GLOBAL REPORT ON TRAFFICKING IN PERSONS¹⁸⁸

The previous graph, provided by the U.N. Global Report, explains that sex trafficking is the most pervasive and consistent form of human trafficking. While the proportion of sex trafficking versus other forms of trafficking has decreased over the years, this is not indicative of any sort of overall success. Human trafficking has skyrocketed in the last two decades, meaning sex trafficking has only increased. In fact, over 79% of trafficking today involves some sort of sexual exploitation.¹⁸⁹

¹⁸⁸ *Id.* at 16.

¹⁸⁹ UNODC report on human trafficking exposes modern forms of slavery, UNITED NATIONS: OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (last visited Oct. 4, 2022).

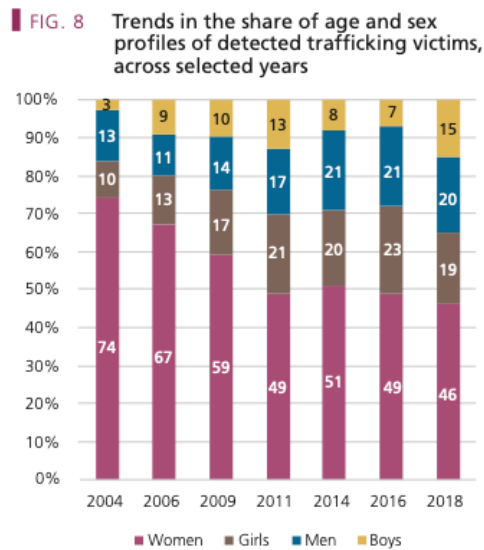


FIGURE 8 FROM GLOBAL REPORT ON TRAFFICKING IN PERSONS ¹⁹⁰

This graph provides the information that amongst those who are trafficked, women and girls make up a large majority. Therefore, it is likely that sex traffickers disproportionately target women and girls due to the demand of buyers, mainly men, who desire women to abuse.

The slight decrease in specifically women being trafficked over the years may be due to the TVPRA and the U.N. Protocol being enacted in 2000; however, while this small success is a good sign, in the last decade, the number of women and girls trafficked has remained stable, meaning there must be another push to end sex trafficking and make our world free from sexual slavery.

As explained previously, 90% of the U.N. Member States have signed the international treaty which mandates that each Signatory implement domestic laws criminalizing sex trafficking. This means that most countries have anti-trafficking laws. Taking into account each nation's domestic laws, the TVPRA, the various international treaties banning slavery, and the U.N. Security Council Resolutions, it is clear that both internationally and domestically, the increase in trafficking is not due to a lack of legislation; rather, the continual increase in sexual exploitation and trafficking in each nation is due to a lack of enforcement and punishment so as to sufficiently deter the multi-billion dollar industry of criminals sexually exploiting women.

¹⁹⁰ GLOBAL REPORT ON TRAFFICKING IN PERSONS, *supra* note 132, at 16.

D. SEX TRAFFICKING IS AGAINST INTERNATIONAL CUSTOMARY LAW AND IS A
JUS COGENS

International customary law includes a type of soft law that is not binding but has an impact. This occurs when there is a unilateral act done by one country that becomes binding on other countries. Due to the United States creating the TVPRA as a unilateral practice and criminalizing those who traffic in enslaved persons, the United States has created a unilateral act that impacts the international community as a binding rule to abide by.

Furthermore, the criminalization of sex trafficking is customary international law that the United Nations Security Council and International Court of Justice can adjudicate. Due to the TVPRA, as well as the U.N. Protocol, these laws calling for a stop to sex trafficking and legally criminalizing sex trafficking are internationally binding. Though the U.N. Security Council has not implemented the TVPRA into an international treaty, it has stated in the Universal Declaration of Human Rights that each person has a right to be free from enslavement and has implemented other treaties to end violence against women.¹⁹¹

Additionally, engaging in sex trafficking and trafficking in persons is *jus cogens* to which no State, government, or entity can abscond or object.

A *jus cogens* norm is a robust and universal obligation held in the international legal community as an important component of international law.¹⁹² They are obligations that “exist independently of the consent of men” and are “fundamental principles of international law so universally recognized as to be regarded as being based upon the consent of all states,” that “bind the states without their explicit consent.”¹⁹³ In addition to being provided under the naturalist theory of international law, the Vienna Convention on the Law of Treaties¹⁹⁴ also marks the use of *jus cogens* in the international legal system.¹⁹⁵ Under the Vienna Convention, the International Law Commission Rapporteur distinguished between “those rules which are mandatory and imperative in any circumstances (*jus cogens*) and those (*jus dispositivum*) which merely finish a rule for application in the absence of any other agreed regime.”¹⁹⁶ The Vienna Convention provides for the

¹⁹¹ S.C. Res. 1325 (Oct. 31, 2000) (calling all parties in conflict to respect women’s rights) (aff’d in S.C. Res. 1820, promoting ambitions, maintenance of international peace and security, prevention of and response to sex acts that target civilians).

¹⁹² Stephanie Smith, Piracy, Slavery, and the Limits of International Law: The Gap Between the Rhetoric and Reality of *Jus Cogens* (Spring 2013) (unpublished Ph.D. dissertation, Old Dominion University) (on file with author).

¹⁹³ GEORGE A. FINCH, THE SOURCES OF MODERN INTERNATIONAL LAW 44, 60 (1937).

¹⁹⁴ See Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention], https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

¹⁹⁵ Smith, *supra* note 192, at 34.

¹⁹⁶ Christopher A. Ford, *Adjudicating Jus Cogens*, 13 WIS. INT’L L.J. 145, 157 (1995).

invalidation of treaties that violate the parameters established by *jus cogens*.¹⁹⁷ In Article 53, the Vienna Convention defines peremptory norms of general international law as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹⁹⁸

As *jus cogens* norms are now accepted as a more encompassing concept that goes beyond treaty nullification, it is an autonomous concept of international law, beyond the Vienna Convention,¹⁹⁹ that acts as restrictions, prohibitions, guidance, limits on international actors, and justification for action on the international stage²⁰⁰ referenced by a variety of actors,²⁰¹ including the United Nations Security Council, States, NGOs, and individuals.²⁰²

However, despite *jus cogens* being held as a “sacred” international norm that must be adhered to and never criticized at the “risk of being declared a grave offender of international legality,”²⁰³ the full resolution about the source of *jus cogens* and how they were to be enforced was never fully reached.²⁰⁴

These obligations require “the enforcement of the positive law prohibiting the violation of a *jus cogens* right, i.e., the redress of any such violation falls within the competency of each and every state comprising that community.”²⁰⁵ Therefore, each nation has the obligation to not only abide by these *jus cogens* norms, but also help to enforce them in their international legal community. Universal jurisdiction allows for “any state to exercise jurisdiction over” violations of peremptory norms, “wherever they take place and whatever the nationality of the alleged offender or victim.”²⁰⁶

¹⁹⁷ See Vienna Convention, *supra* note 194.

¹⁹⁸ *Id.* at 18.

¹⁹⁹ *Id.* at 37; IAN SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 17, 215 (2d ed. 1984).

²⁰⁰ See Alexander Orakhelashvili, *The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions*, 16 EUR. J. INT’L L. 59 (2005).

²⁰¹ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27).

²⁰² See Antonio Augusto Cancado Trindade, *Jus Cogens: The Determination and the Gradual Expansion of its Material Content in Contemporary International Case-Law*, ORG. OF AM. STATES, <https://www.oas.org/dil/esp/3%20-%20cancado.lr.cv.3-30.pdf> (last visited April 22, 2021).

²⁰³ JERZY SZTUCKI, JUS COGENS AND THE VIENNA CONVENTION ON THE LAW OF TREATIES: A CRITICAL APPRAISAL 157 (Springer-Verlag 1974).

²⁰⁴ Smith, *supra* note 192, at 36.

²⁰⁵ IAN SINCLAIR, HIERARCHY IN INTERNATIONAL LAW: THE HUMAN RIGHTS DIMENSION 106 (Antwerpen: Intersentia, 2001).

²⁰⁶ ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 44 (2d ed., Cambridge Univ. Press 2010).

Slavery and slavery-like practices are *jus cogens*. In fact, not only is slavery *jus cogens*, it is one of the most firmly established and oldest tenets of these norms.²⁰⁷ Widespread rape, especially used as a war crime, is also *jus cogens*.²⁰⁸ Sex-trafficking is modern-day slavery and is thereby considered a subsection of an existing *jus cogens* that must be paid attention to, objected to, and at the insistence of our international community, punished. As a *jus cogens*, sex trafficking is prohibited from being used in any nation in the world, and no nation can object to such prohibitions.

A. Enforcement Begins from the Top Down and the Bottom Up

But where is the enforcement? If there is none, the laws are made essentially useless. In order for our international community to live up to its high ideals of freedom for all human beings from enslavement, including sexual enslavement, those individuals, corporations, governments, States and groups selling women for their bodies need to be penalized. The laws currently in place need to be utilized and the current declarations and treaties against human trafficking, including sex trafficking, must be relied on by international organizations and States in bringing violators to justice and freeing women and children from lives of modern-day slavery. This includes prosecuting those who solicit victims of sex trafficking for commercial sex acts.

i. The United States' Steps to Leading a Global Change

Domestic laws translate internationally. If the domestic laws in the United States—and other countries that have adopted something similar to the TVPRA—are not being enforced or taken as seriously as they should, the international community will be much less willing to implement and enforce such laws. As the United States is a global leader that has one of the most robust laws against sex trafficking already in place, it needs to take the lead and kick-start an international movement to enforce the laws against sex trafficking by petitioning the U.N. Security Council to bring actions against States that are willfully ignoring or even participating in the sex trafficking of women and children. As a leader, the United States should also begin to implement the laws it has enacted more vigorously by working with the Department of Justice's anti-trafficking task forces to investigate and prosecute those who purchase commercial sex in order to guarantee the enforcement of local and international laws that criminalize sex slavery.

The United States can push for a global treaty against sex trafficking to create a worldwide reform with all governmental organizations working together

²⁰⁷ Smith, *supra* note 192, at 1.

²⁰⁸ See Dean Adams, *Prohibiting Widespread Rape*, 6 SAN DIEGO INT'L L.J. 357 (2005).

to build a better world. Ideally, each State can sign on to an explicit treaty to protect populations against sexual trafficking and violence. Since many States have implemented laws against sex trafficking—following the TVPRA and U.N. Protocol—each State should ban together at the international governmental level to root out injustice and fight for the rights of their people. Each State should monitor the States around them as well as monitor within its own borders to ensure the safety of children and the female population.

ii. *International Duties to Ensure Basic Human Freedom from Sex Slavery*

The right to be free exists as a basic human right. It is the responsibility of each nation to ensure that they are abiding by the Declaration of Human Rights. It is also the responsibility of global leaders to ensure that they are providing a solid foundation of laws and enforcement mechanisms that other smaller States can imitate to produce a stronger world in the fight against sexual exploitation.

The U.N. also has a responsibility, as well as other international organizations, to push for international change and treaties, to bring cases against countries that are not abiding by its treaties and declarations, and to ensure that no one State goes unpunished for such a gross violation of international law and basic human rights.

In order for an international criminal court to compel individuals under the sovereignty of a State to comply with its injunctions, orders and summonses, it likely will need to rely on the cooperation of that State.²⁰⁹ The international criminal court can bring suit against those nations that are violating international customary law. If sex trafficking were generally recognized as a violation of a *jus cogens* norm, the International Court of Justice (“ICJ”) could begin enforcing this *jus cogens* when one state brings another before the ICJ, initiating the international criminal court system’s participation in this fight against sex trafficking.

iii. *Women’s Voices Need to Lead This Change*

Lastly, the international community needs more women leaders in the room, making these decisions and participating in global discussions on women and women’s rights. Women’s perspectives are essential in making this *jus cogens* a recognized reality and starting this global reform to protect the personal security of women’s and children’s bodies, well-being, and basic human rights. Due to the fact that most of the sexual demand comes from men, inevitably, some of the men leading these discussions on sex trafficking may be conflicted or self-interested in

²⁰⁹ LORI DAMROSCH & SEAN MURPHY, INTERNATIONAL LAW, CASES & MATERIALS 219 (7th ed. 2019).

such treaties, agreements, or enforcement. These global discussions need a higher proportion of women fighting for women in order to make a real difference.

E. CONCLUSION

While likely well-intentioned, President Obama's statement that "real change happens [] from the bottom up"²¹⁰ was inaccurate. In fact, real change must simultaneously happen from the bottom up and from the top down. The citizens, businesses, and congregations of each nation cannot change the world without the laws necessary in place to criminalize such action and the enforcement methods—sanctions and penalizations—to ensure that such laws are a real deterrent to such a lucrative industry. The leaders of global change must be global movers and shakers, namely the nations themselves and the United Nations Security Council. The United States of America is in the position to begin such a global change. As one of the leading international powers in the world, the United States must move forward in both its domestic and global stand to fight back against sex trafficking to protect the inherent dignity of all people, male and female, transgender, young, and old. Such sexual abuse and slavery shadow the entire globe, and while the nations can try to root it out from the bottom up, those efforts will only be sustainable if they are implemented by and with their national governments. Those governments will be more enticed to enact such legislation if the main powers in the world are making the same changes as well as leading the movement to enforce the penalties against inaction and criminal offenses.

²¹⁰See Obama, *supra* note 53.