

Christal Morehouse

Combating Human Trafficking

Policy Gaps and Hidden Political
Agendas in the USA and Germany

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Contents

List of Figures	9
List of Tables	11
Foreword	13
Acknowledgements	15
Introduction	17
1 International Anti Human Trafficking Policy Frameworks	25
1.1 The Six International Human Trafficking Agreements in Brief	25
1.2 In Depth Analysis of International Human Trafficking Policy Frameworks at the International Level	27
1.2.1 Demographic Parameters	28
1.2.2 Geographic Parameters	32
1.2.3 Exploitation Parameters	39
1.2.4 Victim Protection Parameters	41
1.2.5 International Cooperation Parameters	53
1.2.6 Criminalization and Punishment Parameters	58
1.3 Additional International Treaties Relevant to Combating Human Trafficking	71
1.3.1 The Universal Declaration of Human Rights	71
1.3.2 The Seven Core International Human Rights Treaties	71
2 Toward a Theoretical Human Trafficking Policy Framework ...	75
2.1 Existing Theoretical Human Trafficking Concepts	75
2.1.1 Forced Labor	76
2.1.2 Irregular Migration Facilitated by Organized Crime	83
2.1.3 Anti Prostitution	87
2.2 Building a more Comprehensive Theoretical Concept	89
2.3 Next Steps Toward a Comprehensive Theoretical Concept on Human Trafficking	99

3	Anti Human Trafficking Policy Frameworks in The United States of America	103
3.1	Historical Roots of Combating Human Trafficking in the United States of America	104
3.1.1	The United States Declaration of Independence	104
3.1.2	The Thirteenth Amendment to the United States Constitution	105
3.2	Organizational Structures of Combating Human Trafficking and Detected Scope in the United States of America	106
3.2.1	Office for Refugees and Resettlement (ORR)	110
3.2.2	Office of Victims of Crime (OVC)	113
3.2.3	Legal Services Corporation (LSC)	114
3.2.4	Department of Homeland Security (DHS)	116
3.2.5	Department of Labor (DoL)	120
3.2.6	Better Utilizing the Information Available to the United States Government	121
3.3	Estimated Magnitude of Human Trafficking in the United States of America	123
3.4	Recent Developments in Anti Human Trafficking Policy in the United States of America in Brief	127
3.4.1	The Trafficking Victims Protection Act of 2000	127
3.4.2	Trafficking Victims Protection Reauthorization Act of 2003	130
3.4.3	Trafficking Victims Protection Reauthorization Act of 2005	131
3.4.4	The William Wilberforce Trafficking Victims Protection Reauthorization Act 2008	133
3.5	In Depth Analysis of United States Human Trafficking Policy Frameworks	137
3.5.1	Demographic Parameter: Gender-Specificity	138
3.5.2	Geographic Parameter: Internal Trafficking	143
3.5.3	Exploitation Parameters: Forced Non-Sexual Labor and Trafficking in Human Organs	150
3.5.4	Victims Protection Parameter: Victim Access to Legal Residence	158
3.5.5	Criminalization and Punishment Parameters: Links in the Trafficking Chain Including the Consumer and the Commercial Nature of the Crime	163

4	Anti Human Trafficking Policy Frameworks in The Federal Republic of Germany	177
4.1	Historical Roots of Combating Human Trafficking in the Federal Republic of Germany and the European Union	177
4.1.1	The Basic Law (Grundgesetz)	178
4.1.2	European Union Policy Frameworks Prior to 2000	179
4.2	Organizational Structures of Combating Human Trafficking and Detected Scope in the Federal Republic of Germany	182
4.2.1	The German Federal Police (BKA)	183
4.2.2	The Federal Working Group on Human Trafficking	188
4.3	Estimated Magnitude of Human Trafficking in the Federal Republic of Germany	190
4.4	Recent Developments in Anti Human Trafficking Policy in the European Union in Brief	190
4.4.1	Charter of Fundamental Rights of the European Union Amended in 2000	191
4.4.2	Framework Decision of 2002 on Combating Trafficking in Human Beings Approximating the Criminal Laws of the Member States	191
4.4.3	Council Directive on the Residence Permit Issued to Third-Country Nationals who are Victims of Trafficking in Human Beings 2004	192
4.4.4	European Convention on Action Against Trafficking in Human Beings Concluded in 2005	193
4.5	Recent Developments in Anti Human Trafficking Policy in the Federal Republic of Germany in Brief	194
4.5.1	Introduction of Human Trafficking to the Criminal Code 1992	194
4.5.2	Reform of the German Criminal Code on Human Trafficking 2005	195
4.5.3	Migration Reform to Transpose Directives of the European Union 2007	197
4.5.4	The Prostitution Law 2002	198
4.6	In Depth Analysis of German Human Trafficking Policy Frameworks	199
4.6.1	Demographic Parameter: Gender-Specificity	200
4.6.2	Geographic Parameter: Internal Human Trafficking	205
4.6.3	Exploitation Parameters: Forced Non-Sexual Labor and Trafficking in Human Organs	208
4.6.4	Victim Protection Parameter: Victim Access to Legal Residence	215

4.6.5	Criminalization and Punishment Parameters: Links in the Trafficking Chain Including the Consumer and the Commercial Nature of the Crime	222
5	Improving Methods for Estimating Human Trafficking Scope ..	233
5.1	Current Systems of Estimating the Scope of the Human Trafficking Victim Population	235
5.2	Developing a Universal System of Estimating the Scope of Human Trafficking	243
5.2.1	Putting Forth Indicators for Human Trafficking Scope	244
5.2.2	Documented Cases of Labor Exploitation	248
5.2.3	Documented Cases of Illegal Prostitution	249
5.2.4	Documented Profit Traffickers Made from Victims of Human Trafficking	250
5.2.5	Documented Cases of Pedophilia or Sex Tourism	251
5.2.6	Documented Cases of ID or Travel Document Fraud	251
5.2.7	Documented Cases of Confinement or Servitude not Classified as Human Trafficking	252
5.2.8	Documented Cases of Arranged or Mail-Order Marriages	253
5.3	Next Steps in Establishing Human Trafficking Indicators	254
6	Conclusions	255
6.1	Gaps in Conceptual Framework and Definition	258
6.2	Hidden Political Agendas: Migration and Prostitution	259
6.3	Gaps in Data and Reporting	260
6.4	Gaps in Service Provision	261
6.5	Gaps in Governance Structures	262
6.6	Moving the Anti Human Trafficking Agenda Forward	262
	Bibliography	265
	Annex	273

List of Figures

Figure 1: A Typology of Forced Labor for Statistical Estimation	76
Figure 2: A Concept for Depicting the Overlap between Forced Labor and Human Trafficking	79
Figure 3: A Concept for Depicting the Overlap between Irregular Migration Facilitated by Organized Crime and Human Trafficking	83
Figure 4: Modified Human Trafficking Concept in the Context of Migration . .	86
Figure 5: A Concept for Depicting the Relationship between Prostitution and Human Trafficking	88
Figure 6: The Open Circle of Human Trafficking	94
Figure 7: Countries of Detected Human Trafficking Victim Origin in the Federal Republic of Germany	97
Figure 8: Number of Victims of Human Trafficking Certified by the ORR . . .	111
Figure 9: Number of Pre-Certified Victims of Human Trafficking Serviced by the Grantees of the OVC	114
Figure 10: Number of Victims of Human Trafficking Assisted by LSC Grantees	115
Figure 11: Number of Victims of Human Trafficking Granted a T-Visa	117
Figure 12: Number of Victims of Human Trafficking Granted a Continued Presence Permit	119
Figure 13: Principal US Government Agencies with Responsibilities for Antitrafficking Programs	144
Figure 14: Number of Detected Human Trafficking Victims in the Federal Republic of Germany from 1994–2007	186
Figure 15: Countries of Detected Human Trafficking Victim Origin in the Federal Republic of German from 2003–2007	187
Figure 16: Human Trafficking Victims’ Residence Following the Reflection Period	216
Figure 17: Human Trafficking Indicators According to Their Level of Importance	247
Figure 18: Documented Cases of Labor Exploitation	249
Figure 19: Documented Cases of Illegal Prostitution	249
Figure 20: Documented Profit Traffickers Made from Victims of Human Trafficking in a Given Year	250

Figure 21: Documented Cases of Pedophilia or Sex Tourism	251
Figure 22: Documented Cases of ID or Travel Document Fraud	252
Figure 23: Documented Cases of Confinement or Servitude not Classified as Human Trafficking	253
Figure 24: Documented Cases of Arranged or Mail-Order Marriages	253
Chart A: Organizational Structure of Combating Human Trafficking in the United States of America	108
Chart B: Organizational Structure of Combating Human Trafficking in the Federal Republic of Germany	183

List of Tables

Table 1: Ethnic-Specificity	29
Table 2: Age-Specificity	30
Table 3: Gender-Specificity	32
Table 4: Euro-Centricity and Signatory of International Treaty	35
Table 5: Exclusion of Internal Human Trafficking	38
Table 6: Inclusion of Forced Prostitution	40
Table 7: Inclusion of Forced Non-Sexual Labor and Traffic in Human Organs	41
Table 8: Inclusion of Victim Identification	44
Table 9: Inclusion of Victim Rehabilitation	46
Table 10: Inclusion of Public Awareness	48
Table 11: Inclusion of Victim Access to Legal Residence	52
Table 12: Inclusion of Government Monitoring	53
Table 13: Inclusion of Institutional Coordination	56
Table 14: Inclusion of Extradition	58
Table 15: Criminalization of Links in the Trafficking Chain Including the Consumer	62
Table 16: Irrelevance of Victim Consent	64
Table 17: Criminalization of Attempted Trafficking	65
Table 18: Inclusion of Confiscated Assets	66
Table 19: Inclusion of the Commercial Nature of the Crime	68
Table 20: Human Trafficking Parameters	68
Table 21: Identifying Forced Labor in Practice	78
Table 22: Classifying Recent Academic Research according to Typology	90
Table 23: Funding Obligated for International Activities to Combat Trafficking in Persons, Fiscal Years 2001–2005	109
Table 24: Data on Human Trafficking Maintained by US Government Entities	122
Table 25: Summary of Human Trafficking Parameters	175
Table 26: Overview of Human Trafficking Data Sets in Germany	185
Table 27: Summary of Human Trafficking Parameters	230
Table 28: Victim Profiles in US Government, ILO, UNODC, and IOM Databases	236

Table 29: Estimated Scope of Prostitution and Sex Trafficking	241
Table 30: Indicators of Human Trafficking Scope	245
Table 31: Number of Policy Recommendations According to Issue and Actor .	257

Foreword

Human trafficking is one of the most urgent political challenges of our global age. As the UN defines it, human trafficking is essentially a form of non-institutional slavery, but also includes the trafficking of human organs. It has been resistant to abolition and difficult to combat. Human trafficking is organized through networks and is clandestine in nature, making it very hard for governments to even detect. Yet it is arguably the most severe form of human exploitation in the world. Traffickers trade in the immediate human suffering of their 'goods'.

Human trafficking is a pressing political issue for two key reasons. First, because its victims are often subjected to virtual slavery, exposing them to severe physical and mental abuse. Their rights are brutally violated and they are robbed of their fundamental freedom and dignity. The severity and estimated scope of this abuse has made the issue a priority for the American and German governments. Second, human trafficking is estimated to be one of the top three sources of income globally, for organized crime. Only trafficking in drugs and arms surpasses human trafficking as a means for such illegal networks to generate funds. Criminal networks undermine the integrity of democratic states and destabilize their social and economic order. Income generated from human trafficking provides such networks with the resources they need to sustain a wide range of harmful activities. For both of these key reasons, governments have recognized human trafficking as a threat to the democratic way of life and to the basic rule of law.

Despite its extreme severity, human trafficking has been one of the most difficult phenomena for national governments and the international community to understand, detect and combat. For many years the international community and national governments remained unclear and divided on how to define human trafficking. After numerous attempts, the international community finally established a comprehensive definition in 2000. Yet this definition remains the subject of various arguments and disagreements still today. Experts and governments are constantly refining our understanding of what human trafficking is and the many forms it can take.

This book, which was written as a dissertation for doctoral study at the Humboldt University in Berlin, is the result of over five years of research. It provides an original analysis of the issue and is a comparative country analysis of US and German efforts to combat human trafficking. Its purpose is to contribute to the effectiveness of both

governments to combat human trafficking by uncovering evident deficiencies in current policies and methods, and adding to our understanding of what human trafficking is. In particular, the author's analysis of the current state of academic research on human trafficking represents an important addition to our understanding of this complex issue. It indicates that researchers and government agencies tend too often to interpret human trafficking through one of three lenses – forced labor, migration or prostitution – while ignoring other aspects of the issue. Research and anti human trafficking policies must take a comprehensive view in order to be effective. Hence the author's research goes beyond a deficit analysis. It proposes policies and concepts on how to improve anti human trafficking efforts in both countries. It also provides a schema for policy makers, which they can use to improve their understanding of human trafficking and their anti human trafficking policies.

The damaging and corrupting effects of human trafficking resonate far beyond the direct impact it has on its immediate victims; indeed it can be said that they affect our entire society. This book illuminates the highly complex and sensitive issue of human trafficking.

Prof. Dr. Rita Süßmuth

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Christal Morehouse

Introduction

Human trafficking is one of the most extreme forms of exploitation that exist in the 21st century. Traffickers show contempt for human life and deny their victims the basic right to freedom. This form of exploitation yields large profits and in order to combat the practice a significant increase in national and international effort is required. It is the symptom of a greater struggle that humanity has not yet been able to resolve. This is the dichotomy between the potential for individual gain and the great personal cost to another person.

Human trafficking is a global problem, which is occurring in all societies. It has been an extremely difficult issue to define; the constant mutations of how this crime is executed have left policy makers and law enforcement unsuccessful at systematically preventing it to date. In a global world, in which wealth and resources are still concentrated in the hands of the few, certain segments of the population are especially at risk of becoming the objects of others' individual gain. The main cleavages allowing one person to exploit another are typically a relative economic disadvantage, minority status (ethnic, gender) and/or disrupted access to trustworthy social networks (i.e. through migration). The imbalance of wealth and power, discrepancies in the factual distribution of individual rights, and above all the willingness of people to trade in human misery, have lead to severe human exploitation on a global scale. Human trafficking is one of the most atrocious symptoms of humanity's failure to forgo potential personal gain in order to prevent the destitution of another person. Perpetrators of this crime show a complete disregard for the dignity and rights of their victims. They essentially sell these to willing buyers for personal profit.

Combating human trafficking is a complex policy area. It intersects many policies that are high on the agendas of the United States and German Government, such as structuring immigration and combating prostitution. This comparative analysis examines the policy areas that converge to comprise anti human trafficking policy in the United States of America and the Federal Republic of Germany. It is based on the following hypothesis:

Anti human trafficking policy frameworks in the United States of America and the Federal Republic of Germany are robust, yet they exhibit policy gaps. Furthermore, these policies have in part been distorted to advance hidden policy agendas under the auspices of combating human trafficking. Both these deficits have reduced

the potency of government efforts in the US and Germany to combat human trafficking.

In the context of this analysis 'hidden policy agendas' describe a situation in which governments use human trafficking policy to achieve related policy goals that impact the main policy objective negatively.

This analysis will evaluate anti human trafficking policy in the United States of America and the Federal Republic of Germany. It examines the issue from a dual perspective. It is a comparative empirical analysis and a policy evaluation. Its goal is to uncover policy gaps and hidden policy agendas, which weaken the German and American government's ability to combat human trafficking. It will conclude with policy and research recommendations. It will also examine the larger societal implications of what failing to deal with this issue could have on US and German societies. This analysis does not aim to identify best practice. Rather it focuses on policy inputs and on the role of governments and civil society in improving human trafficking policy and research.

The US and Germany were chosen for comparison because they demonstrate a broad number of similarities in their anti human trafficking policies. Both countries share a similar legal understanding of human trafficking and are both destination countries of trafficking in significant scope. Both have pro-active anti human trafficking policies and have recently modernized these. The countries are strikingly different in their approach to immigration and prostitution. Most importantly, they are similarly challenged to improve their policies as well as to detect and protect more victims within their borders. Furthermore, the author's intimate knowledge of the political situation in both countries and linguistic abilities led to this choice.

The fact that human trafficking persists in democratic countries indicates that there is a gap between the principles we act upon and the societal beliefs we preach: equality, liberty and the right to life. We assume that these beliefs are deeply rooted in our societies. However, human trafficking is challenging democratic countries to reflect more closely on which principles really drive our actions. The consequences of living in societies in which a segment of the population is essentially a disposable resource are devastating and far reaching. Tolerating, or not effectively fighting human trafficking could erode the social cohesion and collective democratic values of a society; it allows for non-institutional slavery to carry on. Furthermore, it provides a broad economic basis on which organized crime, political and economic corruption can flourish. Democratic societies must re-examine their ability to foster equality, liberty and the right to life. Government and societal responses to human trafficking thus become a litmus test as to the strength and quality of our democracies.

In the context of the United States, human trafficking challenges the country's historic collective identity. This is based on the United States' 'founding myth' (Gründungsmythos), which may be summarized as a mix of the pioneering fight for freedom and the idea that immigrants form the fabric of US society. Additionally, there is a puritan, moral anti-prostitution signature to the US Government's approach. Against this historical background, it is understandable that anti human trafficking policy has been placed high on the US political agenda. It has also been discussed predominantly as an immigrant and a moral issue, one that demonizes prostitution. Despite the relatively low number of detected occurrences of human trafficking in the United States of America, the US Government has devoted significant resources and political capital to combating human trafficking since 2000. Yet US historical identity and the realities victims face in the United States remain in strong opposition to one another.

In the context of the Federal Republic of Germany, the German Basic Law is the cornerstone of democratic, societal values. It is the unifying social contract to which all residents in Germany are bound. Germany's slow and interrupted road to democracy in the first half of the 20th century is mired in racism and hate. Ensuring that the Holocaust and fascist rule will never reoccur in Germany are deeply anchored in its 'founding myth'. This founding myth is unlike the singularly hopeful one that the United States Government maintains. Although the nostalgia associated with the founding myth of Germany is not of the same caliber as that of the US, anti-fascism, pro-equality, democracy and liberty constitute a common denominator for it. The German founding myth can best be described as the common intention to promote liberty and social equality while preventing racism and discrimination. The first two articles of the Basic Law ensure the human dignity and personal freedoms of all persons regardless of their citizenship or legal status. In this context, the human trafficking debate in Germany has been dominated by issues of gender equality, of immigration and of non-discrimination against prostitutes. However, immigration factors into the German anti human trafficking political debate in a somewhat different way than in the United States, based on Germany's long time denial of being a country of immigration. Yet, as in the United States, the persistence of human trafficking in Germany has raised questions about the nations' commitment to its founding principles and raised concerns about the health of its democracy.

Combating human trafficking is a relatively old policy area. International policy frameworks were first put into place more than 100 years ago. Since 1904, the international community has been working together to understand and put together the pieces of the human trafficking puzzle. Starting from a partial approach to combat-

ing human trafficking of target victims-groups (e.g. white women) and forms of human trafficking (e.g. sex trafficking) the international community expanded its understanding and with it its ability to take action to reduce the scope of human trafficking. However, this issue has only topped the policy agendas of the international community since 2000, when the United Nations drafted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000 UN Anti Human Trafficking Protocol). Because the international community has guided anti human trafficking efforts since the abolishment of institutional slavery in the United States of America and the Federal Republic of Germany, Chapter One is devoted to examining anti human trafficking policies at the international level. Chapter one applies inductive reasoning to establish a theoretical framework for comparing anti human trafficking policies in the US and Germany from these international treaties. This method of analysis was chosen based on the lack of a comprehensive theory on human trafficking (which is explored in depth in Chapter Two).

Human trafficking was defined by the United Nations in the 2000 UN Anti Human Trafficking Protocol. Essentially, it is the enslavement of a person for the exploitation of his or her labor or organs. Often confused with migrant smuggling, human trafficking does not require the crossing of national borders and remains a crime even in the event that a victim should consent to being held in slavery-like conditions. Unlike human smuggling, it is not primarily a crime against the state, but rather a crime against the personal freedom, dignity and human rights of the victim. In the 2000 UN Anti Human Trafficking Protocol human trafficking means:

“The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹

In this analysis, the term human trafficking will always be used as defined by the 2000 UN Anti Human Trafficking Protocol unless otherwise stated.

This analysis is divided into six chapters. Chapter One examines the international policy frameworks of combating human trafficking. International anti human traf-

¹ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

ficking treaties have existed longer than US and German national frameworks. International anti human trafficking frameworks have recently served as a reference point for equivalent national legislation in both countries. This analysis begins at the roots of anti human trafficking efforts, at the international level. Chapter One establishes which components of human trafficking have been addressed at this level since the first anti human trafficking treaty: the 1904 International Agreement for the Suppression of White Slave Traffic (1904 Anti Human Trafficking Treaty). Indeed by the year 2000 over twenty individual components to anti human trafficking treaties had been included in the six anti human trafficking treaties since 1904. Chapter One analyzes how international anti human trafficking frameworks have evolved over time. It distils components of international anti human trafficking frameworks, in which progress has been inconsistent, underdeveloped or controversial between 1904 and 2000. These ‘problematic’ components construct a theoretical framework for comparing human trafficking policies in the US and Germany. This method of analysis was chosen due to the lack of a comprehensive theory on human trafficking. The ‘problematic’ components of human trafficking are examined in-depth as part of Chapters Three and Four for the United States of America and the Federal Republic of Germany.

Chapter Two examines existing theoretical concepts of human trafficking. It looks at the broader context of how researchers have framed human trafficking and how they have analyzed it. This chapter demonstrates that existing theoretical concepts fall short of describing human trafficking in a comprehensive way. The chapter’s analysis concludes by deriving a new, more inclusive theoretical concept on human trafficking. This new concept, which depicts the complexity of human trafficking more completely, might provoke dialogue among experts and in time lead to a comprehensive theoretical framework on human trafficking.

Chapters Three and Four are designed in a comparative schema. Both chapters begin with an exploration of the historical roots of human trafficking. This approach uncovers the national foundations on which current human trafficking legislation was constructed in the national context. Thereafter, the organizational architectures of government anti human trafficking efforts are mapped for the United States of America and the Federal Republic of Germany. Anti human trafficking is a highly interdisciplinary policy area. Responsibility is distributed between multiple government agencies. Understanding the institutional complexity of government activity involved in combating human trafficking for both countries is crucial to determining the full extent of government activities. The detected and estimated scopes of human trafficking are investigated in both chapters. Then the most recent developments in

legislation are analyzed. Finally, an in-depth analysis of the ‘problematic’ components of human trafficking legislation is conducted based on the results of Chapter One on international anti human trafficking. Reports from the government, the International Labor Organization (ILO), NGOs and the media are used to determine whether the ‘problematic’ components of the anti human trafficking frameworks at the international level have been resolved in the national policy frameworks of the United States of America and the Federal Republic of Germany. Chapters Three and Four contain policy recommendations at the national level.

Chapter Five proposes a set of 47 human trafficking indicators that may improve estimates of its scope. Currently, there is no set of human trafficking indicators that is used internationally to derive human trafficking estimates. Indeed very few categories of empirical data factor into current methods of estimating the number of human trafficking victims. Therefore, the author conducted an Internet survey of experts to determine which data categories are thought to have a strong correlation with human trafficking scope. The results of this survey are also analyzed in Chapter Five. International policy advisors, service providers, journalists and researchers in the field of human trafficking were invited to take the survey online.² The surveyed persons found seven of the proposed indicators to have a significant correlation to the scope of human trafficking. These seven indicators could be used by national governments and international organizations to standardize and broaden the categories of empirical data that are used for calculating human trafficking estimates.

Chapter Six concludes this analysis; it explores the wider societal implications of the policy gaps and hidden policy agendas that emerged from it. It also uncovers issues that are in urgent need of further research. It is essential that scientific researchers and policy experts in this field remain interconnected and work to mutually improve anti human trafficking intelligence and policy internationally, in United States of America and the Federal Republic of Germany.

Research conducted for this analysis includes primary and secondary print sources, meetings and interviews with experts from the United States and Federal Republic of Germany as well as international authorities, participation in international conferences and a Web-based survey on human trafficking indicators. Furthermore, human trafficking news articles were monitored, contributing to this analysis and were posted on the Internet site created by the author (www.traffickinginpersion.org). The Website was maintained from January 2005 to August 2008. This site functioned as an information source and raised awareness on the issue.

² The participants requested that their identities remain anonymous.

This book also benefited from the author's exchanges with policy makers and field experts, which included discussions with officials from the US Department of States and Homeland Security, the Federal Police, the German Society for Technical Cooperation (GTZ), and with German and American NGOs and researchers. Additionally, this book benefited from discussions with representatives from international organizations such as the OSCE (Organization for Security and Cooperation in Europe), the IOM (International Organization on Migration), ILO (International Labor Organization), the UNODC (United Nations Office for Drugs and Crime) and the Council of Europe.

Initial research was conducted to determine which aspects of human trafficking have been under-researched and which aspects of human trafficking policy could be improved through further research and analysis. The structure of this paper reflects the results of this initial research.

1 International Anti Human Trafficking Policy Frameworks

Anti human trafficking policy measures have evolved at the international level for more than 100 years. Since 1904, the international community has been working together to understand and assemble the pieces of the human trafficking puzzle. Starting from a partial approach to combating human trafficking of target victims-groups (e.g. white women) and forms of human trafficking (e.g. sex trafficking) the international community expanded its understanding and with it its ability to take action. Because the international community has led anti human trafficking efforts since the abolishment of institutional slavery in the United States of America and the Federal Republic of Germany, Chapter One is devoted to examining anti human trafficking policies at the international level. For this analysis and in the absence of a comprehensive theory on human trafficking, inductive reasoning was used to scaffold a basis for comparing human trafficking policies in the United States and Germany. Discrete international policy measures were systematically extracted from existing anti human trafficking treaties. The reoccurring pillars of international anti human trafficking frameworks were distilled into key policy parameters for combating human trafficking. These key policy parameters provide the analytical design for Chapters Three and Four. Chapter One will seek to answer the following questions: How did anti human trafficking policies evolve and how has the international community's understanding of human trafficking changed over the years? Which components of human trafficking have been 'problematic'?

1.1 The Six International Human Trafficking Agreements in Brief

The international communities combined undertaking on this issue strongly supported the US and German Governments' efforts at reaching a national consensus on the meaning of human trafficking and placing it on their political agendas.

At the beginning of the 1900s and after wide spread abolition of institutional slavery globally in the 19th century, the international community (through multi-lateral agreements arrived at under the patronage of the French Government), the League of Nations and later the United Nations Organization (UN) began to address a form of

slavery that is less formal, less public and harder to detect than institutional slavery: human trafficking. Although the anti human trafficking policy framework has been developed regularly at the international level since 1904, this has occurred against a background of differing international institutional arrangements. For example, the first two treaties (The 1904 International Agreement for the Suppression of White Slave Traffic and The 1910 International Convention for the Suppression of the White Slave Traffic) are co-called ‘consolidated treaties’,³ which were signed prior to the establishment of the League of Nations. They emerged at a time of what is referred to as ‘Old Diplomacy’:

“Traditional diplomacy, or, as it was often called after the First World War, ‘Old Diplomacy,’ was a system of intercourse between the governments of sovereign states. This system relied exclusively on the exchange of ambassadors or ministers charged by their respective governments with the twin tasks of acting as both informants and intermediaries. As an informant, the ambassador or minister acted as the ‘man on the spot,’ keeping his government apprised of the internal conditions of the country in which he was stationed. As an intermediary, the ambassador or minister acted to present the views and interests of his own government to that of his hosts, as well as to encourage amicable relations between the host government and his own.”⁴

With the founding of the League of Nations, so-called ‘New Diplomacy’ began. Both anti human trafficking treaties that were signed prior to the era of New Diplomacy have since been registered with the League of Nation and deposited with the UN.

The six international treaties that explicitly address human trafficking are:

- The 1904 International Agreement for the Suppression of White Slave Traffic (1904 Anti Human Trafficking Treaty),⁵
- The 1910 International Convention for the Suppression of the White Slave Traffic (1910 Anti Human Trafficking Convention),⁶
- The 1921 International Convention for the Suppression of Traffic in Women and Children (1921 Anti Human Trafficking Convention),

³ Consolidated Treaties refer to bilateral and multilateral treaties from 1648 through 1919. They make up a series of international law covering the 270 years from the Westphalian treaties in 1648 to the beginning of the League of Nations.

⁴ Karl J. Schmidt, *From Revolution to Reconstruction – The League of Nations*, <http://www.let.rug.nl/usa/E/league/leaguexx.htm> (accessed February 7, 2008).

⁵ This treaty preceded the establishment of the League of Nations in 1919; it was adopted by League of Nations in October 1920.

⁶ This treaty preceded the establishment of the League of Nations in 1919; its German and French versions were registered with the United Nation in July 1920. The document in its German version can also be traced to the ‘Deutsches Reichs-Gesetzblatt’ 1913, No. 8.

- The 1933 International Convention for the Suppression of the Traffic in Women of Full Age (1933 Anti Human Trafficking Convention),
- The Geneva Convention of 1949 for the Suppression of the Traffic in Persons and of the Exploitation of Others (1949 Anti Human Trafficking Convention) and
- The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000 UN Anti Human Trafficking Protocol).

These treaties will be explored in the next subchapter in-depth.

1.2 In Depth Analysis of International Human Trafficking Policy Frameworks at the International Level

Through inductive reasoning, 22 parameters were derived from the six international anti human trafficking treaties by observing their reoccurring components. This in-depth analysis will track how these 22 parameters have evolved overtime and conclude with a smaller selection of the main pressure points of international policies, which have remained ‘problematic’.

The 22 parameters of human trafficking identified in policy frameworks are divided into six categories below:

1. Demographic Parameters

- Ethnic-Specificity
- Age-Specificity⁷
- Gender-Specificity

2. Geographic Parameters

- European Focus of Anti Human Trafficking Measures
- Germany (or a predecessor nation thereof) was a Signatory
- The United States of America was a Signatory
- Exclusion of Internal Human Trafficking

3. Exploitation Parameters

- Inclusion of Forced Prostitution
- Inclusion of Forced Non-Sexual Labor
- Inclusion of Traffic in Human Organs

⁷ Applying specific restrictions on victims of human trafficking based on age.

4. Victims Protection Parameters,
 - Victim Identification
 - Victim Rehabilitation
 - Public Awareness
 - Victim Access to Legal Residence
 - Government Monitoring
5. International Cooperation Parameters
 - Institutional coordination
 - Inclusion of Extradition
6. Prosecution and Punishment Parameters.
 - Prosecution of Links in Trafficking Chain Including the Consumer
 - Irrelevance of Victim Consent
 - Prosecution of Attempted Trafficking
 - Confiscation of Assets
 - Commercial Nature of the Crime

The following subchapters will determine how the international community framed these 22 parameters in its policies over time. The ‘problematic’ parameters, in which progress was inconsistent, underdeveloped or controversial, will then be analyzed in the national policy context for the US and Germany in Chapters Three and Four.

1.2.1 Demographic Parameters

Over the last 100 years, the international community has used demographic factors as criteria for determining who is legally defined to be a human trafficking victim. The following parameters have been extracted from the six international human trafficking treaties as reoccurring demographic parameters used to define who is a victim of human trafficking: ethnicity, age and gender.

Ethnicity

The first two international agreements on combating human trafficking incorporated the concept of ethnic exclusivity in their titles. The 1904 Anti Human Trafficking Treaty was entitled the 1904 Agreement for the Suppression of the White Slave Traffic; the 1910 Anti Human Trafficking Convention was entitled the 1910 International Convention for the Suppression of the White Slave Traffic. Interestingly, beyond the title of the 1904 and 1910 international Anti Human Trafficking agreements, no

further reference is made to ethnicity in the articles of both treaties regarding the agreement's definition of human trafficking. Although the 1921 Anti Human Trafficking Convention: International Convention for the Suppression of the Traffic in Women and Children, does not reference the issue of ethnicity in its text, its title no longer contains an ethnic reference. This distinguishes it from the two prior anti human trafficking treaties. Successor international treaties regarded ethnicity as an irrelevant parameter in determining if governments would recognize a trafficked person as a victim of human trafficking.

Table 1: Ethnic-Specificity

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Ethnic-Specificity (only 'white' victims)	Yes	Yes	No	No	No	No

Source: Original representation

Age

At the international level, age has not been a factor for excluding trafficked persons from being legally recognized as such. Yet, age has played varying roles concerning the rights of children and minors versus those of adult victims in combination with other aspects of human trafficking such as consented exploitation. The legal age of majority has been defined in various ways at the international level.

The 1904 Anti Human Trafficking Treaty did not differentiate between minor and adult human trafficking victims in granting victim-status. The treaty was therefore not age-specific. In this analysis, age-specificity means that adults and minors face different criteria in determining if they can be considered victims of human trafficking. In its preamble, the 1904 Anti Human Trafficking Treaty secured "to women of full age who have suffered abuse or compulsion, as also to women and girls underage, effective protection against the criminal traffic known as the 'white slave traffic'."⁸

The 1910 Anti Human Trafficking Convention was age-specific and addressed the 'white slave traffic' of female minors (under 21) and adult women. It raised the age

⁸ Statues at Large, "International Agreement for the Suppression of the 'White Slave Traffic,'" May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): 84.

of majority by one year to 22 years; it also applied different criteria regarding the issue of consent to adult and minor human trafficking victims. The 1921 Anti Human Trafficking Convention applied the same limitations as the 1910 Anti Human Trafficking Convention. The 1921 Anti Human Trafficking Convention was therefore age specific.

Although the 1933 Anti Human Trafficking Convention focused only on women or girls of full age, it did not exclude minors as being recognized as victims of human trafficking. Instead it removed the restriction on recognizing adult victims of human trafficking as such in cases where adults consented to their exploitation. Therefore, the 1933 Anti Human Trafficking Convention was not age-specific. Equally, the 1949 Anti Human Trafficking Convention was not age specific; neither was the 2000 UN Trafficking Protocol.

Table 2: Age-Specificity

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Age-Specificity ^a	No	Yes	Yes	No	No	No

Source: Original representation

Gender

The issue of gender has been more difficult for the international community to define regarding its willingness to legally recognize victims of human trafficking as such.

The first two Anti Human Trafficking Agreements of 1904 and 1910 were gender-specific. The 1904 Treaty for the Suppression of White Slave Traffic addressed human traffic of women only: adult women and female minors. The 1910 Anti Human Trafficking Convention was also gender-specific, applying only to female victims. Article one of the 1910 Anti Human Trafficking Convention states:

“Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.”¹⁰

⁹ Applying specific restrictions on victims of human trafficking based on age.

¹⁰ Statues at Large, “International Convention for the Suppression of the White Slave Traffic,” May 4, 1910, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html>, University of Minnesota Human Rights Library, (accessed August 9, 2005): Art. 1.

The 1921 Anti Human Trafficking Convention removed the gender-specificity of prior international Anti Human Trafficking Agreements only on children. Article two stated: “The High Contracting Parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes and who commit offences within the meaning of the Convention of May 4, 1910.”¹¹ Despite this progress, the 1933 Anti Human Trafficking Convention included a gender-specific definition of trafficking, referring only to ‘a woman or a girl of full age’ in article one and in its title.¹² Since the 1933 Anti Human Trafficking Convention does not address children, it neither reaffirms nor disputes the progress made in the previous convention concerning child victims of both genders.

The 1949 Anti Human Trafficking Convention was a turning point at the international level concerning governments’ understanding the relationship between gender and human trafficking. In this convention the League of Nations defined human trafficking to apply to all men and women. Following the 1949 Anti Human Trafficking Convention, the international community gained continuing clarity on the issue of gender as irrelevant to granting victims of human trafficking this status. It defined human trafficking as including sex trafficking of both genders in articles one and 17. In article one, the 1949 Anti Human Trafficking Convention states that a victim can be ‘any person’. Article 17 is more specific and stipulates: “The Parties to the present Convention undertake ... to check the traffic in persons of either sex for the purpose of prostitution.”¹³ The 2000 UN Anti Trafficking Protocol was also gender-specific.

The difficulty at the international level to define the relationship between human trafficking and gender has been reflected in anti human trafficking laws at the national level in many countries. Therefore, this aspect will be analyzed at the national level in Chapters Two and Four.

¹¹ League of Nations, “International Convention for the Suppression of the Traffic in Women and Children,” March 31, 1922, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 2.

¹² League of Nations, “International Convention for the Suppression of the Traffic in Women of Full Age,” October 11, 1933, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 1.

¹³ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 17.

Table 3: Gender-Specificity

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Gender-Specificity (only female victims)	Yes	Yes	Yes ¹⁴	Yes	No	No

Source: Original representation

1.2.2 Geographic Parameters

Geographic parameters have played a vital role in defining who the international community recognizes as a victim of human trafficking. The following two aspects have been extracted from the six international human trafficking treaties as key geographic parameters: the geographic focus of anti human trafficking measures and the exclusion of internal human trafficking in defining this offence. These issues have been repeatedly addressed in the past 100 years of international policy.

The geographic range of the governments involved in anti human trafficking at the international level, have determined where the focus of those policies lie. The geographic scope of the countries involved in combating human trafficking varied throughout the past 100 years.

The issue of whether or not a border crossing must take place in order for human trafficking to occur has also been a determining factor of defining human trafficking. For example, when a border crossing has been a prerequisite for human trafficking to occur, all internal human trafficking victims have been excluded from being recognized as such.

European Focus of Anti Human Trafficking Measures (Euro-centric)

Europe was at the forefront of combating human trafficking in the early history of international anti human trafficking policies at the beginning of the 20th century. The shift from primarily European anti human trafficking efforts to global engagement was non-linear. European nation states expressed on-off participation in the various international treaties. Prior to 1949, human trafficking was an inner-European issue (also encompassing European colonies).

The 1904 Anti Human Trafficking Treaty was Euro-centric; its signatories were predominantly European countries and many of their colonies. The initial signatories

¹⁴ The gender-specificity was lifted on children only.

were: The United Kingdom and Ireland (including the British Dominions beyond the seas), Prussia (in the name of the German Empire), Belgium, Denmark, Spain, France, Italy, the Netherlands, Portugal, Russia, Sweden, Norway and Switzerland. Europe was both a region of source and destination for victims of human trafficking for the purpose of sexual exploitation at this time. The United States of America acceded to the 1904 Anti Human Trafficking Treaty in 1908 and was not an initial signatory. In 1904 Anti Human Trafficking Treaty, was signed on May 18.¹⁵ It entered into force on July 18, 1905. The 1910 Anti Human Trafficking Convention was similarly Euro-centric, applying primarily to Europe and its colonies. The initial signatories of the 1910 Anti Human Trafficking Convention were Germany, Austria, Hungary, Belgium, Brazil, Denmark, Spain, France, Great Britain, Italy, Netherlands, Portugal, Russia and Sweden. The United States of America was not a signatory of it. The 1910 Anti Human Trafficking Convention took place from the April 18 to May 4, 1910 and was signed on the later date. It was held in Paris and was a follow-up to the July 1902 Paris Conference on the Suppression of White Slave Traffic, which concluded without a resolution.

The 1921 Anti Human Trafficking Convention expanded the geographic scope of the two prior agreements beyond Europe. Initial signatories to it were: Albania, Germany, Austria, Belgium, Brazil, the British Empire (including Canada, the Commonwealth of Australia, the Union of South Africa, New Zealand and India), Chile, China, Columbia, Costa Rica, Cuba, Estonia, Greece, Hungary, Italy, Japan, Latvia, Lithuania, Norway, the Netherlands, Persia, Poland, Portugal, Romania, Siam, Sweden, Switzerland and Czechoslovakia. Again, the United States of America was not a signatory of this convention. The 1921 Anti Human Trafficking Convention was signed on March 31, 1922. It required all parties to ratify the 1904 and 1910 international agreements on ‘white slave traffic’.

The 1933 Anti Human Trafficking Convention, although it included Australia, Panama, South Africa and China, was primarily Euro-centric. Its initial signatories were: Austria, Belgium, Great Britain and Northern Ireland, Australia, South Africa, China, Spain, France, Greece, Lithuania, Panama, the Netherlands, Poland, Portugal, Sweden and Czechoslovakia. This interrupted the momentum of anti human trafficking engagement at the international level from continually moving from a primarily European to a global issue. Not only did this reflect a lack of interest on the part of international actors in preventing human trafficking, it also showed a European disinterest in addressing the issue of human trafficking beyond the regional context.

¹⁵ Statues at Large, “International Agreement for the Suppression of the ‘White Slave Traffic’,” May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005).

The year in which it was conceived, 1933, was a year of political upheaval, high unemployment and mass emigration in Europe. The 1930s was not a decade in which Europe was creating forward-looking humanitarian policies. This was a time in which segments of the European population were particularly vulnerable to severe forms of exploitation, yet many governments lacked the ability or interest to care for their citizens. The Federal Republic of Germany's predecessor Fascist State, the Third Reich, was not a signatory of this convention nor was the United States of America. The International Convention took place in Geneva, Switzerland from October 9 to 11, 1933. The resulting League of Nations' 1933 Anti Human Trafficking Convention was signed on October 11, 1933.

The 1949 Anti Human Trafficking Convention was not Euro-centric; it was internationally focused. Although the Convention can only be described as a limited global effort based on the small number of countries that subscribed to it, it marked a lasting turning point at which the nucleus of combating human trafficking became global. This change from a primarily regional to a global focus on anti human trafficking policies occurred rather slowly, only after a half-century of international efforts. Initial signatories were: Brazil, Burma, Denmark, Ecuador, Honduras, India, Iran, Liberia, Luxemburg, Pakistan, the Philippines, South Africa, Yugoslavia and Finland. Neither the United States of America was a signatory of the 1949 Anti Human Trafficking Convention nor were the two predecessor German states of the Federal Republic of Germany. The 1949 Anti Human Trafficking Convention amended the 1904, 1910, 1921 and 1933 international policy frameworks on human trafficking. It was approved by General Assembly resolution 317(IV) of 2 December 1949. It entered into force on July 25, 1951, in accordance with article 24.

By 2000 anti human trafficking efforts were undertaken by almost every government in the world. The 2000 UN Anti Trafficking Protocol was not Euro-centric. Its signatories are from all over the globe. The preamble of the Protocol states:

“Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”¹⁶

Furthermore, there are no references in the protocol indicating that stopping human trafficking in Europe is a priority over other regions. The 2000 UN Anti Trafficking

¹⁶ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Preamble.

Protocol clearly aims at stopping human trafficking globally. The United States of America and the Federal Republic of Germany are both initial signatories to the 2000 UN Protocol. However, both countries took years to ratify it: The US on November 3, 2005 and Germany on June 14, 2006.¹⁷ One reason for this was that national policies had to be adapted to fit the new international framework; another was the reluctance of sovereign nations to allow the international community to dictate national policies. Further reasons for this delay will be explored in Chapters Three and Four. The 2000 UN Anti Trafficking Protocol was signed from December 12 to 15, 2000 and entered into force on December 25, 2003, in accordance with article 17.

Table 4: Euro-Centricity and Signatory of International Treaty

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
European Focus of Anti Human Trafficking Measures	Yes	Yes	No	Yes	No	No
Germany (or a predecessor nation states thereof) was a Signatory	Yes	Yes	Yes	No	No	Yes
The United States of America was a Signatory	Yes ¹⁸	No	No	No	No	Yes

Source: Original representation

Exclusion of Internal Human Trafficking

Concerning the issue of internal human trafficking,¹⁹ the international community acted inconsistently between 1904 and 2000 in determining whether or not a border

¹⁷ UN, “Signatories of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (accessed February 24, 2008).

¹⁸ The United States of America acceded to the 1904 Anti Human Trafficking Treaty in 1908 and was not an initial signatory.

¹⁹ For the purposes of this analysis, internal human trafficking refers to the trafficking of a citizen of a given country within that country. In other words, this is trafficking in which the citizenship of the victim is identical to the country in which he or she is trafficked.

crossing must take place – that is if the victim must be trafficked in a country in which her or she is not citizen – in order for human trafficking to occur. The international community expressed some uncertainty concerning the relationship between a victim’s country of citizenship and a victim’s legitimacy to be defined as such by governments. In cases where a border crossing is required as a prerequisite in order for human trafficking to occur, internal human trafficking victims are not recognized as such. In other words, when a given country’s own citizens are trafficked within that same given country, these citizens are disqualified from gaining victim-status. The indecision concerning the relationship between human trafficking and border crossings has been paralleled in the development of national policy frameworks in Germany and the United States. Therefore, this aspect will be analyzed at the national level in Chapters Three and Four.

In the 1904 Anti Human Trafficking Treaty, a border crossing was necessary for human trafficking to occur; it therefore excluded internal human trafficking. On the contrary, the 1910 Anti Human Trafficking Convention did not require a border crossing and only stated that the offense ‘may’ be committed internationally. Article two states that perpetrators: “shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.”²⁰ This wording stands in contrast to the wording of article seven, which states, “The Contracting Parties undertake to communicate to each other the records of convictions ... where the various acts constituting such offences have been committed in different countries.”²¹ The 1910 Anti Human Trafficking Convention included punishment of international human trafficking, but did not specifically exclude internal trafficking. The 1921 Anti Human Trafficking Convention maintained the same conditions concerning border crossings as the 1910 Anti Human Trafficking Convention, in which a border crossing was not a prerequisite of human trafficking.

Whereas the 1910 Anti Human Trafficking Convention should have resolved this issue when it determined that human trafficking is not contingent on border-crossings, the 1933 Anti Human Trafficking Convention reverted to focusing on international human trafficking, highlighting trafficking situations in which borders are crossed, in order to grant trafficked persons victim status. The 1933 Anti Human Trafficking Convention required the victim to cross a border in that the offence had

²⁰ Statues at Large, “International Convention for the Suppression of the White Slave Traffic,” May 4, 1910, Treaties and International Agreements Registered with the Secretariat of the United Nations, <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html>, University of Minnesota Human Rights Library, (accessed August 9, 2005): Art. 2.

²¹ *Ibid.*, Art. 7.

to take place in ‘another country’ in order for human trafficking to occur. In article one, it stated:

“Whoever, in order to gratify the passions of another person, has procured, enticed or led away, even with her consent, a woman or a girl of full age for immoral purposes to be carried out in another country, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.”²²

Although trafficking within state borders is not specifically addressed in the 1949 Anti Human Trafficking Convention, it did not state that a border crossing is necessary for human trafficking to occur.

In 2000, the international community defined human trafficking independent of border crossings in article three:

“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”²³

In paragraph three of the 2000 UN Trafficking Protocol, human trafficking is not limited through the transport of victims over borders.

The United Nations Office for Drugs and Crime Website on human trafficking further explains that the definition of human trafficking includes internal human trafficking:

“Once initial control is gained, victims are moved to a place where there is a market for their services and where they often lack language skills and other basic knowledge that would enable them to seek help. Destinations are commonly in foreign countries, but that is not always the case – international borders do not have to be crossed. Upon arrival at their destination, victims are forced to work in difficult, dangerous and usually unpleasant occupations, such as prostitution, the production of child pornography or general labor, in order to earn profits for the traffickers.”²⁴

²² League of Nations, “International Convention for the Suppression of the Traffic in Women of Full Age,” October 11, 1933, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 1.

²³ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

²⁴ UN Office on Drugs and Crime, *Summary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, http://www.unodc.org/unodc/trafficking_convention.html?print=yes (accessed October 5, 2007).

Internal human trafficking can also be established in line with the offence defined by the 2000 UN Trafficking Protocol. This issue has been the source of some confusion among governments and experts, since the scope of application of the Protocol and Convention on Organized Crime are international in nature. To unmistakably demonstrate the meaning of the UN protocol regarding human trafficking and border crossings, the UN the Special Rapporteur on Trafficking in Persons wrote in her 2006 Report to the UN's Economic and Social Council on February 20, 2006:

“The Protocol definition of trafficking does not require proof of movement of the victim across borders or otherwise. Trafficking is just as much trafficking even when it occurs in the victim's own home village, town or city.”²⁵

In article four, the scope of the Protocol, not the definition of human trafficking, is limited to human trafficking that is international in nature:

“This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established . . . , where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.”²⁶

Therefore, the 2000 UN Anti Trafficking Protocol defines human trafficking in both its international and internal forms, yet limits the scope of the Protocol to its international form. The inclusion of internal human trafficking in defining this offence is important because internal human trafficking occurs to a large extent, especially in

Table 5: Exclusion of Internal Human Trafficking

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Exclusion of Internal Human Trafficking	Yes	No	No	Yes	No	No

Source: Original representation

²⁵ Sigma Huda, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, Office of the UN High Commissioner of Human Rights, February 20, 2006, http://ap.ohchr.org/documents/dpage_e.aspx?si=E/cn.4/2006/62 (assessed October 5, 2007): 9.

²⁶ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 4.

developing countries. It also occurs in the United States of America and the Federal Republic of Germany.

1.2.3 *Exploitation Parameters*

Since 1904, the international community has used exploitation factors as criteria for inclusion or exclusion in granting victim-status to human trafficking victims. Forced prostitution, forced non-sexual labor and the traffic in human organs have been identified as exploitation parameters included in international human trafficking treaties. Whereas prostitution experienced linear development in the evolution of defining human trafficking, forced non-sexual labor and the traffic in human organs were more problematic issues for the international community in defining human trafficking. This can be seen in their non-linear evolution in the six international treaties.

Forced Prostitution

The dominance of preventing prostitution in designing anti human trafficking policy at the international level can be found up until 2000. The 1904 Anti Human Trafficking Treaty defined ‘white slave traffic’ as being specific to prostitution and justified its aims in moral sexual practice. Its main objective was to detect “persons in charge of women and girls destined for an immoral life.”²⁷ The 1910 Anti Human Trafficking Convention was also limited to human trafficking for the purpose of prostitution; its regulations focused on preventing women (adults and non-adults) from leading immoral lives by preventing prostitution, especially forced prostitution. Other forms of human trafficking were not addressed in the 1910 Anti Human Trafficking Convention.

The 1921 1933 and 1949 Anti Human Trafficking Conventions were prostitution-specific. The 1949 Anti Human Trafficking Convention confined human trafficking to prostitution in article one to a person who:

„Procures, entices or leads away, for purposes of prostitution, another person even with the consent of that person, or exploits the prostitution of another person, even with the consent of that person.“²⁸

²⁷ Statues at Large, “International Agreement for the Suppression of the ‘White Slave Traffic’,” May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 2.

²⁸ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 1.

Article two of the convention tied human trafficking directly to prostitution by punishing anyone who:

“Keeps or manages, or knowingly finances or takes part in the financing of a brothel; knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.”²⁹

In the 2000 UN Anti Trafficking Protocol, human trafficking is not restricted to just sexual exploitation. In article three of the 2000 UN Protocol:

“Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”³⁰

Table 6: Inclusion of Forced Prostitution

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Forced Prostitution	Yes	Yes	Yes	Yes	Yes	Yes

Source: Original representation

Forced Non-Sexual Labor and Traffic in Human Organs

Non-sexual forced labor as a form of human trafficking was completely absent from international law until 2000. The 1904 Anti Human Trafficking Treaty, the 1910 Anti Human Trafficking Convention, the 1921 Anti Human Trafficking Convention, the 1933 Anti Human Trafficking Convention and the 1949 Anti Human Trafficking Convention did not include non-sexual forms of forced labor in their definitions of human trafficking. The 2000 UN Protocol was the first to define human trafficking as encompassing non-sexual enslaved labor in addition to sexual forms.

A similarly late development in the definition of human trafficking at the international level concerns the inclusion of the trafficking of human organs as a form of human trafficking. Only in the year 2000, did the international community come to the conclusion that trafficking in human organs is a form of human trafficking.

²⁹ *Ibid.*, Art. 2.

³⁰ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

Due to the late modernization of the definition of human trafficking to include non-sexual forced labor and trafficking human organs, these aspects will be analyzed at the national level in Chapters Three and Four.

Table 7: Inclusion of Forced Non-Sexual Labor and Traffic in Human Organs

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Forced Non- Sexual Labor	No	No	No	No	No	Yes
Inclusion of Traffic in Human Organs	No	No	No	No	No	Yes

Source: Original representation

1.2.4 *Victim Protection Parameters*

Since 1904, the international community has included victim protection measures in its policies. Measures to identify victims, rehabilitate them, raise public awareness about the dangers of human trafficking, allow victim access to legal residence and monitor suspicious activity have been identified as reoccurring victim protection parameters in the six international human trafficking treaties.

The issues of identification, rehabilitation, public awareness as well as government monitoring experienced a very jagged, non-linear development in the evolution of defining human trafficking. Only the victim protection parameter of victim access to legal residence developed linearly. Residence was a policy option that States optionally offered foreign human trafficking victims; yet foreign human trafficking victims did not have a right to receive residency in the six international anti human trafficking treaties.

Victim Identification

Government authorities must detect and identify victims of human trafficking in order to free them from virtual slavery. Victim identification is one of the most important ways of protecting human trafficking victims from exploitation, especially when victims are identified early on in the exploitation process. States institutions may unknowingly come into contact with victims of human trafficking at times, such as during a border crossing, an inspection of a work site, routine traffic controls or a

raid on an illegal brothel. The international community has recognized the importance of identifying victims of human trafficking as a key to protecting victims and combating human trafficking. It has, however, expressed this aspect of victim protection inconsistently since 1904.

The 1904 Anti Human Trafficking Treaty emphasized governments' responsibility to identify victims of human trafficking. In article two, it stated: "Each of the Governments undertakes to have watch kept, especially in railway station, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life."³¹ Measures to increase victim identification by national authorities were included in the 1904 Anti Human Trafficking Treaty, such as interviews with suspected victims (at this time, only suspected prostitutes). National authorities were also responsible for investigating a victim's nationality and civic status, as well as recording their 'declarations' of the crime as stated in article three.

The 1910 Anti Human Trafficking Convention included no additional identification measures. The international community's neglect to further address this aspect of anti human trafficking policy demonstrated a disconnect between victim identification and effective anti human trafficking policies.

Article seven of the 1921 Anti Human Trafficking Convention again incorporated victim identification into anti human trafficking policies and allotted the responsibility of victim identification to immigration and emigration authorities. These were to: "Adopt such administrative and legislative measures as are required to check the traffic in women and children ... not only at the points of departure and arrival, but also during the journey."³²

The 1933 Treaty did not include any additional victim identification clauses. This Treaty was heavily prosecution oriented and neglected victim protection aspects of combating human trafficking.

In article 17 of the 1949 Anti Human Trafficking Convention methods of victim identification were further developed along the framework introduced in the 1921 Anti Human Trafficking Convention. Immigration as well as emigration controls were designed as the main channels for identifying human trafficking victims. Article 17 states:

³¹ Statues at Large, "International Agreement for the Suppression of the 'White Slave Traffic'," May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 2.

³² League of Nations, "International Convention for the Suppression of the Traffic in Women and Children," March 31, 1922, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 7.

“The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, ... to check the traffic in persons of either sex for the purpose of prostitution. In particular they undertake: To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route; ... To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution; To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.”³³

Article 18 of the 1949 Anti Human Trafficking Convention reemphasized a further aspect of victim identification as a key anti human trafficking measure. The 1949 Anti Human Trafficking Convention followed the framework set out by the 1904 Anti Human Trafficking Treaty. Article 18 of the 1949 Anti Human Trafficking Convention stated that Parties to the Convention should have: “Declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State.”³⁴

The 2000 UN Anti Trafficking Protocol emphasizes the prevention of human trafficking in a comprehensive way, including victim identification. The Protocol in articles 10 through thirteen reaffirm that the responsibility of victim identification resided to border and other immigration authorities. Victim identification measures specified in the 2000 UN Protocol are to establish:

- “Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons.”³⁵
- “The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons.”³⁶
- “The obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers

³³ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 17.

³⁴ *Ibid.*, Art. 18.

³⁵ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 10.

³⁶ *Ibid.*, Art. 10.

are in possession of the travel documents required for entry into the receiving State.”³⁷

- “That travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued.”³⁸
- “The integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.”³⁹
- That States “verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons” at the request of another State Party.⁴⁰

Because the 2000 UN Anti Human Trafficking Protocol is framed within the United Nations Convention against Transnational Organized Crime, the emphasis on international human trafficking is understandable. Regardless of this fact the 2000 UN Protocol has one decided weakness. The clear trend toward establishing immigration and border controls as the main means of identifying victims of human trafficking overlooks the issue of internal human trafficking of a countries own citizens within its own borders; it also does little to detect international victims of human trafficking after they enter a foreign country. Such means of identifying human trafficking victims turn a blind eye on domestic human trafficking victims.

Table 8: Inclusion of Victim Identification

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Victim Identification	Yes	No	Yes	No	Yes	Yes

Source: Original representation

Victim Rehabilitation

Once victims are freed or once they escape a human trafficking situation, they often become destitute and traumatized. The international community has recognized the fact that victims of human trafficking cannot be expected to care for themselves im-

³⁷ *Ibid.*, Art. 11.

³⁸ *Ibid.*, Art. 12.

³⁹ *Ibid.*, Art. 12.

⁴⁰ *Ibid.*, Art. 13.

mediately after their liberation. Yet the international community has inconstantly placed the responsibility of rehabilitation on national governments. It has also defined the rehabilitation services that should be provided to human trafficking victims in various ways since 1904.

The 1904 Anti Human Trafficking Treaty emphasized regulating the personal security of victims in articles three and four:

“The Governments undertake ... to entrust temporarily, ... the victims of a criminal traffic when destitute to public or private charitable institutions, or to private individuals offering the necessary security.”⁴¹

This stipulation offered victims the possibility of acquiring housing and time to recover from the trauma they suffered during their exploitation. Government provision of personal security was recognized early at the international level as a key component of effectively combating human trafficking.

The 1910 Anti Human Trafficking Convention included no additional rehabilitation measures. The international community’s neglect to further address this aspect of anti human trafficking policy demonstrated a disconnect between fostering the rehabilitation of the victim and effective anti human trafficking policies.

The 1921 Anti Human Trafficking Convention included one reference to the rehabilitation of human trafficking victims. National authorities were to: “Arrange for the exhibition, in railway stations and in ports, of notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance.”⁴² The 1933 Treaty did not include any additional victim rehabilitation clauses. This Treaty was prosecution oriented.

Only two articles of the 1949 Anti Human Trafficking Convention addressed measures to rehabilitate victims of forced prostitution. Article 16 states:

“The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.”⁴³

⁴¹ Statues at Large, “International Agreement for the Suppression of the ‘White Slave Traffic,’” May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

⁴² League of Nations, “International Convention for the Suppression of the Traffic in Women and Children,” March 31, 1922, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 7.

⁴³ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 16.

In line with the purely anti-prostitution focus of the 1949 Anti Human Trafficking Convention, these services were restricted to victims of sex trafficking. Article 19 of the 1949 Anti Human Trafficking Convention addressed the role of the state concerning victim protection: “Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance.”⁴⁴

Roman numeral two of the 2000 UN Anti Trafficking Protocol is devoted to the rehabilitation of human trafficking victims. Included in its provisions are states’ responsibilities to ensure the physical safety of the victim while the victim is in its territory. The state also should see to the physical, psychological and social recovery of victims of trafficking in persons, “in particular, the provision of appropriate housing; counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; medical, psychological and material assistance; and employment, educational and training opportunities.”⁴⁵ The state should provide the victim with the legal possibilities to obtain compensation for damage suffered. Furthermore, it should ensure that the age, gender and special needs of victims of trafficking in persons are considered, in particular the special needs of children, including appropriate housing, education and care. Each of these responsibilities was ascribed a different level of state-commitment in the Protocol. Whereas the physical safety of victims must be guaranteed, the other measures are matters which states are encouraged (not obligated) to provide.

Table 9: Inclusion of Victim Rehabilitation

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Victim Rehabilitation	Yes	No	Yes	No	Yes	Yes

Source: Original representation

⁴⁴ Ibid., Art. 19.

⁴⁵ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 6.

Public Awareness

The international community first addressed warning the public about the dangers of human trafficking in order to protect potential victims from being trafficked, in 1921. It only became a constant part of international policies in 1949.

The 1904 Anti Human Trafficking Treaty and the 1910 Anti Human Trafficking Convention do not address any measures that would aim at preventing human trafficking prior to its start. Both international agreements do not, therefore, include any clauses regarding public awareness raising as a component of anti human trafficking policy.

The 1921 Anti Human Trafficking Convention did address pre-trafficking measures as part of anti human trafficking policies. Specifically it includes raising public awareness to prevent human trafficking and to inform victims who to contact to get out of a human trafficking situation: “The High Contracting Parties undertake ... to arrange for the exhibition, in railway stations and in ports, of notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance.”⁴⁶ The 1921 Anti Human Trafficking Convention also addressed further measures of preventing human trafficking (as defined at this time) such as the licensing and supervision of employment agencies in article six.

The 1933 Anti Human Trafficking Convention, like the 1904 and 1910 agreements, did not include any measures for preventing human trafficking. As a result, the 1933 Anti Human Trafficking Convention did not include raising public awareness in its aims.

The 1949 Anti Human Trafficking Convention specifically included in article 17 public awareness campaigns as a measure to combat human trafficking: “The Parties of the present Convention undertake, in connection with immigration and emigration ... to arrange for the appropriate publicity warning the public of the dangers of the aforesaid traffic.”⁴⁷

The 2000 UN Anti Trafficking Protocol includes public awareness as part of its anti human trafficking measures. Roman numeral three, which is devoted to prevention, cooperation and other measures, states in article nine on ‘prevention of trafficking in persons’:

⁴⁶ League of Nations, “International Convention for the Suppression of the Traffic in Women and Children,” March 31, 1922, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 7.

⁴⁷ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 17.

“States Parties shall establish comprehensive policies, programs and other measures ... States Parties shall endeavor to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.”⁴⁸

Table 10: Inclusion of Public Awareness

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Public Awareness	No	No	Yes	No	Yes	Yes

Source: Original representation

Victim Access to Legal Residence

As early as 1904, the international community weighed repatriation against granting international human trafficking victims legal residence in the country of exploitation, as part of their anti human trafficking framework. Since then, granting victims access to legal residence in the country of exploitation has wandered in and out of the international toolbox of protecting human trafficking victims. The international community claims a human rights approach to fighting human trafficking, yet to date it has never framed legal residence in the country of exploitation as a right of international human trafficking victims.

The 1904 Anti Human Trafficking Treaty supported voluntary victim repatriation and cautioned States authorities to clearly detect and identify the victim prior to action. Foreign human trafficking victims were not entitled to residency of the country into which they were trafficked. The 1904 Anti Human Trafficking Treaty did not, however, prioritize repatriation when weighed against the human security and best interest of the victim. Residency was an option for international victims of human trafficking; but it was awarded only at the discretion of the state.

“The Governments also undertake ... to send back to their country of origin those women and girls who desire it, or who may be claimed by persons exercising authority over them... Repatriation shall only take place after agreement as to identity and nationality [of the victim].”⁴⁹

⁴⁸ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 9.

⁴⁹ Statues at Large, “International Agreement for the Suppression of the ‘White Slave Traffic’,” May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

The cost of repatriation was to be covered jointly by the country of origin and destination, when the victim or her family could not cover this cost. Although voluntary repatriation of human trafficking victims was regulated in the 1904 Anti Human Trafficking Treaty, there is no detectable anti-immigration policy in it. For example, the option of granting the foreign victim residence was not prohibited. Furthermore, there was no clause in the 1904 Anti Human Trafficking Treaty specifying that a victim must cooperate with judicial authorities in order to avoid repatriation.

The issue of victim repatriation was simply not addressed in the 1910 Anti Human Trafficking Convention. Likewise, the 1921 Anti Human Trafficking Convention regarded human trafficking and immigration as policy areas, which overlap. It did so in article seven, where governments were to guarantee women and children safe passage at ports of entry and exit, as well an en route. It did not, however, specifically address the repatriation or access to residence of a victim.

The 1933 Anti Human Trafficking Convention did not include any additional victim repatriation or residence clauses. This Treaty was prosecution oriented. However, it did include measures of refusal of entry and expulsion of convicted human trafficking perpetrators. Article three of the 1933 Anti Human Trafficking Convention states that the following information should be exchanged between contracting governments: "Records of convictions, together with any useful and available information with regard to the offender ... Particulars of any measures of refusal of admission or of expulsion which may have been applied to him."⁵⁰

The 1949 Anti Human Trafficking Convention did include repatriation as a policy measure for dealing with victims of human trafficking after their detection and liberation. However, article five allowed injured non-nationals to be treated the same as nationals: "In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals."⁵¹ This clause ties the duration of an international victim's stay in the country of exploitation to their pursuing the prosecution of their exploiters.

⁵⁰ League of Nations, "International Convention for the Suppression of the Traffic in Women of Full Age," October 11, 1933, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

⁵¹ UN, "Convention for the Suppression of the Traffic in Persons and the Exploitation of Others," March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 5.

Article 19 of the 1949 Anti Human Trafficking Convention included regulations:

“To repatriate ... [human trafficking victims] who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers.”⁵²

It stopped short of making repatriation mandatory in all cases. The cost of repatriation was to be covered by the states involved, in the case that the victim or the victim’s family could not cover this cost. It is interesting that the 1949 Anti Human Trafficking Convention contains similar language to the 1904 Anti Human Trafficking Treaty. In the latter trafficked women can be “claimed” by others exercising authority over them.

The 2000 UN Anti Human Trafficking Protocol defines the relationship between immigration policies as an optional instrument of combating human trafficking. Granting international human trafficking victims temporary or permanent residence in the country of exploitation to foster their protection and reintegration is left up to the signatory governments. In the case of repatriation, voluntary repatriation is the policy tool of choice. Article seven states:

“Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases... each State Party shall give appropriate consideration to humanitarian and compassionate factors.”⁵³

The wording of article seven: ‘shall consider adopting ... temporarily or permanently,’ allows signatory states much leeway in framing immigration policies at the national level.

As regards repatriation, article eight of the 2000 UN Anti Human Trafficking Protocol regulates the repatriation of human trafficking victims. States to which victims are returned are responsible for the safety of that person and for the return to take place without unreasonable delay. This entails that receiving States quickly issue the proper documents to victims of trafficking. Also, the Protocol encourages states not to oblige human trafficking victims to give testimony in legal proceedings connected to their exploitation.

“When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the re-

⁵² Ibid., Art. 19.

⁵³ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 7.

ceiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.”⁵⁴

Furthermore, the Convention against Transnational Organized Crime to which the Anti Human Trafficking Protocol belongs, offers victims limited protection as witnesses of transnational crime (including victims of human trafficking). According to article 18 of the Convention:

“A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.”⁵⁵

In sum, the 2000 UN Anti Human Trafficking Protocol and Organized Crime Convention are in favor of giving victim access to residency in the country of exploitation, especially as witnesses for the prosecution. The Protocol and Convention also encourage voluntary (not forced) repatriation of international victims; yet they do not go so far as to require states to grant victims a right to residence in the country of their exploitation.

Granting legal residence to human trafficking victims in the US and Germany is currently dependant on the victim’s cooperation in prosecuting human traffickers. A victim’s receiving long-term residence is an exception, not the rule. Most victims are subject to repatriation after they have made their contribution to the prosecution. Some victims are never given access to residence in their country of exploitation due to their refusal to aid the prosecution. Yet both the US and Germany claim to take a victim-approach to combating trafficking. One explanation for this contradictory policy is that some policy makers assert that granting legal residence as a victim’s right would lead to a large increase of immigration and to large-scale fraud. Since victims’ rights to residence are underdeveloped (i.e. contingent on judicial cooperation) and are controversially debated at the international and national levels, this issue will be analyzed at the national level in Chapters Three and Four.

⁵⁴ *Ibid.*, Art. 8.

⁵⁵ UN, “United Nations Convention against Transnational Organized Crime,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 18.

Recommendation:

The 2000 UN Anti Human Trafficking Protocol should be amended and should require states to grant international victims of human trafficking a right to residence independent of the victim's judicial cooperation.

Table 11: Inclusion of Victim Access to Legal Residence

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Victim Access to Legal Residence	Yes	No	No	No	Yes	Yes

Source: Original representation

Government Monitoring

In this context, government monitoring will be used to describe state policies aimed at inspecting employment agencies and at gathering intelligence on suspected traffickers. This element of anti human trafficking policy contains both a victim protection aspect as well as a prosecution aspect. It has been categorized as a victim protection parameter in this analysis because monitoring policies can deter traffickers, by signaling that governments are serious about detecting and prosecuting responsible institutions and individuals. Because human trafficking is clandestine by nature, governments have the responsibility to actively detect and dismantle human trafficking operations and to free victims from this non-intuitive form of slavery. International anti human trafficking policy frameworks included government monitoring of ports of entry, of the institutions that recruit and employ labor in 1904. However government monitoring of relevant agencies and places of international transit have gravitated in and out of international anti human trafficking treaties since then.

Gathering intelligence on 'white slave' trafficking rings and monitoring agencies that offered work to women abroad were part of the 1904 Anti Human Trafficking Treaty. The 1910 Anti Human Trafficking Convention did not contain any provisions for monitoring employment or transport agencies. Article six of the 1921 Anti Human Trafficking Convention focused on improving monitoring and licensing agencies that employ women and children seas over to reduce exploitation. The 1933 Anti Human Trafficking Convention did not include provisions for monitoring labor or transit agencies.

Monitoring of employment agencies was a responsibility of the state according to the 1949 Anti Human Trafficking Convention in article 20. It was responsible for the “supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.”

Article 11 of the 2000 UN Anti Human Trafficking Protocol addresses the detection and prevention of human trafficking through specific border measures:

“States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.”⁵⁶

Since there is general agreement at the international and national level that government monitoring is essential to anti human trafficking policies, this element will not be analyzed in Chapters Three and Four.

Table 12: Inclusion of Government Monitoring

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Government Monitoring	Yes	No	Yes	No	Yes	Yes

Source: Original representation

1.2.5 International Cooperation Parameters

International cooperation is the foundation of all United Nations agreements. There are, however, various forms of international cooperation. Institutional coordination and extradition are two forms of international cooperation rooted in international anti human trafficking agreements. Whereas the issue of institutional coordination was a constant part of international human trafficking policy frameworks since 1904, extraditing human trafficking suspects was not included in all of the six treaties.

⁵⁶ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 11.

Institutional coordination

In this subchapter institutional coordination describes the regulated communication of government institutions. This subsection will address two issues. The first is the establishment of international communication between responsible government authorities and the second is the regulation of official communication channels between these.

Article one of the 1904 Anti Human Trafficking Treaty created responsible government offices for the suppression of ‘white slave traffic’ and networked national bodies, furthering government cooperation on combating human trafficking. 1904 Anti Human Trafficking Treaty signatory governments were to establish authorities that coordinate “information relative to the procuring of women or girls for immoral purposes abroad.”⁵⁷ The 1910 Anti Human Trafficking Convention increased the depth of government cooperation to fight this crime transnationally. It also created political process for international cooperation in which information exchanged between governments was defined. The participating states were required to communicate laws that punish the forms of trafficking to the Government of the French Republic. Article six of the 1910 Anti Human Trafficking Convention established which authorities should be involved in prosecution and information exchange for human trafficking cases. Participating states are reminded in the 1910 Anti Human Trafficking Convention to inform other signatory states of international trafficking crimes known to them as previously required in the 1904 Anti Human Trafficking Treaty.

The 1921 Anti Human Trafficking Convention increased government cooperation on anti human trafficking policies by calling for the harmonization of existing laws to fit the framework of the 1921 Anti Human Trafficking Convention. The 1933 Anti Human Trafficking Convention made a significant advance in the area of government cooperation to fight trafficking. In article three, it increased the minimum standard for communicating trafficking crimes between participating states, specifying that:

“Records of convictions, together with any useful and available information with regard to the offender, such as his civil status, description, finger-prints, photograph and police record, his method of operation, etc. Particulars of any measures of refusal of admission or of expulsion which may have been applied to him.”⁵⁸

⁵⁷ Statues at Large, “International Agreement for the Suppression of the ‘White Slave Traffic’,” May 18, 1904, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 1.

⁵⁸ League of Nations, “International Convention for the Suppression of the Traffic in Women of Full Age,” October 11, 1933, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

The 1949 Anti Human Trafficking Convention regulated the official routes of communication between countries in cases of international human trafficking offences. These included the direct communication of judicial authorities, the communication of Ministers of Justice, and/or the direct communication through diplomatic or consular representatives in article 13. The exchange of information of prosecutions, arrests, convictions, refusal of admission or expulsion of guilty persons, as well as descriptions of offenders, their fingerprints, photographs, methods of operation and police records were binding in article 15 of the 1949 Anti Human Trafficking Convention:

“Particulars of any offence referred to in the present Convention or any attempt to commit such offence; Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them. The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.”⁵⁹

Previous convictions of perpetrators were to be exchanged and considered in the prosecution of traffickers according to article seven. Each signatory States was tasked with centralizing information collection on trafficking offences and sharing this information with other States in article 14.

One of the three aims of the 2000 UN Anti Human Trafficking Protocol is: “to promote cooperation among States Parties in order to meet ... [its] objectives.”⁶⁰ The provisions of the 2000 Convention against Transnational Organized Crime apply to the 2000 Anti Human Trafficking Protocol. The Convention against Organized Crime and its protocols on human trafficking and human smuggling are devoted to commonly defining the crimes they address. They outline how States exchange information to prevent, investigate and prosecute international criminals. Article 18 of the 2000 UN Convention on Transnational Organized Crime entitled ‘mutual legal assistance’ provides the framework for international cooperation, including institutional coordination, inter-governmental communication and law harmonization.

“States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention ... Mutual legal assistance to be afforded in accordance with this article may be

⁵⁹ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 15.

⁶⁰ *Ibid.*, Art. 2.

requested for any of the following purposes: Taking evidence or statements from persons; effecting service of judicial documents; executing searches and seizures, and freezing; examining objects and sites; providing information, evidentiary items and expert evaluations; providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; facilitating the voluntary appearance of persons in the requesting State Party; any other type of assistance that is not contrary to the domestic law of the requested State Party ... Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution.”⁶¹

The 2000 UN Convention on Transnational Organized Crime goes a step further and maps out common procedures for the implementing authorities (police, border control, etc.) to combat this type of crime in article 29.

“Each State Party shall, to the extent necessary, initiate, develop or improve specific training programs for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programs may include secondments and exchanges of staff. States Parties shall assist one another in planning and implementing research and training programs designed to share.”⁶²

Other forms of cooperation are included in the 2000 Anti Human Trafficking Protocol, such as government cooperation with NGOs, bilateral and multilateral cooperation “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”⁶³

Table 13: Inclusion of Institutional Coordination

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Institutional Coordination	Yes	Yes	Yes	Yes	Yes	Yes

Source: Original representation

⁶¹ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 18.

⁶² *Ibid.*, Art. 29.

⁶³ *Ibid.*, Art. 9.

Extradition

Extradition is an important form of international cooperation because it reduces international barriers involved in prosecuting human traffickers. Due to the global nature of human trafficking, national governments have to overcome national sovereignty limitations in order to investigate, access and prosecute perpetrators who operate in multiple countries. When national governments do not agree to extradite suspected human traffickers and to exchange the necessary information to facilitate extradition, then the international nature of the crime becomes an advantage for the perpetrator. National borders become a protective shield behind which the perpetrator can hide. In such a case globalization and the freedom of movement mutate into instruments of oppression and human rights abuse.

The 1904 Anti Human Trafficking Treaty did not allow for offenders to be extradited. Extradition was first included as a form of international cooperation in the 1910 Anti Human Trafficking Convention. The 1910 Anti Human Trafficking Convention did specify that an offender could be extradited in article five. The 1921 Anti Human Trafficking Convention included additional provisions concerning the extradition of traffickers in article four:

“In cases where there are no extradition Conventions in force between [the High Contracting Parties]... , they will take all measures within their power to extradite or provide for the extradition of persons accused or convicted of the offences specified in Articles 1 and 2 of the Convention of May 4, 1910.”⁶⁴

The 1933 Anti Human Trafficking Convention did not include provisions on extradition.

The 1949 Anti Human Trafficking Convention defined the crime as an extraditable crime, and one that must be pursued by a Nation State’s domestic law, in cases where its citizens were not subject to extradition in articles eight and nine.

Extradition is a central element of the 2000 UN Anti Human Trafficking Protocol, although it is not included in the 2000 Protocol directly, but rather in the United Nations Convention against Transnational Organized Crime to which the protocol belongs. Extradition is possible in:

“Cases where an offence ... involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.”⁶⁵

⁶⁴ League of Nations, “International Convention for the Suppression of the Traffic in Women and Children,” March 31, 1922, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 4.

⁶⁵ UN, “United Nations Convention against Transnational Organized Crime,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 16.

Table 14: Inclusion of Extradition

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Extradition	No	Yes	Yes	No	Yes	Yes

Source: Original representation

1.2.6 *Criminalization and Punishment Parameters*

The international community has defined several components for criminalizing human trafficking since 1904. The following parameters have been extracted from the six human trafficking treaties: criminalization the links of human trafficking including the consumer, prosecuting human traffickers regardless of a victim's consent to being exploited, criminalization of perpetrators who attempted human trafficking, yet are prevented from committing the crime, confiscation of the assets of human traffickers and prosecuting human traffickers based on the commercial nature of exploitation.

The issue of prosecuting the links in the chain of human trafficking was a part of international human trafficking policy frameworks in 1904. However, it was only in 1921 that the international community reached a lasting consensus on the irrelevance of victim consent in establishing whether or not the victims had been trafficked.

Whereas the international community regarded attempted human trafficking as a crime since 1910, it was not until the UN Trafficking Protocol of 2000 that the international community included the confiscation of the assets of perpetrators as a means of combating human trafficking.

The main motivation for the criminalization of human trafficking remained immorality, until the UN Protocol of 2000, when this became commercial exploitation of labor or illegal sale of human organs.

Criminalization of Links in Trafficking Chain Including the Consumer

Multiple actors carry out human trafficking, and especially international human trafficking. Victims are often exploited by more than one person in their domestic environment. In many detected cases of human trafficking States authorities have

established that human trafficking victims were recruited and coerced prior to their exploitation. They were often transported and harbored before they were exploited for their labor. Therefore, the chain of exploitative actors and related criminal acts that may occur prior to a human trafficking victim's exploitation are extremely relevant to combating human trafficking. The international community recognized this as early as 1904. Combating the links in the chain leading up to the actual exploitation of the victims has been a part of international anti human trafficking policies since then. Over the last 100 years, the international community has more accurately defined which links are involved in the trafficking chain and has more clearly associated these related crimes to that of human trafficking. However, the last link in the human trafficking chain, the consumer was not addressed until 2000.

The 1904 Anti Human Trafficking Treaty allowed for the criminalization of some links in the human trafficking chain such as 'accomplices' and persons involved in the 'procurement' of victims, beyond just punishing the final exploiter of the victim. The 1910 Anti Human Trafficking Convention also defined some links in the chain of human trafficking as a crime. Specifically, it addressed the use of violence, threats, abuse of authority, or any other method of compulsion on adult women as human trafficking. Article two of the 1910 Anti Human Trafficking Convention made criminal, many links in the chain of traffic, namely, the procurement, enticement, or leading away of adult women in order to traffic them illegal.

"Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries."⁶⁶

Thus early on in the history of combating human trafficking at the international level, not only the perpetrators directly exploiting victims of human trafficking were considered guilty of the crime, but also those who took part in victimizing trafficked persons prior to their intended exploitation were equally guilty of the crime. Although this demonstrates much foresight in comprehensively combating human trafficking, the last link in the trafficking chain was not addressed in either of these international Treaties.

⁶⁶ Statues at Large, "International Convention for the Suppression of the White Slave Traffic," May 4, 1910, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www1.umn.edu/humanrts/instreet/whiteslavetraffic1910.html>, University of Minnesota Human Rights Library, (accessed August 9, 2005): Art. 1.

The 1921 Anti Human Trafficking Convention did not expand the links previously identified as being part of the trafficking chain; it maintained the provisions of the 1910 Anti Human Trafficking Convention in which the procurement, enticement, or leading away of adult women was made illegal. The 1933 Anti Human Trafficking Convention reaffirmed the criminalization of the links in the trafficking chain, such as procurement, enticement or leading away a victim were included as forms of trafficking. Article one of the 1933 Anti Human Trafficking Convention states:

“Whoever, in order to gratify the passions of another person, has procured, enticed or lead away, even with her consent, a women or girl of full age for immoral purposes to be carried out in another country, shall be punished ...”⁶⁷

The 1949 Anti Human Trafficking Convention continued the emphasis placed on prosecuting multiple links in the trafficking chain and not just the persons who directly exploit human trafficking victims for their labor (at this time only regarding prostitution). Article one of the 1949 Anti Human Trafficking Convention defines ‘enticing’ and ‘leading away’ a victim as a form of human trafficking, including various links in the trafficking chain as trafficking. Furthermore, article three makes all acts, which prepare human trafficking as criminal acts. Articles one and two of the 1949 Anti Human Trafficking Conventions state:

“The Parties to the present Convention agree to punish any person who, to gratify the passions of another: Procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person ... Keeps or manages, or knowingly finances or takes part in the financing of a brothel; Knowingly lets or rents a building or other place... for the purpose of the prostitution of others.”⁶⁸

Yet again, the final link in the human trafficking chain, the consumer, was not addressed.

The 2000 UN Anti Human Trafficking Protocol follows in the tradition of prior international anti human trafficking treaties. According to the 2000 Anti Human Trafficking Protocol, human traffickers are defined as all persons involved in the chain of trafficking, such as: recruiters, transporters, those who harbor human trafficking victims, employers of enslaved persons or persons who buy or sell the organs of such

⁶⁷ League of Nations, “International Convention for the Suppression of the Traffic in Women of Full Age,” October 11, 1933, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 1.

⁶⁸ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 1–2.

persons. Article three of the UN Protocol on information exchange and training states:

“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”⁶⁹

A person who ‘gives payments’ in order to achieve the ‘consent of a person having control over another’ for the purpose of exploitation, can be interpreted to mean the consumer. The consumer pays the trafficker for the ‘privilege’ of exploiting the victim of human trafficking. Without the consumer, human traffickers could not make a profit from their crimes and would lose their prime motivation for exploiting their victims. Those persons who knowingly consume the labor of trafficking victims should be equally responsible for human trafficking as those who recruit, coerce, transport or harbor the victims prior to the victims’ exploitation. An example is a consumer who knowingly pays for the sexual services of a human trafficking victim. Although there may be many grey areas in which it is not clear whether the consumer knowingly exploited a trafficked person, there are also cases in which the intention of the consumer to purchase the services of an enslaved person can be proven. Such is the case when a consumer buys the temporary services of a victim and offers to pay the trafficker an additional fee in the event that the victim should die as a result of the severe exploitation the consumer plans to inflict on the human trafficking victim.

Unfortunately, the 2000 Anti Human Trafficking Protocol does not differentiate between those who knowingly ‘give payment’ for forced services and those who unknowingly purchase these. Consumers who unknowingly purchase forced labor should not be punished in the same way as those who do this in full knowledge of their exploitative consumption of labor or human organs.

Recommendation:

The international definition of human trafficking should make clearer that those persons who purchase the services of human trafficking victims, while in full knowledge of the victims’ circumstances, are an integral part of the human trafficking chain.

⁶⁹ UN, “United Nations Convention against Transnational Organized Crime,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

Table 15: Criminalization of Links in the Trafficking Chain Including the Consumer

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Criminalization of Links in Trafficking Chain Including the Consumer	No	No	No	No	No	Yes

Source: Original representation

Irrelevance of Victim Consent

It is almost unimaginable that a victim of human trafficking would consent to his or her own exploitation, yet this has occurred and has been an issue addressed by the international community since 1910.

The 1904 Anti Human Trafficking Treaty did not specifically exclude the criminalization of human traffickers who secured the ‘consent’ of sexually exploited victims, yet it did not specifically include it either.

The 1910 Anti Human Trafficking Convention regarded human trafficking as a crime regardless of whether or not the victim consented to being trafficked only when the victim was a minor (not an adult) in article one.

“Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.”⁷⁰

The meaning of this article is hard to understand without the aid of the annex to the Convention regarding what ‘a woman or girl under age’ means. This sentence could be read to mean that ‘a woman’ refers to an adult and ‘girl under age’ to a minor. This is not the case. The annex of the 1910 Anti Human Trafficking Convention explains:

“As regards the suppression of the offences provided for in Articles 1 and 2, it is fully understood that the words ‘woman or girl under age, woman or girl over age’ refer to women or girls under or over twenty completed years of age.”⁷¹

⁷⁰ Statues at Large, “International Convention for the Suppression of the White Slave Traffic,” May 4, 1910, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html>, University of Minnesota Human Rights Library, (accessed August 9, 2005): Art. 1.

⁷¹ Ibid., Annex.

The terms women and girl refer to the marital status of the female in question. Article two of the 1910 Anti Human Trafficking Convention addresses adult females:

“Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.”⁷²

The main difference in the crime of ‘white slave traffic’ against adult and non-adult women as defined in the 1910 Anti Human Trafficking Convention is consent. If an adult female consents to ‘white slave traffic’ then she is no longer considered a victim of the crime as defined in this protocol. The annex to the protocol states, however, that these are minimum standards defined in the protocol and that signatory States can pass additional, more severe, laws that punish trafficking, “for example, as the procuring of women over age, even where neither fraud nor compulsion may have been exercised.”⁷³

The 1921 Anti Human Trafficking Convention did not expand this aspect of how human trafficking was defined; however, it did maintain the 1910 provision that a perpetrator is guilty of trafficking, even when a child victim consented to the act.⁷⁴

In article one, the 1933 Anti Human Trafficking Convention made consent irrelevant as a requirement on adult women. This approach was maintained in the 1949 Anti Human Trafficking Convention. Even persons who consented to being trafficked were considered victims in the 1949 Anti Human Trafficking Convention according to article three:

“To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.”⁷⁵

According to the 2000 Anti Human Trafficking Protocol, human trafficking takes place regardless of the exploited person’s (child or adult) consent to the exploitation. Consent is laid out as ‘irrelevant’ in article three of the 2000 UN Anti Human Trafficking Protocol when the victim was recruited, transported, transferred, harbored, threatened, forced, coerced, abducted or deceived. The consent of the victim is also

⁷² Ibid., Art. 2.

⁷³ Ibid., Annex.

⁷⁴ A child is defined as being under 20 completed years of age.

⁷⁵ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

irrelevant when the trafficker abused his power over the victim, the victim's vulnerability or gave or received payments or benefits to achieve the consent of a person having control over the victim, for the purpose of exploitation. Exploitation includes the prostitution of others, other forms of sexual exploitation (such as forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs).

Table 16: Irrelevance of Victim Consent

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Irrelevance of Victim Consent	No	Yes ⁷⁶	Yes ⁷⁷	Yes	Yes	Yes

Source: Original representation

Attempted Trafficking

Attempted human trafficking differs from the links in the human trafficking chain analyzed above because it addresses acts that do not result in the actual exploitation of victims. Attempted human trafficking can be thought of as a broken link in the chain of human trafficking. Without going into the legal debate regarding intent and failed criminality, the international community has established that attempted human trafficking is a serious enough offence to deserve criminalization since 1921.

The 1921 Anti Human Trafficking Convention included attempted trafficking as a form of trafficking for the first time. The 1904 Anti Human Trafficking Treaty and the 1910 Anti Human Trafficking Convention did not stipulate the criminalization of perpetrators in cases where trafficking was attempted, but not successfully executed. All following international anti human trafficking policy frameworks maintained that attempted human trafficking should be punished.

The 1933 Anti Human Trafficking Convention in article three specifically stated that prosecution should be pursued regardless of whether or not the trafficker was successful in carrying out the crime:

⁷⁶ Consent is only irrelevant for minors. Adults who consent to their own exploitation cannot be considered victims of human trafficking according to this Convention.

⁷⁷ Consent is only irrelevant for minors. Adults who consent to their own exploitation cannot be considered victims of human trafficking according to this Convention.

“The High Contracting Parties undertake to communicate to each other in regard to any person of either sex who has committed or attempted to commit any of the offences referred to in the present Convention or in the Conventions of 1910 and 1921.”⁷⁸

The 1949 Anti Human Trafficking Convention criminalized attempts to commit human trafficking in article three: “To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.”⁷⁹ Article five of the 2000 Protocol requires signatory states to criminalize the attempt to commit human trafficking.

Table 17: Criminalization of Attempted Trafficking

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Criminalization of Attempted Trafficking	No	No	Yes	Yes	Yes	Yes

Source: Original representation

Confiscation of Assets

It is estimated that human trafficking ranks among the top three international crimes that gross the most profit. Trafficking in drugs and arms comprise the top two most profitable international crimes. Antonio Maria Costa, executive director of the UN Office of Drug and Crime, stated in an interview with the International Herald Tribune that, “the trade in humans is now a market worth \$30 billion to \$40 billion, often with links to organized crime.”⁸⁰ Confiscating the profits human traffickers would be an effective way to combat human trafficking for two reasons:

⁷⁸ League of Nations, “International Convention for the Suppression of the Traffic in Women of Full Age,” October 11, 1933, *League of Nations Treaty Series*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

⁷⁹ UN, “Convention for the Suppression of the Traffic in Persons and the Exploitation of Others,” March 21, 1950, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 3.

⁸⁰ Elisabeth Rosenthal, “UN proposes fund to fight human trafficking,” *International Herald Tribune* (March 27, 2007), <http://www.ihf.com/articles/2007/03/27/news/human.php> (accessed October 5, 2007).

1. It targets one of the main motivations of human traffickers: their financial profit. This would potentially deter human traffickers from trafficking people by increasing their risk.
2. The assets confiscated from human traffickers could be used to finance States efforts to combat human trafficking and also for the cost of victim rehabilitation and victim support services.

From 1904 to 1999, confiscating the assets of convicted human traffickers was not a part of international anti human trafficking agreements. In 2000, the UN Convention against Transnational Organized Crime changed this. Article 12 of the Convention, to which the Trafficking Protocol it a part made the confiscation of perpetrators assets a key element to fight human trafficking:

“States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.”⁸¹

The 2000 Convention intended that states are able to identify, trace, freeze or seize profits of transnational crime, including human trafficking, for the purpose of the eventual confiscation of those assets. If proceeds of transnational crime have been transformed into other property, this property is also subject to confiscation.

Although the confiscation of assets is a part of combating human trafficking national governments are not required to spend confiscated money to help victims of human trafficking or to increase their anti human trafficking efforts.

Table 18: Inclusion of Confiscated Assets

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of Confiscated Assets	No	No	No	No	No	Yes

Source: Original representation

⁸¹ UN, “United Nations Convention against Transnational Organized Crime,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): Art. 12.

This component of anti human trafficking policy was introduced into international agreements late in their evolution. It will not be analyzed in national contexts on its own, but will be tied into the analysis of the commercial nature of the crime.

Commercial Nature of Crime

The motivation for perpetrators to traffic their victims is largely based on making a large profit. As previously mentioned, the UN estimates trafficking to be one of the top three sources of profit stemming from organized crime. The ‘commercial nature’ of human trafficking has been incorporated in this analysis because it plays a significant role in United States anti human trafficking frameworks. This issue has not yet been addressed in international policy frameworks.

In 1904, the motivation for trafficking a victim was to procure ‘a woman or girls for immoral purposes abroad’. The motivation of commercially exploiting the victims was not named as a primary motivation; rather engaging in immoral sexual activity was emphasized.

In 1910, to ‘gratify the passions of another person’ was seen as the motivation for trafficking. Again there was no direct relationship drawn between commercial profit and human trafficking. The morally questionable sexual activity that the victim was forced to engage in was emphasized instead. The 1921 and 1933 Anti Human Trafficking Conventions rely on the 1910 Anti Human Trafficking Convention concerning the definition and motivation for human trafficking as defined at that time.

The 1949 Anti Human Trafficking Convention refers to exploitation with the purpose of prostitution. Again there is no connection made between the motivation of traffickers to exploit their victims and the commercial nature of the crime.

Although the 2000 UN Anti Human Trafficking Protocol and the UN Convention against Transnational Organized Crime acknowledge the role of profit and therefore the commercial motivations associated with organized crime, they do not require this for human trafficking to occur.

The international community to date does not specify the commercial nature of human trafficking as a defining characteristic. However, this issue is one that cannot be ignored and will be explored in Chapters Three and Four. At the national level, the United States has defined ‘the commercial nature of the crime’ as a main characteristic of human trafficking which must be included in anti human trafficking policy frameworks.⁸²

⁸² *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec. 103.

Recommendation:

The international definition of human trafficking should include the commercial nature of the crime in order to better differentiate between human trafficking and other crimes such as pedophilia.

Table 19: Inclusion of the Commercial Nature of the Crime

	1904 Anti Human Trafficking Treaty	1910 Anti Human Trafficking Convention	1921 Anti Human Trafficking Convention	1933 Anti Human Trafficking Convention	1949 Anti Human Trafficking Convention	2000 Anti Human Trafficking Protocol
Inclusion of the Commercial Nature of the Crime	No	No	No	No	No	No

Source: Original representation

Table 20: Trafficking Parameters

Policy frameworks	1904 Treaty	1910 Convention	1921 Convention	1933 Convention	1949 Convention	2000 Protocol
Key Areas						
Demographic Parameters						
Ethnic-Specificity	Yes	Yes	No	No	No	No
Age-Specificity	No	Yes	Yes	No	No	No
Gender-Specificity	Yes	Yes	Yes ⁸³	Yes	No	No
Geographic Parameters						
European Focus of Anti Human Trafficking Measures	Yes	Yes	No	Yes	No	No
Germany (or a predecessor nation states thereof) was a Signatory	Yes	Yes	Yes	No	No	Yes

Continued page 69

⁸³ The gender-specificity was removed on children only.

Table 20: Continued

Policy frameworks	1904 Treaty	1910 Convention	1921 Convention	1933 Convention	1949 Conven-	2000 Protocol
Key Areas						
The United States of America was a Signatory	Yes ⁸⁴	No	No	No	No	Yes
Exclusion of Internal Human Trafficking	Yes	No	No	Yes	No	No
Exploitation Parameters						
Inclusion of Forced Prostitution	Yes	Yes	Yes	Yes	Yes	Yes
Inclusion of Forced Non-Sexual Labor	No	No	No	No	No	Yes
Inclusion of Traffic in Human Organs	No	No	No	No	No	Yes
Exploitation Parameters						
Inclusion of Victim Identification	Yes	No	Yes	No	Yes	Yes
Inclusion of Victim Rehabilitation	Yes	No	Yes	No	Yes	Yes
Inclusion of Public Awareness	No	No	Yes	No	Yes	Yes
Inclusion of Victim Access to Legal Residence	Yes	No	No	No	Yes	Yes
Inclusion of Government Monitoring	Yes	No	Yes	No	Yes	Yes
International Cooperation Parameters						
Inclusion of Institutional Coordination	Yes	Yes	Yes	Yes	Yes	Yes
Inclusion of Extradition	No	Yes	Yes	No	Yes	Yes

Continued page 70

⁸⁴ The United States of America acceded to the 1904 Anti Human Trafficking Treaty in 1908 and was not an initial signatory.

Table 20: Continued

Policy frameworks	1904 Treaty	1910 Convention	1921 Convention	1933 Convention	1949 Convention	2000 Protocol
Key Areas						
Criminalization and Punishment Parameters						
Criminalization of Links in Trafficking Chain Including the Consumer	No	No	No	No	No	Yes
Irrelevance of Victim Consent	No	Yes ⁸⁵	Yes ⁸⁶	Yes	Yes	Yes
Criminalization of Attempted Trafficking	No	No	Yes	Yes	Yes	Yes
Inclusion of Confiscated Assets	No	No	No	No	No	Yes
Inclusion of the Commercial Nature of the Crime	No	No	No	No	No	No

Source: Original representation

Table 20 summarizes the main components of anti trafficking policy frameworks and tracks the development of each component. Those aspects of anti human trafficking policy, which have remained controversial or ‘problematic’ over the past ca. 100 years are marked in grey in the table above and listed below:

- Demographic parameter: gender-specificity
- Geographic parameter: internal human trafficking
- Exploitation parameters: forced non-sexual labor and trafficking in human organs
- Victim protection parameter: victim access to legal residence
- Criminalization and punishment parameters: criminalization of links in the trafficking chain and the commercial nature of the crime.

⁸⁵ Consent was only irrelevant for minors.

⁸⁶ Consent was only irrelevant for minors.

1.3 Additional International Treaties Relevant to Combating Human Trafficking

Beyond the six international treaties, which specifically address human trafficking, other international agreements are relevant to combating human trafficking. Specifically, the Universal Declaration of Human Rights and the Seven Core international Human Rights Treaties further anchor a human rights approach to combating human trafficking at the international level.

1.3.1 *The Universal Declaration of Human Rights*

The Universal Declaration of Human Rights, adopted by the United Nations in 1948, sets out in article three the right of every person to life, liberty and security of person. It specifically prohibits slavery and servitude in article four: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁸⁷ Since human trafficking is primarily the severe violation of a person’s human rights, the universal declaration of human rights is an important instrument through which anti human trafficking policies can be anchored. Torture, cruel, inhuman or degrading treatment are also prohibited by the declaration. Equality before the law and non-discrimination are basic human rights that every individual is entitled to regardless of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁸⁸ Article 23 further guarantees that, “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”⁸⁹

1.3.2 *The Seven Core International Human Rights Treaties*

The seven core international human rights treaties expand upon the rights included in the Universal Declaration of Human Rights. These core treaties are:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965;

⁸⁷ UN, “Universal Declaration of Human Rights,” December 10, 1948, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www.un.org/Overview/rights.html> (accessed October 6, 2007).

⁸⁸ *Ibid.*, Art. 2.

⁸⁹ *Ibid.*, Art. 23.

- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;
- International Covenant on Civil and Political Rights (ICCPR), 1966;
- Convention on the Elimination of Discrimination against Women (CEDAW), 1979;
- Convention against Torture and Other Forms of Cruel, Inhumane or Degrading Treatment or Punishment (CAT), 1984;
- Convention on the Rights of the Child (CRC), 1989;
- International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (ICRMW), 1990.

These treaties stem from the principles established in the 1948 Universal Declaration of Human Rights. Many of the rights and protections included in the seven core international human rights treaties pertain to protecting victims from being trafficked. For example, the ICERD includes the right to enjoy one's basic human rights without restriction and be free regardless of race, color, descent, or national or ethnic origin.

The ICESCR laid down the right to just and favorable conditions of work, the right to health and the right to participate in cultural life, among other things. The ICCPR includes the protection of minorities, the right to asylum and equality before the law, as well as non-discriminatory protection by the law. The ICESCR and the ICCPR together are referred to as the International Bill of Human Rights.

CEDAW aims to protect the rights of women. In article one, it defines discrimination against women:

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹⁰

Although human trafficking is not a crime specific to women and girls, a majority of its victims are female. According US government estimates from 2004, 80 percent of global human trafficking victims are female.⁹¹ CEDAW builds on the ICERD treaty and goes further to protect women's rights, in cases where their exploitation is made

⁹⁰ UN, “Convention on the Elimination of All Forms of Discrimination against Women,” *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed October 6, 2007): Art. 1.

⁹¹ *Trafficking Victims Protection Reauthorization Act of 2005*, Public Law 109–164, 106th Congress (January 10, 2006), Sec. 2.

possible or is simplified through gender discrimination. Article six of CEDAW address human trafficking in women specifically: “States Parties shall take all appropriate measures, including policy frameworks, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁹² Articles 12 and 13 advocate women’s rights to health, employment, among other things.

The CAT treaty is relevant to human trafficking. It includes a provision for punishing those who inflict cruel, inhumane or degrading treatment or punishment. CAT commits its signatories of have legal channels for preventing, investigating and punishing torture and cruel, inhumane or degrading treatment or punishment. It also prevents repatriation of persons who risk being subjected to such treatment. In the case of human trafficking this could apply to victims who risk being re-trafficked. Articles 12 and 14 include victim’s rights to fair and adequate compensation as well as full rehabilitation.

The CRC builds on the ICCPR. In article 35 it establishes the right of children not to be abducted, sold or trafficked. Article 32 protects children from economic abuse; article 34 protects them from sexual exploitation. A child’s right to identity and prohibition of illicit transfer of children are laid down in articles 7, 8 and 11. Article 38 prohibits children from participating and being forced to participate in armed conflict.

The ICRMW defines the rights of documented and undocumented migrants and their families. The preamble addresses human trafficking:

“Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights.”⁹³

It defines both groups’ economic, social and cultural rights that also apply to victims of human trafficking, as the treaty applies to migrant workers and their family members during their move, while abroad and after their return to their country of origin. For example, it protects victims of human trafficking who are transported under deplorable conditions, are forced to work in virtual slavery or are punished for resisting

⁹² UN, “Convention on the Elimination of All Forms of Discrimination against Women,” *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed October 6, 2007): Art. 6.

⁹³ UN, “International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families,” 45/158, 18 December 1990, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www.ohchr.org/english/law/cmw.htm> (accessed October 6, 2007): Preamble.

to work. Article ten states: “No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁹⁴ Article eleven is also relevant to combating human trafficking: “1. No migrant worker or member of his or her family shall be held in slavery or servitude. 2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labor.”⁹⁵ The right to liberty and security of person, as well as protection by the States against violence, physical injury, threats and intimidation, are also included in the ICRMW in article 16. This is independent of their legal status.

The Federal Republic of Germany is a signatory of six of the seven core international human rights treaties. It is not a signatory of the last of the core treaties, the ICRMW. The same is true of the United States of America.⁹⁶

Chapter Two will examine the theoretical concepts that have been put forward to explain the complexity of human trafficking. These frameworks are incomplete and to date, no comprehensive theory of human trafficking exists. Chapter Two will posit a more complete theoretical concept to explain the complexity of human trafficking.

⁹⁴ Ibid., Art. 10.

⁹⁵ Ibid.

⁹⁶ UN, “International Convention on the Elimination of All Forms of Racial Discrimination,” 2106, December 21, 1965, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://www.unhchr.ch/html/menu3/b/d_icerd.htm (accessed October 6, 2007).

2 Toward a Theoretical Human Trafficking Policy Framework

This chapter will examine existing theoretical concepts of human trafficking. Available concepts are incomplete and fall short of describing human trafficking in a way, which encompasses the entire phenomenon in accordance with the UN Protocol of 2000. This chapter proposes a new, more inclusive theoretical concept on human trafficking.

2.1 Existing Theoretical Human Trafficking Concepts

Theoretical concepts describing human trafficking are not well developed. Most refer only to the aims of anti human trafficking policies such as the US States Department's three Ps (prevention, prosecution and protection) approach, or to the causes of human trafficking (demand driven).⁹⁷ These descriptions are too narrow and would be an insufficient theoretical framework on which to base a comparative country analysis on human trafficking.

Three typologies have dominated theoretical concepts of human trafficking in literature, since the international community commonly defined human trafficking in 2000. These describe human trafficking as:

- A byproduct of forced labor
- A symptom of migration facilitated by organized crime and
- A result of prostitution.

However, all three typologies depict human trafficking as a subset of a related issue thereby highlighting one particular trait of human trafficking and neglecting other components thereof. These three typologies will be analyzed in the chapter to determine their advantages and disadvantages.

⁹⁷ Bridget Anderson and Julia O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, Geneva: International Organization for Migration, 2003.

2.1.1 Forced Labor

The International Labor Organization (ILO) posits that human trafficking is a subset of forced labor. It assumes that forced labor can be dissected into the following subordinate categories:

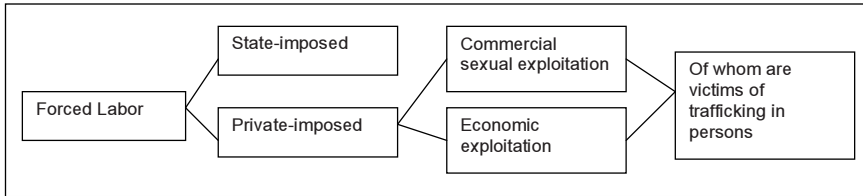


Figure 1: A Typology of Forced Labor for Statistical Estimation

Source: ILO Director-General, “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005,” *ILO*, www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059 (accessed October 28, 2007): 10.

The relationship between human trafficking and forced labor is a close one. Four forced labor treaties apply to the issue of human trafficking and there are eight fundamental ILO Conventions regarding individual freedoms and human rights.⁹⁸ However, exploring each individual relationship in all the treaties and conventions would go beyond the purpose of this subchapter, which aims to evaluate if placing human trafficking in a forced labor policy framework would accurately depict what human trafficking encompasses.

Two forced labor treaties will be examined to determine if the theoretical concept of the ILO on forced labor accurately depicts human trafficking:

- Forced Labor Convention number 29 from 1930 and
- Forced Labor Convention number 182 from 1999.

The ILO Convention number 29, adopted in 1930, contains the following definition of forced labor in article two: “All work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁹⁹ According to this basic definition, all victims of forced labor

⁹⁸ ILO, “Human Trafficking and Forced Labor Exploitation: Guidance for policy frameworks and Law Enforcement,” *Cornell University Digital Library*, <http://digitalcommons.ilr.cornell.edu/forcedlabor/22> (accessed October 28, 2007).

⁹⁹ ILO, “Forced Labour Convention No. 29 Concerning Forced Labour,” June 28, 1930, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www.unhchr.ch/html/menu3/b/31.htm> (accessed October 29, 2007): Art. 2.

can potentially be considered victims of human trafficking. In comparison, human trafficking is defined as: “The exploitation, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁰⁰

The two main criteria found in ILO’s Convention number 29 are the so-called ‘double criteria’ of forced labor: ‘menace of penalty’ and ‘involuntariness’. Both of these criteria are fulfilled according to the UN’s 2000 definition of human trafficking:

“Trafficking in persons’ shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability ... for the purpose of exploitation.”¹⁰¹

In other words, according to the ILO’s 1930 definition, victims of forced labor could also be victims of human trafficking unless trafficked for his or her organs and assuming the labor exploitation is severe.

The 1999 Convention number 182 on the ‘Worst Forms of Child Labor’ applies to persons 18 years of age or younger. Article three of the Convention defines the worst forms of child labor and overlaps with the UN’s 2000 human trafficking definition. The ILO determines the worst forms of child labor as:

“All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”¹⁰²

The ILO states in its recent report ‘A Global Alliance against Forced Labor’ from 2005, “the very concept of forced labor, as set out in the ILO standards on the sub-

¹⁰⁰ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): 54–55.

¹⁰¹ 2000 UN Convention http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/383e.pdf

¹⁰² ILO, “Convention No. 182: Worst Forms of Child Labour Convention,” June 1, 1999, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, <http://www.ilocarib.org.tl/childlabour/c182.htm> (accessed October 29, 2007): Art. 3.

ject, is still not well understood.”¹⁰³ The report attempts to update the term ‘forced labor’. It lists a series of criteria for identifying forced labor practices.

Table 21: Identifying Forced Labor in Practice

Lack of consent to (involuntary nature of) work (the “route into” forced labour)	Menace of a penalty (the means of keeping someone in forced labor) Actual presence or credible threat of:
<ul style="list-style-type: none"> • Birth/descent into “slave” or bonded status • Physical abduction or kidnapping • Sale of person into the ownership of another • Physical confinement in the work location – in prison or in private detention • Psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance • Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.) • Deception or false promises about types and terms of work • Withholding and non-payment of wages • Retention of identity documents or other valuable personal possessions 	<ul style="list-style-type: none"> • Physical violence against worker or family or close associates • Sexual violence • (Threat of) supernatural retaliation • Imprisonment or other physical confinement • Financial penalties • Denunciation to authorities (police, immigration, etc.) and deportation • Dismissal from current employment • Exclusion from future employment • Exclusion from community and social life • Removal of rights or privileges • Deprivation of food, shelter or other necessities • Shift to even worse working conditions • Loss of social status

Source: ILO Director-General, “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005,” *ILO*, www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059 (accessed October 28, 2007): 6.

Only three of the ILO’s 2005 criteria for identifying forced labor do not apply strictly to human trafficking. These are: ‘dismissal from current employment under the menace of penalty’, the ‘exclusion from future employment through menace of penalty’ and ‘physical confinement in prison’. The first two factors on their own are not severe enough forms of penalty to qualify the victims as someone who has been trafficked. Without accompanying circumstances, these factors alone would not describe a person who is forced into a situation of virtual slavery. Accordingly, the ILO’s theoretical concept for forced labor and the ILO’s understanding of human trafficking could be more accurately depicted as two partially overlapping circles. This would be more reflective of the definitions explored above than the ILO’s concept of forced labor and its proposed relationship to human trafficking.¹⁰⁴ Depicting

¹⁰³ ILO Director-General, “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005,” *ILO*, www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059 (accessed October 28, 2007): 5.

¹⁰⁴ *Ibid.*, 10.

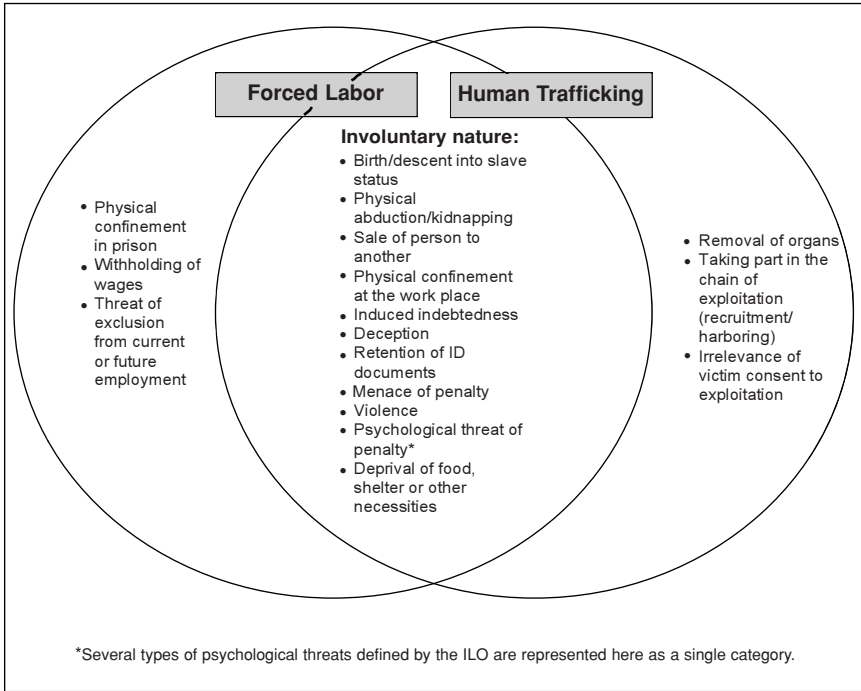


Figure 2: A Concept for Depicting the Overlap between Forced Labor and Human Trafficking
 Source: Original representation

the relationship between forced labor and human trafficking as two partially overlapping circles could take the following form.

The ILO rightfully identifies a convergence of forced labor and human trafficking on a number of common attributes. The overlap of the two issues in a large number of areas is unmistakable. But the overlap between the two issues is not complete. This can be seen clearly in the above diagram, which addresses the aspects of forced labor as identified by the ILO in their 2005 report “A Global Alliance Against Forced Labor”. Again, aspects of forced labor that do not qualify as human trafficking as defined by the UN in the 2000 UN Anti Trafficking Protocol are prison labor and violations of a person’s labor rights that is exploitative (threat of exclusion from employment), but that would not qualify as forms of ‘modern slavery’.

In its 2005 report ‘A Global Alliance against Forced Labor’, the ILO explores three differences between human trafficking and forced labor that are disputable.

These are:

1. "In short, human trafficking represents an opportunistic response to the tensions between the economic necessity of migrating, and the politically motivated restrictions on doing so."¹⁰⁵
2. "Forced labor can sometimes be an indirect outcome of the smuggling process, rather than a direct result of abusive or deceptive recruitment in the origin country. In fact, it is often difficult to distinguish in practice between workers who have entered forced labor as a result of trafficking and those who have been smuggled."¹⁰⁶
3. "Not all forced commercial sexual exploitation is the result of trafficking. In some cases, women and girls are forced into prostitution in their places of origin."¹⁰⁷

These arguments attempt to distinguish human trafficking from forced labor and assume that migration must take place for human trafficking to occur. This is not the case. In the first quotation, the ILO's wording would suggest that migration and/or recruitment are necessary for trafficking to occur and in the absence of migration, the victim would be considered exclusively a victim of forced labor. Human trafficking can occur independent of migration. Indeed, domestic victims of human trafficking are one of Germany's largest victim groups. Hence, non-migrants, who have not moved internationally or been recruited by organized smuggling rings can fall victim to human trafficking.

Concerning the second quotation, the method of how a victim obtained a highly exploitative 'job' in which his or her human rights were abused or how her or she was forced into a slave-like condition are absolutely irrelevant for human trafficking to occur. Therefore, the argument presented in the second quotation does not demonstrate a difference between human trafficking and forced labor.

Regarding the third quotation, a victim must not be recruited in his or her country of origin to be a victim of human trafficking. However, should a victim have been recruited in his or her country of origin, the recruiter is seen as a link in the human trafficking chain and is therefore also subject to punishment according to the UN's definition of human trafficking in the 2000 UN Anti Human Trafficking Protocol. This example demonstrates that human trafficking is a broader crime than forced labor. To use a metaphor, if human trafficking is a lengthier video of tragic events, forced

¹⁰⁵ Ibid., 46.

¹⁰⁶ Ibid., 47.

¹⁰⁷ Patrick Belser, Michaëlle de Cock and Farhad Mehran, "Minimum Estimate of Forced Labor in the World," *ILO*, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5073 (accessed October 28, 2007): 12.

labor is a still-picture in that video, a segment of the larger event. This applies only to those aspects of human trafficking and forced labor that overlap.

The ILO has made progress in understanding how much human trafficking and forced labor converge. In an ILO report published in 2003 “Trafficking in human beings: New approaches to the problem,” the ILO’s understanding of human trafficking, as expressed in its publication, was more static. In their 2003 report, the ILO stated:

“While trafficking might be difficult to pin down because of its complexity, its essential components are not in dispute: People who are trafficked enter the process when they are recruited by people or processes. They may be forced or coerced by family, friends, recruitment agents or agencies, and in extreme cases be forcibly removed by abduction. They may be duped by misinformation or lies, or pushed by need or desperation to seek out recruiters themselves (often called ‘voluntary’ recruitment, although free choice hardly applies). This initial stage in the process may involve the exchange of money or negotiation of a loan. Once in debt, the person who wants to move is extremely vulnerable to threats and manipulation.”¹⁰⁸

The ILO has often referenced the definition of human trafficking as defined in the 2000 UN Anti Human Trafficking Protocol. For example, its 2005 report “ILO Minimum Estimate of Forced Labor in the World” states:

“Forced labor is sometimes the result of human trafficking. According to the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), trafficking in persons refers to the recruitment or transfer of persons, by force, abduction or deception, for the purpose of ‘exploitation’. The U.N. protocol further specifies that ‘exploitation’ includes ‘forced labor, services, slavery, or practices similar to slavery’ as well as other things – which are not the subject of the present paper- like ‘the removal of organs’.”¹⁰⁹

However, its attempts to distinguish between human trafficking and forced labor in its report ‘A Global Alliance against Forced Labor’ are based on optional components of human trafficking such as migration, recruitment, the role of intermediaries in trafficking the victim or the trafficking in organs. As a result, the ILO’s theoretical concept of forced labor and the role of human trafficking in it are insufficient to address human trafficking in its complexity.

Advantages

Placing anti human trafficking policies in a labor exploitation framework overcomes gender-specific conceptions of human trafficking, which have dominated the debate

¹⁰⁸ ILO, “Trafficking in Human Beings: New approaches to combating the problem,” www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=1871 (accessed October 29, 2007): 2.

¹⁰⁹ Patrick Belser, Michaëlle de Cock and Farhad Mehran, “Minimum Estimate of Forced Labor in the World,” *ILO*, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5073 (accessed October 28, 2007): 9.

in past decades. This theoretical concept also does not distinguish between sexual and non-sexual types of labor exploitation, which have been problematic in national legislation in Germany up until the 2005 reform of human trafficking laws and in the United States prior to the 2000 legislation reform.

Disadvantages

Human trafficking and labor exploitation are not synonymous in every case. However, if one compares the definition of forced labor put forth by the ILO and the international community's definition of human trafficking, there is indeed overlap, yet the two issues differ (see Fig. 2).

The ILO's approach to defining human trafficking as a subset of labor exploitation is narrow, because it does not reflect that human trafficking is a severe form of labor exploitation and differs from other forms of low-wage labor exploitation, or 'milder' forms of psychological threats such as exclusion from future employment. For example, some forms of labor exploitation take place without the worker losing the freedom to change his employer or ability to terminate a labor contract. The forced labor theoretical concept of human trafficking also does not account for trafficking in human organs.

Implications of Disadvantages

The ILO poses an important institutional question in its 2005 report 'A Global Alliance against Forced Labor':

"Are the abusive recruitment and employment practices to which migrant workers are particularly vulnerable best dealt with through providing for the offence of forced labor or that of trafficking in domestic policy frameworks?"¹¹⁰

Although the ILO poses an either, or question to the international community, the option not addressed in the ILO's report is if the massive overlap of the two issues might best be managed by creating one expanded international organization, rather than by determining how best to draw the line between forced labor and human trafficking. Currently, there is no single international organization that is responsible for anti human trafficking policies. Considering the amount of overlap between the two issues and the lack of a clear institutional mandate for combating human trafficking at the international level, the UN should consider expanding the mandate of the ILO to include human trafficking.

¹¹⁰ ILO Director-General, "A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005", ILO, www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059 (accessed October 28, 2007): 7.

Recommendation:

Due to the significant overlap between forced labor and human trafficking, the UN should consider mandating the ILO to be an International Anti Human Trafficking and Forced Labor Organization.

2.1.2 Irregular Migration Facilitated by Organized Crime

Europol categorizes human trafficking as a subset of irregular immigration policy in their 2001 report, “Crime Assessment: Trafficking of human beings into the Euro-

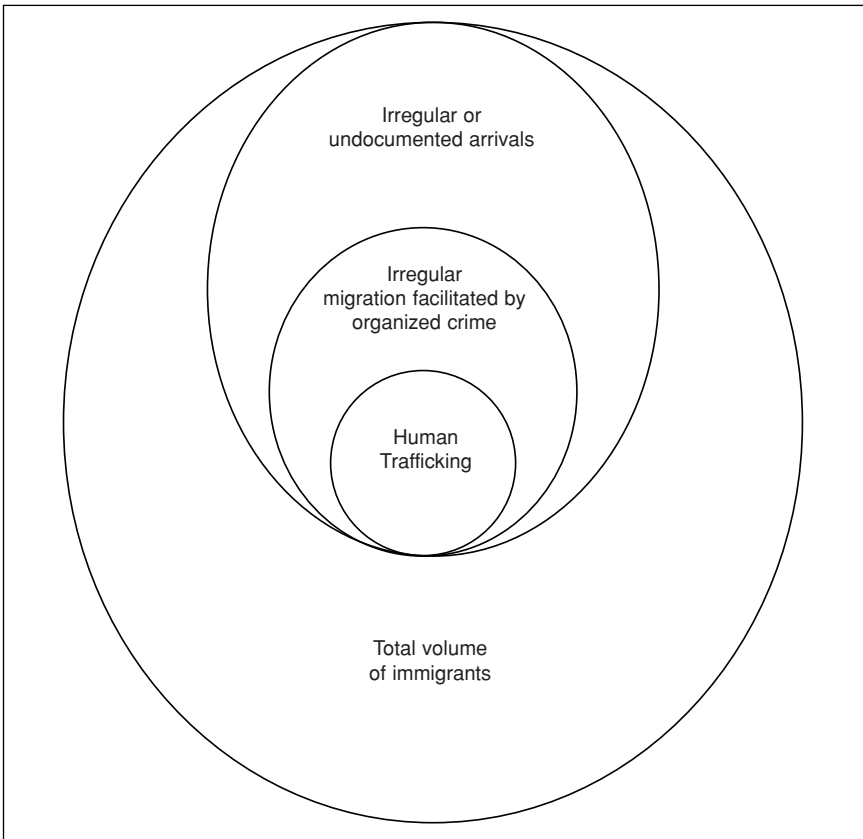


Figure 3: A Concept for Depicting the Overlap between Irregular Migration Facilitated by Organized Crime and Human Trafficking

Source: Original representation

pean Union.”¹¹¹ This is due to the fact that many detected human trafficking victims have been undocumented immigrants. Europol proposed the following concept for human trafficking within a larger context of irregular migration, applying the following logic:

- “• Of the overall total volume of immigrants / asylum seekers, some will be irregular or undocumented arrivals.
- Of the irregular or undocumented arrivals, organized crime networks will have facilitated a proportion of them.
- Of the arrivals facilitated by organized crime, some will be victims of human trafficking.”¹¹²

Especially the US anti human trafficking framework has focused on international human trafficking victims, who are victimized during the immigration process or shortly thereafter. The US only produces estimates for international victims of human trafficking and primarily, certifies immigrant victims of human trafficking as such. The US service-providing sector is funded for and focused on international victims of human trafficking. Additionally, international human trafficking victims have difficulty setting themselves apart from irregular immigrants and are often mistaken as such.

Advantages

Migrants have often been the victims of human trafficking. The ability of perpetrators to exploit immigrants is great. Immigrants often do not speak the language of the country into which they are trafficked. Immigrants may fear government authorities and avoid contacting them. This is especially the case when organized crime rings facilitate irregular immigration. Human trafficking and human smuggling have often been closely related in detected cases of human trafficking.

For example, debt bondage is centered on the initial smuggling or transport of persons and the later trafficking of them through exploiting their labor. Workers are often charged large sums of money for the service of the smuggler. Those too poor to pay up-front for transportation are offered this service on “credit”. This debt is then used to coerce the immigrant to work for the organized crime ring in the destination country. Often human traffickers lock their victims into a debt bondage situation by

¹¹¹ Europol, Crime Assessment: Trafficking of human beings into the European Union, (The Hague: Europol, 2001), 45.

¹¹² Ibid.

charging their victims large fees (for the housing in which they are forced to live and for food) then they pay workers for their labor.

Disadvantages

Human traffickers do not only victimize undocumented migrants whom they have smuggled across a border. This group represents only a part of the spectrum of human trafficking victims. Human trafficking victims can be nationals of the country in which they are trafficked. Human trafficking does not always involve the crossing of international borders. Additionally, legal immigrants can be victims of human trafficking. Immigrants who have legally entered a foreign country and have overstayed their visa can also become victims.

It is important to differentiate between human trafficking and human smuggling. Until 1999 the distinction between these two terms was not clearly made by the international community. Through the work of the “Ad Hoc Committee on the Elaboration of a Convention against Transnational Crime” in Vienna, an international consensus was reached, clearly distinguishing between these two issues. The Ad Hoc Committee established the difference between human trafficking and human smuggling to be:

“Trafficking in persons means the recruitment, transportation, transfer, harboring or receipt of persons, either by the threat or use of abduction, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having the control over another person.”¹¹⁴

The Committee defined human smuggling as:

“The international procurement for profit for illegal entry of a person into and/or illegal residence in a State of which the person is not a national or permanent resident.”¹¹⁵

¹¹⁴ UN, “Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,” A/AC.254/4/Add.3/Rev.4, November 23, 1999, *Documents Registered with the Secretariat of the United Nations*, <http://www.uncjin.org/Documents/Conventions/dcatoc/6session/4a3r4e.pdf> (accessed October 30, 2007): 5.

Supplementing the United Nations Convention against Transnational Organized Crime. Revised draft Protocol to Prevent. UN General Assembly, Article 2 (AC/254/4/Add.3/Rev.4), November 1999.

¹¹⁵ UN, “Revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime,” A/AC.254/4/Add.1/Rev.3, November 22, 1999, *Documents Registered with the Secretariat of the United Nations*, <http://www.uncjin.org/Documents/Conventions/dcatoc/6session/4a1r3e.pdf> (accessed October 30, 2007): 4.

Human trafficking is primarily a crime against humanity. Human smuggling is a crime against the state. Human smuggling is also sometimes referred to as ‘facilitated migration’ and unlike human trafficking allows only for the illegal entry into a foreign country. Human trafficking does not require the passing of international borders, nor does it require illegal entry in the event that national borders are crossed.

There are several methods of human smuggling:

- entry through false documentation,
- undetected entry,
- intentional false entry on temporary visa with intention of overstay.

Human smuggling can be part of the human trafficking process. However, human smuggling can occur independently of human trafficking.

Accordingly, the theoretical concept proposed by Europol is inaccurate. It could be modified to show the overlapping nature of human trafficking with both legal migration and irregular migration, which was not facilitated by organized crime (such as overstaying a tourist visa).

Even after these modifications, the Europol’s theoretical concept still neglects to account for domestic human trafficking victims and for factors that impact human

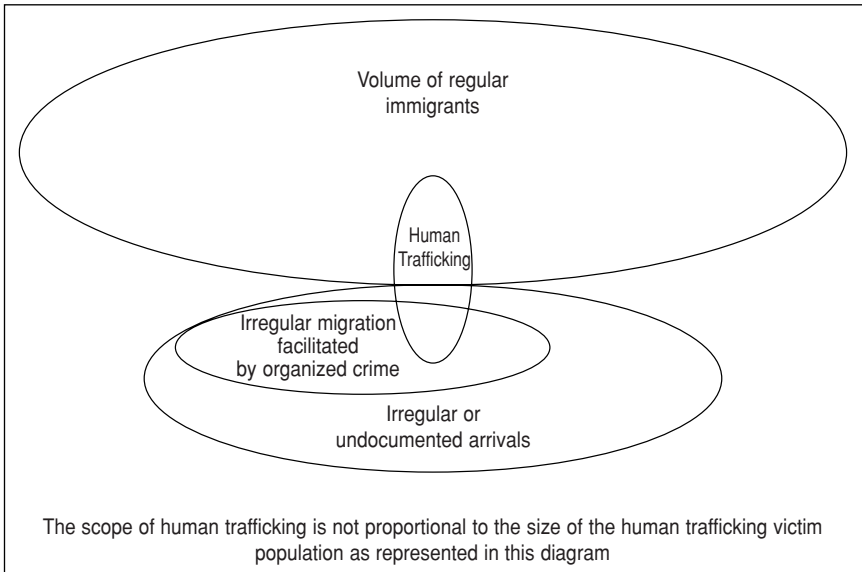


Figure 4: Modified Human Trafficking Concept in the Context of Migration

Source: Original representation

trafficking such as prostitution or forced labor. Even in modified form, this framework only establishes a relationship between human trafficking and facilitated, irregular migration. It is, therefore, not an adequate theoretical framework in which to place human trafficking.

2.1.3 *Anti Prostitution*

The United States of America views human trafficking and prostitution to be closely linked. This convergence is embodied in a December 2002 National Security Presidential Directive.¹¹⁶ This directive supposed the connection between the two issues as being so strong that the US Government does not provide government funding to organizations that are pro legal prostitution.

“As a result of the prostitution-trafficking link, the U.S. government concluded that no U.S. grant funds should be awarded to foreign non-governmental organizations that support legal state-regulated prostitution.”¹¹⁷

It claims that the correlation between human trafficking and legalized prostitution is as follows:

“Where prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.”¹¹⁸

The US Department of States relies on information reported by the Swedish Ministry of Industry, Employment, and Communications for this correlation. Indeed, the Swedish Ministry published a facts sheet in 2004 and 2005 on human trafficking and prostitution in which it correlated a drop in street prostitution with a fall in the demand for sexual services and a reduction in the number of women and children who provide sexual services:

“Since the Act [criminalization of voluntary prostitution] came into force, there has been a dramatic drop in the number of women in street prostitution, according to information provided by the police and social services. Criminalization has also meant that the number of men who buy sexual services has fallen along with the recruitment of women into prostitution.”¹¹⁹

¹¹⁶ US Department of State, “The Link Between Prostitution and Sex Trafficking,” <http://www.state.gov/documents/organization/38901.pdf> (accessed October 30, 2007): 1.

¹¹⁷ *Ibid.*, 2.

¹¹⁸ *Ibid.*, 1.

¹¹⁹ Ministry of Industry, Employment and Communications, “Prostitution and trafficking in women,” Fact Sheet Article number N5029 (April 2005), <http://www.sweden.gov.se/content/1/c6/01/87/74/6bc6c972.pdf> (accessed August 15, 2005): 1.

Accordingly, a graphic depiction of human trafficking within the context of prostitution could take the following form according to the stance the US Government has taken on the relationship between the two issues.

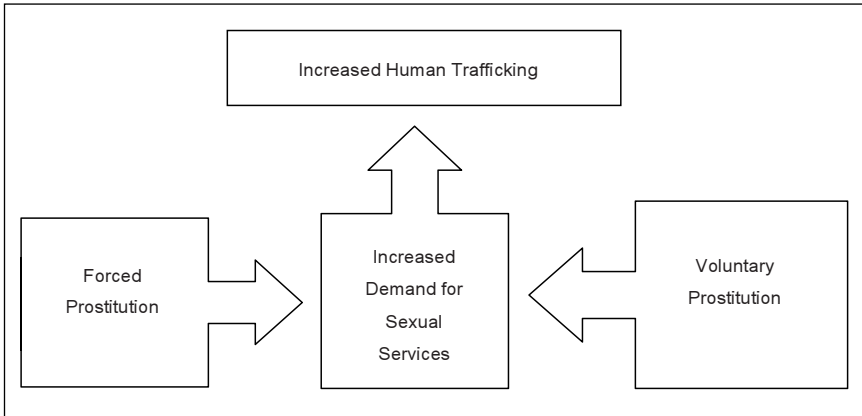


Figure 5: A Concept for Depicting the Relationship between Prostitution and Human Trafficking

Source: Original representation

Advantages

Forced sexual exploitation in the form of forced prostitution is estimated to be the most prevalent form of labor for which human trafficking victims are exploited. Therefore, prostitution and human trafficking are often related issues.

Disadvantages

Forced prostitution and voluntary prostitution differ. Voluntary prostitutes may decide how many hours they will work on a given day. They may refuse to take clients at their own discretion. They keep the profits they make and they may change profession at the time of their own choosing. Legal prostitution is the sale of sexual services and not subjugation to violence. Violence against women, regardless if they are prostitutes or not, is a crime in the United States and Germany. The prostitution theoretical model does not account for this or for the multiple other policy areas that interact with human trafficking such as migration and forced non-sexual labor.

Countries, in which prostitution is legal, such as Germany, have found no correlation between increased human trafficking and legalized prostitution. Indeed, one of

the objectives of legalizing prostitution was to remove the stigma attached to prostitution as an immoral or dirty profession. Increasing public respect for the rights of legal sex-workers aimed at reducing violence against sex-workers. A 2007 report from the German Government concluded that the effects of the October 2001 legalization of prostitution have disproved unsubstantiated claims that organized crime and human trafficking increase when prostitution is legalized.

“Fears that were in part associated with the legalization of prostitution have not come to bear, especially fears linking legalized prostitution to an increased difficulty in fighting crime.”¹²⁰

The point of creating a human trafficking theoretical concept and creating coherence between related policy areas is not to demonize or stigmatize a group of people (such as voluntary prostitutes) by linking them to human trafficking. Policy makers should refrain from weakening anti human trafficking efforts by way of attaching restrictions that have nothing to do with combating human trafficking (e.g. funding relevant NGOs according to their position on legal prostitution). As Chapter Three will explore, the TVPRA 2003 places anti human trafficking policies into an anti prostitution policy framework. An anti prostitution policy framework is too narrow to explain human trafficking in its complexity.

2.2 Building a more Comprehensive Theoretical Concept

The three theoretical concepts on human trafficking in the context of forced labor, migration facilitated by organized crime and prostitution, are too narrow to address the complexity of human trafficking. All three ignore important policy areas that impact human trafficking significantly.

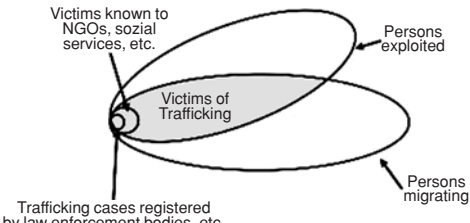
Table 22 demonstrates the prevalence of these typologies in academic literature on human trafficking. It also shows that many researches in the field have recognized gaps in these typologies and have called for a broader theoretical concept of human trafficking. Some have combined two existing typologies, trying to close the gap that exists in human trafficking concepts. The examples in the table below were drawn from a publication by the IOM in 2005, ‘Data and research on human trafficking: A global survey’, which was devoted exclusively to improving research on human

¹²⁰ Unofficial translation: Bundesministerium für Familien, Senioren, Frauen und Jugend, “Bericht der Bundesregierung zu den Auswirkungen des Prostitutionsgesetzes,” <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/bericht-bureg-auswirkungen-prostitutionsgesetz,property=pdf,bereich=,rwb=true.pdf> (accessed October 25, 2007), 80.

trafficking. This publication was chosen to exemplify current challenges in human trafficking studies because it includes articles by researchers from around the globe. And because its chapter authors are diverse in their affiliations and include academics, government employees, officials from international organizations and researchers affiliated with NGOs.

Table 22 classifies the authors in the 2005 IOM publication according to what each emphasizes in their research contribution to the IOM’s publication. It contains quotations from that publication and includes calls made by the researchers to expand the theoretical concept of human trafficking beyond that particular typology in many instances.

Table 22: Classifying Recent Academic Research according to Typology

Researcher	Human Trafficking & Forced Labor	Human Trafficking & Migration + Organized Crime	Human Trafficking & Prostitution
Frank Laczko (IOM)		<p>“Much research on trafficking sets out basically to show that trafficking is a problem and tends to be limited to mapping routes and identifying the main countries of origin and destination.” P 14</p> <p><i>But</i> calls for a broader approach... “Trafficking crosses so many disciplinary and mandate boundaries that there is a need for both more interdisciplinary research and research which looks at trafficking issues from a range of different perspectives, including migration, human rights, health, law enforcement, and the like.” P 14</p>	
<p>Methodological Challenges in Empirical Studies</p> <p>Guri Tyldum and Anette Brunovskis (Norway Institute of Applied Studies)</p>	<p>TARGETING VICTIMS OF TRAFFICKING: SUBPOPULATIONS AND POPULATIONS WHERE VICTIMS OF TRAFFICKING CONSTITUTE SUBPOPULATIONS (relative sizes of populations are hypothetical and likely to vary between regions)</p> 		

Continued page 91

Table 22: Continued

Researcher	Human Trafficking & Forced Labor	Human Trafficking & Migration + Organized Crime	Human Trafficking & Prostitution
Methodological Challenges in Research Denise Brennan (Georgetown University)	“Modern-day slavery exists because a range of other exploitative labor conditions exist. The current legislation that protects trafficked persons and offers them the possibility of staying in the United States with a new visa, is based on a binary conceptualization of labor.” P 46		
Designing Trafficking Research from a Labour Market Perspective Andrees and v.d. Linden (ILO)	“The starting point of ILO/SAP-FL was that trafficking for labor exploitation is significant and under-researched... There are only a few studies that take into account trafficking for forced labor exploitation.” P 55–56		
Review of Research and Data in sub-Saharan Africa Aderanti Adepaju (NGO)		“Irregular migration as well as trafficking in young boys and girls was stimulated and intensified by worsening youth unemployment and rapidly deteriorating socio-political and economic conditions and poverty.” P 81	
A Review of Recent OAS Research in the Latin American and Caribbean Region Laura Langberg (OAS)	No single typology. Sees many factors as important: “Trafficking in Latin America is fuelled by several factors: poverty, political and social violence, gender attitudes leading to inequalities, and a general indifference toward women, adolescents, and children.” P 133 “Governments and civil society must recognize the existence of trafficking in persons as a form of labor exploitation, more than just as the movement of migrants.” P 137		

Continued page 92

Table 22: Continued

Re-searcher	Human Trafficking & Forced Labor	Human Trafficking & Migration + Organized Crime	Human Trafficking & Prostitution				
<p>Research on Trafficking in Persons in South Asia</p> <p>A.K.M. Masud Ali (NGO)</p>		<p>“Research suggests that low employment prospects and lack of opportunities are the main reasons for women and men to venture out in search of better living conditions ... Apart from the economic reason, discrimination against women ... play(s) an important role in pushing women to look for independent lives inside or outside the country.” P 141–2</p>					
<p>Human Trafficking in East Asia</p> <p>June JH Lee (IOM)</p>		<p>“The volume of migration flows in the region has dramatically increased over the decades in terms of the overall number of migrants hosted by East Asian countries ... It is unknown how much of this migration flow is human trafficking. However, various studies and continuous media reports suggest that human trafficking is widespread throughout the region and on the rise.” P 165</p>					
<p>A Review of Research on Trafficking in South-East Asia and Oceania</p> <p>Nicola Piper (University of Singapore)</p>		<p>“Although clearly also an internal problem, trafficking of South-East Asians within the same region, as well as to Oceania, cannot be divorced from broader international migration patterns and policies as well as specific characteristics that have been widely acknowledged globally: the “feminization” as well as “illegalization” of labor migration... Trafficking has to be seen as part and parcel of the reality of these broader migration patterns, particularly undocumented flows.” P 205, 207</p>	<p>“With trafficking being strongly linked to the issue of sexual exploitation, this involves a debate which revolves around two fundamentally opposed views regarding the legitimacy of the sex industry, and thus, also around the choice of terminology.” P 206</p>				
<p>A Critical Reflection on Research on Trafficking in Persons within and into Europe</p>		<p style="text-align: center;">TWO TYPOLOGIES OF ORGANIZED CRIME/ HUMAN TRAFFICKING NETWORKS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">UN Drugs and Crime Typology Organized Crime</th> <th style="width: 50%; text-align: center;">Louise Shelley Typology Human trafficking</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <p>Standard Hierarchy (most common – China and Eastern Europe)</p> <ul style="list-style-type: none"> • Single leader • Clear hierarchy • Internal discipline • Named group • Social/ethnic identity • Violence integral • Influence/control over particular territory </td> <td style="vertical-align: top;"> <p>Natural Resource Model (post-Soviet organized crime)</p> <ul style="list-style-type: none"> • Primarily trafficking in women • Use like natural resource • Sell to near trading partners • High violence and human rights abuses • Often “break” women before leave country of origin </td> </tr> </tbody> </table>	UN Drugs and Crime Typology Organized Crime	Louise Shelley Typology Human trafficking	<p>Standard Hierarchy (most common – China and Eastern Europe)</p> <ul style="list-style-type: none"> • Single leader • Clear hierarchy • Internal discipline • Named group • Social/ethnic identity • Violence integral • Influence/control over particular territory 	<p>Natural Resource Model (post-Soviet organized crime)</p> <ul style="list-style-type: none"> • Primarily trafficking in women • Use like natural resource • Sell to near trading partners • High violence and human rights abuses • Often “break” women before leave country of origin 	<p>(She sees the debate as being too confined to this aspect) “(This essay is) an attempt to move beyond the focus on trafficking for sexual ex-</p>
UN Drugs and Crime Typology Organized Crime	Louise Shelley Typology Human trafficking						
<p>Standard Hierarchy (most common – China and Eastern Europe)</p> <ul style="list-style-type: none"> • Single leader • Clear hierarchy • Internal discipline • Named group • Social/ethnic identity • Violence integral • Influence/control over particular territory 	<p>Natural Resource Model (post-Soviet organized crime)</p> <ul style="list-style-type: none"> • Primarily trafficking in women • Use like natural resource • Sell to near trading partners • High violence and human rights abuses • Often “break” women before leave country of origin 						

Table 22: Continued

Re-researcher	Human Trafficking & Forced Labor	Human Trafficking & Migration + Organized Crime		Human Trafficking & Prostitution									
Liz Kelly (University of North London)		<table border="1"> <thead> <tr> <th data-bbox="339 331 574 371">UN Drugs and Crime Typology Organized Crime</th> <th data-bbox="574 331 843 371">Louise Shelley Typology Human trafficking</th> </tr> </thead> <tbody> <tr> <td data-bbox="339 371 574 499"> Regional hierarchy (Japan and Italy) <ul style="list-style-type: none"> ▪ Single leader ▪ Line of command ▪ Some regional autonomy ▪ Geographical reach ▪ Multiple activities ▪ Often social/ethnic identity ▪ Violence integral </td> <td data-bbox="574 371 843 499"> Trade and Development (China) <ul style="list-style-type: none"> ▪ Mainly smuggling of men for labour exploitation, 10 per cent women ▪ Control all stages to maximize profit ▪ Some profit invested in legitimate entrepreneurship in Thailand and China ▪ Less abuse and violence as have investment in continued profit </td> </tr> <tr> <td data-bbox="339 499 574 627"> Clustered hierarchy (least common) <ul style="list-style-type: none"> ▪ Number of groups ▪ Stronger as network ▪ System of governance ▪ Some autonomy ▪ Link to a social/historical context </td> <td data-bbox="574 499 843 627"> Supermarket – low cost, high volume (Mexico) <ul style="list-style-type: none"> ▪ Facilitate illegal entry across border ▪ Small fees, large numbers ▪ Extent of failures, need for multiple attempts keeps fees low ▪ Investment patterns similar to those of migrants – into land and property </td> </tr> <tr> <td data-bbox="339 627 574 786"> Core group (3 in western Europe) <ul style="list-style-type: none"> ▪ Core group surrounded by loose network ▪ Limited numbers ▪ Tight, flat structure </td> <td data-bbox="574 627 843 786"> Violent Entrepreneurs (Balkans) <ul style="list-style-type: none"> ▪ Almost all trafficking in women ▪ Middlemen for Russian organized crime ▪ Increasingly integrated as take over sex businesses in destination countries ▪ Involvement of top level law enforcement in own countries ▪ Use profits to finance other illegal activities, and invest in property and business elsewhere ▪ Considerable violence </td> </tr> <tr> <td data-bbox="339 786 574 898"> Criminal network <ul style="list-style-type: none"> ▪ Linking activities of individuals ▪ Position by virtue of networks and skills ▪ Personal loyalties ▪ Alliances around projects ▪ Low public profile </td> <td data-bbox="574 786 843 898"> Traditional slavery with modern technology (Nigeria and West Africa) <ul style="list-style-type: none"> ▪ Multi-faceted crime groups ▪ Use female recruiters and trade in girls and young women into street prostitution ▪ Small amounts returned to local operators and families to maintain flow </td> </tr> </tbody> </table>	UN Drugs and Crime Typology Organized Crime	Louise Shelley Typology Human trafficking	Regional hierarchy (Japan and Italy) <ul style="list-style-type: none"> ▪ Single leader ▪ Line of command ▪ Some regional autonomy ▪ Geographical reach ▪ Multiple activities ▪ Often social/ethnic identity ▪ Violence integral 	Trade and Development (China) <ul style="list-style-type: none"> ▪ Mainly smuggling of men for labour exploitation, 10 per cent women ▪ Control all stages to maximize profit ▪ Some profit invested in legitimate entrepreneurship in Thailand and China ▪ Less abuse and violence as have investment in continued profit 	Clustered hierarchy (least common) <ul style="list-style-type: none"> ▪ Number of groups ▪ Stronger as network ▪ System of governance ▪ Some autonomy ▪ Link to a social/historical context 	Supermarket – low cost, high volume (Mexico) <ul style="list-style-type: none"> ▪ Facilitate illegal entry across border ▪ Small fees, large numbers ▪ Extent of failures, need for multiple attempts keeps fees low ▪ Investment patterns similar to those of migrants – into land and property 	Core group (3 in western Europe) <ul style="list-style-type: none"> ▪ Core group surrounded by loose network ▪ Limited numbers ▪ Tight, flat structure 	Violent Entrepreneurs (Balkans) <ul style="list-style-type: none"> ▪ Almost all trafficking in women ▪ Middlemen for Russian organized crime ▪ Increasingly integrated as take over sex businesses in destination countries ▪ Involvement of top level law enforcement in own countries ▪ Use profits to finance other illegal activities, and invest in property and business elsewhere ▪ Considerable violence 	Criminal network <ul style="list-style-type: none"> ▪ Linking activities of individuals ▪ Position by virtue of networks and skills ▪ Personal loyalties ▪ Alliances around projects ▪ Low public profile 	Traditional slavery with modern technology (Nigeria and West Africa) <ul style="list-style-type: none"> ▪ Multi-faceted crime groups ▪ Use female recruiters and trade in girls and young women into street prostitution ▪ Small amounts returned to local operators and families to maintain flow 	<p>ploitation to include that for domestic service and labor exploitation. The majority of published material still focuses on sexual exploitation and few investigations include more than one form.” P 235</p>
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Human Trafficking in the Middle East Giuseppe Calandruccio (IOM)		<p>P 251</p> <p>“As this article intends to show, there is growing concern in the region about migration, especially illegal migration... First it shall provide a survey of literature and research on irregular migration, especially the trafficking of human beings. Second, by providing a literature survey, the article intends to map out some distinct characteristics of human trafficking in the Middle East.” P 267</p>											

Source: IOM, *Data and research on human trafficking: A global survey*, www.nswp.org/pdf/IOM-GLOBALTRAFFICK.PDF, (accessed December 7, 2008) (2005).

Anti human trafficking policies should be placed in a new, more inclusive framework, one that reflects their complexity and accounts for the related policy areas that affect the scope of human trafficking. Instead of typifying human trafficking as a subset of other policies, the author proposes a new theoretical concept of human trafficking in the following diagram.

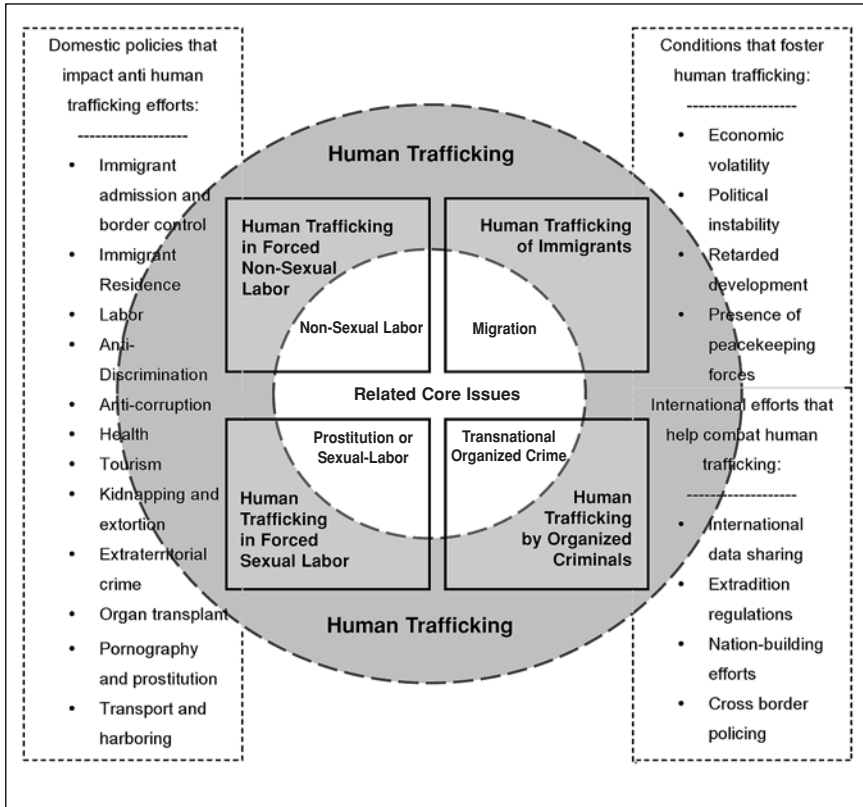


Figure 6: The Open Circle of Human Trafficking

Source: Original representation

This new theoretical concept of human trafficking will be referred to as ‘The Open Circle of Human Trafficking’. It categorized the issues related to human trafficking into the core issues of human trafficking and periphery policy areas thereof.

The related core issues of human trafficking are:

- Non-sexual labor
- Prostitution or sexual-labor
- Migration and
- Transnational organized crime.

The related core issues have incomplete, yet considerable overlap with the crime of human trafficking. As explored earlier in this chapter, forced labor, migration and prostitution are closely related to human trafficking, yet also take on forms that do not equate to human trafficking. A combination of these core issues have often been determining factors in detected human trafficking cases.

Forced Labor

The exploitation of a victim's forced labor is a form of human trafficking that is prevalent as both sexual and non-sexual forced labor. Some examples of these are explored as part of the in-depth analysis for the United States and Germany in Chapters Three and Four. Forced labor is a main method through which human trafficking becomes lucrative for human traffickers. This is clearly expressed in the UN's 2000 Trafficking Protocol definition of human trafficking, in which the aim of human trafficking is explained as:

“Having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹²¹

However, for the purpose of creating a theoretical concept of human trafficking it is important to examine the difference as well as commonalities between reoccurring core elements of human trafficking and human trafficking as a whole.

Not all forced labor (as defined by the ILO) is human trafficking. For example, prison labor and ‘milder forms’ of coercing a laborer from terminating his or her work contracts, such as exclusion from current or future labor, represent unclear boundaries between forced labor and human trafficking. In such cases, governments and other institutions must judge the ‘involuntary nature’ of the labor in order to determine if human trafficking took place. The withholding of wages is a form of ‘force’ that can equate to forced labor, but not always to human trafficking.

It is obvious that not all non-sexual labor is human trafficking. This is the related core issue, in which the design of ‘the open circle of human trafficking’ with its doughnut like shape well reflects the need for overlap and distinctness between human trafficking and its related core issues. Even in sectors of the US and German

¹²¹ UN, “United Nations Convention against Transnational Organized Crime: Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” A/55/383, November 2, 2000, *Treaties and International Agreements Registered with the Secretariat of the United Nations*, http://untreaty.un.org/English/CTC/CTC_04.asp (accessed August 9, 2005): 54–55.

economy in which human trafficking victims have been detected, such as agriculture or domestic work, legal, non-exploitative forms of this labor exist. In the case of sweatshop work, there are forms of sweatshop work that are exploitative labor abuses (wage dumping), but are not human trafficking. A determination between the two circumstances can be based on the relative freedom of the exploited person to terminate his or her employment. For example, if a worker is exploited for his or her labor, yet has the ability to terminate that labor arrangement freely, the exploited worker is not a victim of human trafficking. It would be impossible to draw a sharp line between ‘milder’ forms of labor exploitation and human trafficking, yet it is important to recognize that there are differences.

Likewise, not all sex-labor or prostitution is human trafficking. For example, legal, voluntary prostitution in which a sex-worker sells his or her sexual services for an agreed upon fee, does not equate to human trafficking. Similarly, a rape or violent act directed at a prostitute does not constitute the same offense as human trafficking. These actions are crimes and should be punished, but they are not instances of human trafficking. For human trafficking to take place, the victim must be in a situation of virtual slavery. Again, human trafficking as defined by the 2000 UN Anti Human Trafficking Protocol means:

“The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹²²

Migration

Immigrants have often been victims of human trafficking. The German definition of human trafficking for both sexual and non-sexual labor accounts for this particular vulnerability in paragraphs 232 and 233. Paragraph 232 defines trafficking in human beings for the purpose of sexual exploitation as follows:

“Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, to take up or to continue prostitution or forces the person to perform sexual acts on or in front of the perpetrator or a third person or to have them performed by the perpetrator or a third person, shall be punished with imprisonment of six months up to 10 years.”¹²³

¹²² Ibid.

¹²³ Ban Ying, “Trafficking in Human Beings,” <http://www.ban-ying.de/pageeng/definition.html> (accessed October 20, 2007).

Paragraph 233 defines trafficking in human beings for the purpose of non-sexual labor exploitation as follows:

“Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, into slavery, bondage or debt servitude or to take up or continue an employment relationship with him or a third person under working conditions which are in no way equal to the working conditions of other workers who do the same or a similar job, shall be punished with imprisonment of six months up to 10 years.”¹²⁴

However, for the purpose of creating a theoretical concept for human trafficking it is important to examine the difference as well as commonalities between reoccurring core elements of human trafficking and human trafficking as a whole.

Not all migrants are victims of human trafficking. More specifically, not all irregular or for that matter smuggled migrants become victims of human trafficking. Detected human trafficking victims in Germany are often migrants who have entered a country legally (as a tourist for example). Some victims of human trafficking have been undocumented entrants and smuggled migrants. Yet the citizens of countries such as Germany and the United States of America have also been victims of human trafficking in their own country of origin. Indeed, in the Federal Republic of Germany, German citizens have made up the largest victim groups in recent years.

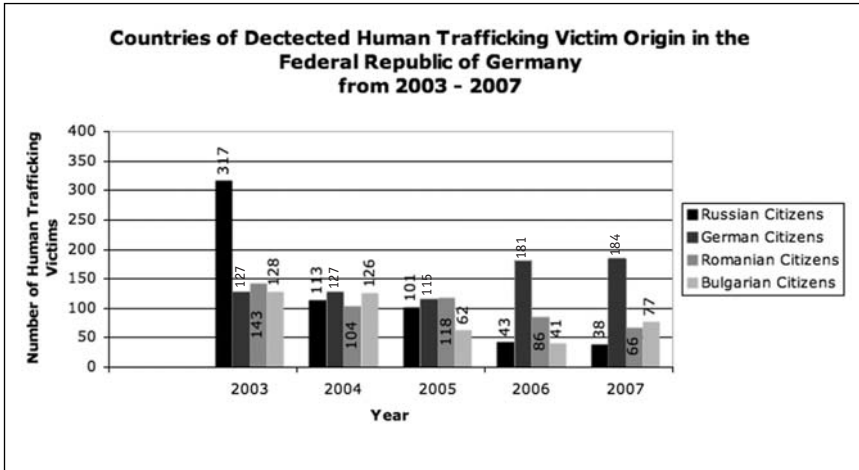


Figure 7: Countries of Detected Human Trafficking Victim Origin in the Federal Republic of Germany

Source: Annual BKA Lagebild Menschenhandel Reports 2003 to 2007

¹²⁴ Ibid.

Transnational Organized Crime

The 2000 UN Anti Human Trafficking Protocol is a part of the United Nations Convention against Transnational Organized Crime. However, human trafficking has not yet been depicted within a theoretical framework of organized crime. Transnational organized crime must be considered as a core element of human trafficking; human trafficking is estimated to be the third most lucrative form of organized crime following the sale of drugs and arms. Antonio Maria Costa, executive director of the UN Office of Drug and Crime, stated in an interview with the *International Herald Tribune* that, “the trade in humans is now a market worth \$30 billion to \$40 billion, often with links to organized crime.”¹²⁵ The ILO, in its Second Report “A Global Alliance Against Forced Labor,” states that in Japan, which is a major destination country for victims of human trafficking, “Though illegal, prostitution is provided in ‘restricted sex-related business’. Powerful organized crime groups control the sex industry, and are also at the centre of human trafficking.”¹²⁶ Transnational organized crime can be considered a related issue that lies at the core of human trafficking.

Furthermore, the United States Government highlights the role of organized crime in human trafficking in several publications. The Congressional Research Service in its report ‘Trafficking in Women and Children: The US and International Response’, states the following:

“Trafficking is considered one of the largest sources of profits for organized crime, generating \$9.5 billion according to the F.B.I.”¹²⁷

It references the Department of State’s 2003 Trafficking in Persons report for this statement. The Congressional Research Report gives an example of Russian organized crime groups and others including Albanian, Estonian, Chechen, Serb, and Italian gangs that have been detected trafficking in persons in Europe.¹²⁸ Finally, the Congressional Research Report describes the importance of human trafficking to transnational organized crime as follows:

¹²⁵ Elisabeth Rosenthal, “UN proposes fund to fight human trafficking,” *International Herald Tribune* (March 27, 2007), <http://www.iht.com/articles/2007/03/27/news/human.php> (accessed October 5, 2007).

¹²⁶ ILO Director-General, “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005,” *ILO*, www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059 (accessed October 28, 2007): 52.

¹²⁷ Francis T. Miko, “Trafficking in Women and Children: The U.S. and international response,” *CRS Report for Congress*, (June 24, 2005), <http://fpc.state.gov/documents/organization/50256.pdf> (accessed October 30, 2007): 2.

¹²⁸ *Ibid.*, 6.

“Human trafficking is now considered a leading source of profits for organized crime, like drugs and weapons, generating billions of dollars.”¹²⁹

Similarly, the United States Department of Justice echoes the link between human trafficking and transnational organized crime:

“Trafficking is a transnational criminal enterprise that recognizes neither boundaries nor borders. Profits from trafficking feed the coffers of organized crime.”¹³⁰

However, for the purpose of creating a theoretical framework for human trafficking it is important to examine the differences as well as the commonalities between reoccurring core elements of human trafficking and human trafficking as a whole.

Not all victims of human trafficking have been facilitated, transported and harbored by transnational organized crime. Especially domestic victims of human trafficking do not fit this profile. Domestic human trafficking victims may well be exploited through organized criminal networks within their own border. They might also be victimized through a small group of relatively isolated perpetrators or by individuals with no, or very limited, links to criminal networks.

2.3 Next Steps Toward a Comprehensive Theoretical Concept on Human Trafficking

This new theoretical concept, the ‘The Open Circle of Human Trafficking’, is designed to show the complexity of human trafficking and to identify the core and periphery issues related to human trafficking. The new theoretical concept on human trafficking does take a step forward in creating a new human trafficking theoretical framework; one advancement is that the new concept liberates human trafficking from earlier limitations. Earlier concepts were too narrow to depict the complexity of human trafficking. This new theoretical concept makes it easier to understand the core and periphery policy issues, which need to be addressed to develop more coherent policies to combat human trafficking.

Periphery Policy Issues

The complexity and sheer number of periphery issues relating to human trafficking creates a challenge for developing human trafficking theory. When one considers

¹²⁹ Ibid., 1.

¹³⁰ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004*, (September 2005), 4.

that the periphery issues suggested by the proposed new concept are intertwined in a web of interaction, which intersect differently in each unique human trafficking case, it is particularly difficult to depict this dynamism in a single static model. An additional difficulty is that some periphery policy issues such as anti-discrimination have a variety of implementation options, whereas other periphery issues are less broad such as residence regulation. Despite the challenges faced in defining the most relevant periphery policy issues relating to human trafficking and depicting this relationship in a diagram, the ‘The Open Circle of Human Trafficking’ takes a step toward achieving this.

The most important periphery domestic policy issues relating to human trafficking are:

- Immigrant admission and border control
- Immigrant Residence
- Labor
- Anti-Discrimination
- Anti-corruption
- Health
- Tourism
- Kidnapping and extortion
- Extraterritorial crime
- Organ transplant
- Pornography and prostitution
- Transport and harboring.

The most important conditions that foster human trafficking are:

- Economic volatility
- Political instability
- Retarded development
- Presence of peacekeeping forces.

International efforts that help combat human trafficking are:

- International data sharing
- Extradition regulations
- Nation-building efforts
- Cross border policing.

This list of human trafficking periphery policy issues is not complete; it can be expanded and fine-tuned through future research. The goal of refining and better defining the most important periphery policy issues is to create more coherent and effective anti human trafficking policies. Thus, issues may differ from country to country.

Recommendation:

The new theoretical concept proposed in this analysis, ‘The open circle of human trafficking’, could be used to develop more comprehensive and coherent policies on human trafficking.

Chapters One and Two have provided an analysis of the international policy frameworks. The following two chapters will analyze national policy frameworks on human trafficking.

3 Anti Human Trafficking Policy Frameworks in The United States of America

Chapter Three will take a multifaceted approach to evaluating anti human trafficking policies in the United States of America. It will explore the roots of anti human trafficking policies there. Then it will examine the current data on the known and estimated scope of human trafficking in the United States of America. Two further objectives of this chapter will be to investigate the institutional distribution of responsibilities on this issue between government agencies and to analyze the most recent developments in US anti human trafficking policies. Finally, this chapter will evaluate the development, and current situation, of the ‘problematic’ aspects of anti human trafficking policy there. Newspaper articles, NGO and government reporting will be referenced to determine the state of anti human trafficking policy.

These ‘problematic’ aspects, which were identified in Chapter One through an analysis of international anti human trafficking policies are the:

- demographic parameter:
 - gender-specificity
- geographic parameter:
 - internal human trafficking
- exploitation parameters:
 - forced non-sexual labor and
 - trafficking in human organs
- victim protection parameter:
 - victim access to legal residence
- criminalization and punishment parameters:
 - criminalization of links in the trafficking chain and
 - the commercial nature of the crime.

The objective of this chapter is to establish if policy gaps and hidden agendas exist in US anti human trafficking policy frameworks. The analytical schema developed in the first chapter will be used to pinpoint policy weaknesses. After all, developments at the international level have acted as a reference point for US policy in this area:

“The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery ...”¹³¹

This chapter does not aim to provide a complete genesis of human trafficking law in the United States of America.

3.1 Historical Roots of Combating Human Trafficking in the United States of America

This subchapter will first look at the Declaration of Independence and Thirteenth Amendment in order to determine out of which context anti human trafficking policies evolved and how anti-trafficking aims were imbedded in the fabric of democratic principles in the United States of America. Since this country still bases its collective identity on its ‘founding myth’ (Gründungsmythos), which is a mixture of the fight for freedom and the idea that immigrants are the basis of US society, the historical background of anti human trafficking policy is extremely relevant. It places anti human trafficking high on the US political agenda, regardless of the relatively low number of concrete occurrences thereof in the United States of America.

3.1.1 The United States Declaration of Independence

The United States Declaration of Independence from July 4, 1776 anchored the principle of equality and freedom in the US into its founding policy frameworks. The Declaration went beyond arguing why the then thirteen colonies unanimously stood for an independent, autonomous, democratic state. The declaration included key principles on which the United States should be erected. These well known principles included: life, liberty and the pursuit of happiness. The second paragraph of the Declaration of Independence states, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”¹³²

¹³¹ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec. 102(23).

¹³² US Congress, Declaration of Independence of the Thirteen Colonies, July 4, 1776, <http://www.law.indiana.edu/uslawdocs/declaration.html> (accessed October 6, 2007): Para. 2.

In 1776, these principles were aims that would prove difficult to implement. Gender and ethnic equality would take centuries to anchor in US law. However, the early-established vision of the type of society the United States aimed to achieve has remained a steadfast element of US political movements since that day, over 230 years ago. In the over two centuries of striving toward this goal, the Trafficking Victims Protection Act 2000 (TVPA 2000) represents a milestone congruent with the founding ideals of the Declaration, strengthening individuals' rights to life, liberty and the pursuit of happiness. The TVPA 2000 specifically references the Declaration of Independence and anchors the relevance of the Declaration in its text:

“One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights.”¹³³

3.1.2 *The Thirteenth Amendment to the United States Constitution*

The Thirteenth Amendment of the US Constitution states in section one that, “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.”¹³⁴ Congress is given the power to enforce the Thirteenth Amendment with appropriate policy frameworks.

Congress ratified the Thirteenth Amendment to the Constitution of the United States on December 6, 1865. Most state legislatures subsequently ratified the Thirteenth Amendment to the Constitution either immediately or within a few years, after their initial rejection of the Amendment.¹³⁵

Two states took an inordinate amount of time to ratify the Thirteenth Amendment. These were: Delaware, which ratified on February 12, 1901 (after having rejected the amendment on February 8, 1865) and Kentucky, which ratified on March 18, 1976 (after having rejected it on February 24, 1865). One state has not ratified the Thirteenth Amendment: Mississippi. The Southern states of the United States had a substantial financial stake in slavery. They had grown rich through an infrastructure of large farming plantations that made large profits based on slave labor. Both Kentucky and Mississippi's economies would have to be completely restructured with

¹³³ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec. 102(22).

¹³⁴ US Constitution, Art. 13, December 6, 1865, http://www.archives.gov/national-archives-experience/charters/constitution_amendments_11-27.html (accessed October 6, 2007).

¹³⁵ For example, New Jersey ratified the Amendment on January 23, 1866 after having rejected the amendment on March 16, 1865.

the abolition of slavery. Additionally, racism and ethnic segregation were commonplace in the US during the 1800s and well into the 1900s.

Eighty-nine years after the Declaration of Independence (1776–1865), institutional slavery was still legal in the US. The founding myth of freedom, liberty and equality in the US in its first 89 years of existence remained a reality for the select few and not for the majority. Gender discrimination and ethnic discrimination were the main barriers to freedom. This gap demonstrates how far the ideals contained in the Declaration, establishing minimum standards of human rights protections within the United States, were from the reality there. The Thirteenth Amendment would only reach a greater level of implementation following extreme upheaval and bloodshed: the American Civil War (1861–1865). There has been much speculation as to why racial and gender equality gaps have persisted in the world's oldest sustained democracy.

Despite the progress that the Thirteenth Amendment represents, it only abolished institutional slavery; it did not create civil equality for ethnic minorities or for women. The long lasting struggle for ethnic-independent and gender-independent equality is an issue closely tied to combating human trafficking and a struggle which has still to be fully won in the United States.

The TVPA 2000 refers to the principles in the Thirteenth Amendment and anchors their relevance to combating human trafficking in the following way:

“The United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.”¹³⁶

3.2 Organizational Structures of Combating Human Trafficking and Detected Scope in the United States of America

Governments and experts are uncertain of the full scope of human trafficking globally or in any given country. This is due to the clandestine character of human trafficking and to underdeveloped systems of identifying and recording information that would more accurately reveal the level of human trafficking present in a country (stock) or the annual change thereof (flow). The detected scope of human trafficking in the United States and Germany, as well as in any given country or region, is thought to be only a portion of the actual size.

¹³⁶ Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 106th Congress (October 28, 2000), Sec. 102 (22).

The actual detected scope of human trafficking is measured in several ways. The most common are:

- number of victims,
- number of human trafficking cases,
- number of suspected perpetrators and
- volume of confiscated revenue.

This analysis will use the number of detected human trafficking victims as a measure of human trafficking scope. This data set will be used for two reasons:

1. Unlike the number of cases, perpetrators and revenue, one person is a unit that does not vary. The other units: cases, perpetrators and revenue vary in relation to the number of victims trafficked. For example, one perpetrator could traffic one or several victims. One trafficking case could deal with one or a multitude of victims and perpetrators. Trafficking revenue from one victim per day can vary based on circumstance as well.
2. The detected number of human trafficking victims has a parallel data set concerning human trafficking estimates.

Statistical data on the number of human trafficking victims who were identified in the United States is published by the Department of Justice (DoJ) in its reports:

- *Assessment of US Activities to Combat Trafficking in Persons* and
- *The Attorney General's Annual Report to Report to Congress on US Government Efforts to Combat Trafficking in Persons* in a given fiscal year.

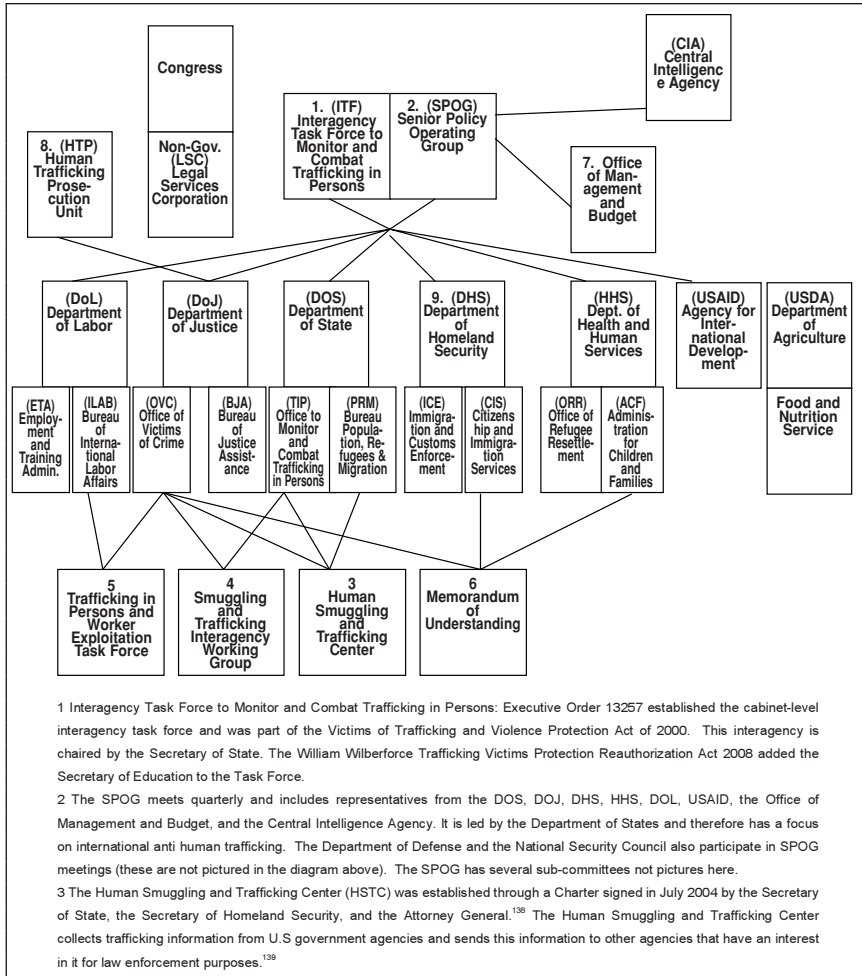
These reports were mandated by the 2003 revision of the TVPA. Prior to 2003 a sub-office of the Office for Health and Human Services, the Office of Refugee Resettlement (ORR), reported to Congress directly concerning the known number of human trafficking victims that fell under its jurisdiction.

Among other things, since 2003 the DoJ has reported on the number of “persons who received benefits or other services under section 107(b) of the TVPA in connection with programs or activities funded or administered by the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and other appropriate federal agencies.”¹³⁷ This report was mandated by the TVPRA 2003 in section six a.

The structural complexity of government offices involved in combating human trafficking is evident in Chart A (s. page 108).

¹³⁷ US Department of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003* (May 1, 2004), 5.

Chart A: Organizational Structure of Combating Human Trafficking in the United States of America



Continued page 109

¹³⁸ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 17.

¹³⁹ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 19.

Chart A: Continued

4 Smuggling and Trafficking Interagency Working Group: The interagency working group established by the National Security Council's Policy Coordination Committee on International Crime as a forum for coordinating increased interagency efforts against the migrant smuggling problem. This working group is co-chaired by the Departments of State and Justice.

5 Trafficking in Persons and Worker Exploitation Task Force: The interagency task force, established by the Attorney General and the Secretary of Labor, has is responsible for coordinating investigations of human trafficking cases across the United States.

6 Share a Memorandum of Understanding regarding human trafficking since July 2004.

7 This Office is institutionally tied to the White House.

8 Human Trafficking Prosecution (HTP) Unit resides within the Criminal Section of the Justice Department's Civil Rights Division. It was created in January 2007.

9. Trafficking victims in the United States are eligible to receive two types of temporary residence permits: continued presence and T nonimmigrant status. The ICE through its Parole and Humanitarian Assistance Branch (PHAB) grants continued presence and the U.S. Citizenship and Immigration Services (USCIS) grants T status.

Source: Original representation

In terms of funding, the Government Office of Accountability reported the following distribution for fiscal years 2001–2005.¹⁴⁰

Table 23: Funding Obligated for International Activities to Combat Trafficking in Persons, Fiscal Years 2001–2005

Dollar in millions						
	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	Total FY 2001–2005
Department of State	\$11.47	\$23.01	\$28.13	\$33.36	\$34.41	\$130.38
US Agency for International Development	6.74	10.72	15.42	27.59	21.34	81.81
Department of Labor ^a	20.65	32.93	48.31	18.65	38.40	158.94 ^a
Department of Justice ^b	0	0	0	0.20 ^b	0 ^b	0.20 ^b
Department of Health and Human Services	0	0	0	0	2.20	2.20
Department of Homeland Security ^c	NA	0	0	0.20	0	0.20
Total	\$38.86	\$66.66	\$91.86	\$80.00	\$96.35	\$130.38

Source: GAO analysis of data provided by State, Labor, Justice, HHS, DHS, and USAID

US Government structures for fighting human trafficking are extremely complex. Anti human trafficking responsibilities within US Government Agencies are also split between subagency departments. Communication and data analysis remain incomplete:

¹⁴⁰ Ibid., 9.

“In addition, we [the GOA] identified eight entities within the federal government that possess some information related to domestic and international trafficking. The Justice Department alone has four different offices that possess domestic trafficking information. None of the federal agencies systematically shares their international data with the others, and no agency analyzes the existing data to help inform international program and resource allocation decisions.”¹⁴¹

3.2.1 *Office for Refugees and Resettlement (ORR)*

The Department of Health and Human Services through its suboffice for Refugees and Resettlement works with victims of human trafficking. It is responsible for granting benefits to eligible victims of human trafficking. Victims recognized by the ORR are eligible for the same public benefits as refugees. These are: Temporary Assistance for Needy Families (TANF), Medicaid, food stamps, the Women, Infants, and Children (WIC) Program, States Children’s Health Insurance Program, Supplemental Security Income (SSI), English language training, employability services, case management, interpretation services, day care, transportation assistance, cash assistance, Assistance in obtaining Employment Authorization Documents (EAD) and Home management training.¹⁴²

The ORR plays a key role in identifying victims of human trafficking as it decides which victims are eligible to receive benefits and, essentially, which victims the government recognizes as such. It is important to note that the organizational structure for identifying and certifying human trafficking victims is set up primarily for foreign victims. The ORR is, after all, normally responsible for non-citizens of the United States. The results of its work reinforce the US Government’s focus on combating international human trafficking: “The countries of origin for the greatest number of victims were Peru (39 percent), Mexico (17 percent), and the Philippines (7 percent).”¹⁴³ Its letters of certification allow victims to apply for a T-visa in the United States and to obtain access to the public services to which they are entitled:

“ORR issues Certification Letters, which it signs and notarizes, to adults who meet these criteria, confirming their status as trafficking victims. The victims can then present the letter to social services agencies as proof that they are eligible for federally-funded or -administered programs to the same extent as refugees. The letter includes the toll-free ORR ‘Trafficking

¹⁴¹ Ibid., 19.

¹⁴² Florida State University, “Florida Responds to Human Trafficking,” *Center for the Advancement of Human Rights* (fall 2003): 68.

¹⁴³ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004*, (September 2005), 6.

Victims Verification' telephone number so that the benefit-granting agency can verify the victim's eligibility."¹⁴⁴

In the US, it is possible to have been an adult victim of human trafficking, but not qualify for victim certification. Adult human trafficking victims must meet the following certification criteria:

"In the case of adults, ORR examines whether the victim meets the statutory requirements for certification: 1) The individual is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and 2) The individual has made a bona fide application for a visa under section 101 (a) (15)(T) of the Immigration and Nationality Act that has not been denied; or 3) The individual is a person whose continued presence in the United States the federal government is ensuring in order to effectuate the investigation and prosecution of traffickers."¹⁴⁵

Human trafficking victims under the age of 18 do not need to meet these eligibility requirements.

Since 2001, the ORR also issues 'discretionary grants' to organizations that provide services to stop human trafficking, prevent it or to protect its victims. Grants are made in the following areas: Networking existing anti human trafficking organiza-

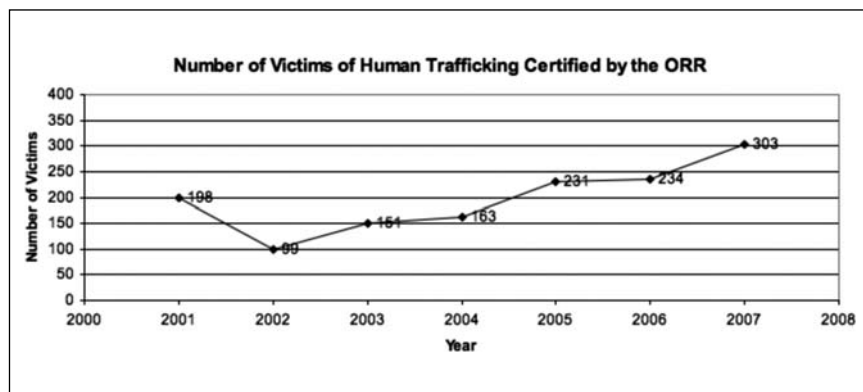


Figure 8: Number of Victims of Human Trafficking Certified by the ORR

Source: US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 4; US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 7 and US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 4.

¹⁴⁴ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 8.

¹⁴⁵ US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005* (June 2006), 8.

tions, awareness raising, case management, direct service to victims of human trafficking and to law enforcement agencies for technical assistance and training.

Grantees are not required to report to the ORR on: “information, on benefits and services accessed by trafficking victims, though ORR strongly encourages benefit offices to report.”¹⁴⁶ As a result, the ORR is not able to assess completely data on the scope of services or the number of human trafficking victims to which services were provided.

However, the ORR does publish the number of victims it has certified annually. This number has ranged from 99 victims in 2002 to 303 victims in 2007. There has been a gradual, yet constant increase in the number of certifications annually since 2002.

The William Wilberforce Trafficking Victims Protection Reauthorization Act 2008 (TVPRA 2008), will establish:

“An effective mechanism for quantifying the number of victims of trafficking on a national, regional, and international basis, which shall include, not later than 2 years after the date of the enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, the establishment and maintenance of an integrated database within the Human Smuggling and Trafficking Center.”¹⁴⁷

In addition to providing an overview of the currently fragmented knowledge of individual US Government agencies, this amendment would increase the uniformity of data collection and make it more systematic across government agencies.

Recommendation:

In order to improve information on the number of human trafficking victims in the US, all government agencies and grantees should be required to provide basic standardized data on the number of human trafficking victims identified. The recorded data should protect the identity of the victim and include characteristics such as age, nationality, length of exploitation, type of exploitation and method of entry into the US (for non-national victims). The method of recoding this data should also allow the government to prevent double-counting victims. The characteristics recorded by the US Government should be harmonized with other countries' data.

Recommendation:

The US Government should not require adult human trafficking victims to help prosecute their perpetrators in order to become certified by the ORR. As a result, the ORR would be able to issue ‘certification letters’ to a greater number of human traf-

¹⁴⁶ *Ibid.*, 11.

¹⁴⁷ US Code, *William Wilberforce Trafficking Victims Protection Reauthorization Act 2008, Public Law H.R.7311*, 110th Congress (December 23, 2008), Sec. 108.

ficking victims, increasing the level of protection provided to these persons in the United States of America.

3.2.2 Office of Victims of Crime (OVC)

Starting in 2003, the Department of Justice, through its suboffice, the Office of Victims of Crime (OVC), has reported on the number of human trafficking victims who were provided with services as a result of DoJ grants to other institutions.

The OVC funds services

“primarily focused on meeting the acute and emergency needs of trafficking victims before they are certified and subsequently eligible for federally-funded or federally-administered benefits. The period between being rescued and receiving certification, however, is the time when victims are most vulnerable and typically have a host of needs that include housing, clothing, and food; medical, dental, and psychological care; legal assistance and immigration advocacy; and interpretation services; however, few organizations or communities have the resources to provide or fund these services.”¹⁴⁸

Since the OVC’s priority is to service victims before they are certified and foreign victims of human trafficking must undergo the certification process which aims at allowing the victims to obtain continued right of residence in the US, it can be deduced that the OVC is working primarily with international and not domestic victims of human trafficking. In 2004, OVC grantees provided services to 357 victims. In total, OVC grantees have served 3,699 victims of human trafficking, since the program came into existence in January 2003. Resultantly the OVC provided services to 200 victims of human trafficking in 2003. The number of serviced victims is not reported for 2004. However, the DoJ has reported the following: “From the inception of the program in 2003 through December 2006, OVC’s grantees provided services to 1,775 pre-certified trafficking victims ... Because OVC does not track pre-certified victims by name or identifiable data, this number includes pre-certified victims who received services from more than one OVC grantee, thereby causing the victim to be counted twice.”¹⁴⁹ Hence 1,218 pre-certification victims were serviced by ORR grantees in 2005 and 2006 combined. The graph below spits this victim population equally among the two years, due to the lack of more specific information. In its report published in May 2008, the DoJ writes: “From the inception of the program in

¹⁴⁸ US Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005* (June 2006), 12.

¹⁴⁹ US Department of Justice, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2006* (September 2007), 7.

January of 2003 through June 2007, OVC's grantees provided services to 1,924 pre-certified trafficking victims.¹⁵⁰ Hence the number of human trafficking victims serviced by the OVC in 2007 was (1,924–1,775) 149 persons.

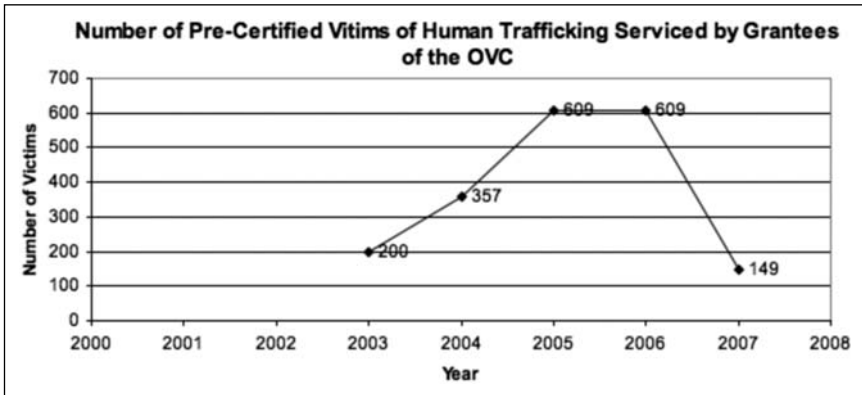


Figure 9: Number of Pre-Certified Victims of Human Trafficking Serviced by the Grantees of the OVC

Source: US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 8; US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 7 and US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 11.

3.2.3 Legal Services Corporation (LSC)

The Legal Services Corporation (LSC) is a private corporation. Congress established it. Besides funding legal aid programs to help poor Americans gain access to the civil justice system, the LSC is tasked with funding organizations that provide victims of human trafficking with legal advice. In 2004, statistical data was available for the first time concerning the number of human trafficking victims who were assisted by the LSC.

“In Fiscal Year 2004, eight LSC grantees assisted 170 trafficking victims.”¹⁵¹ The prior year, 2003, it provided services to 81 victims of human trafficking.¹⁵² In 2005

¹⁵⁰ US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 11.

¹⁵¹ US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005* (June 2006), 13.

¹⁵² US Department of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003* (May 1, 2004), 14.

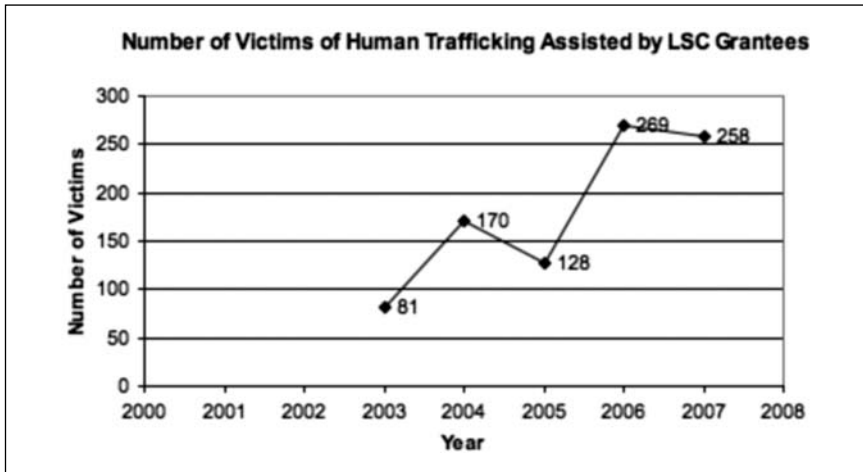


Figure 10: Number of Victims of Human Trafficking Assisted by LSC Grantees

Source: US Department of Justice, et al., *Assessment of U.S. Activities to Combat Trafficking in Persons 2004* (June 2004), 20; US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 9; US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 10 and US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 16.

LSC grantees assisted 128 human trafficking victims; in 2006 they assisted 269 and in 2007 258 victims.¹⁵³

The nationality of human trafficking victims plays a role in their ability to be supported by the LSC. The LSC is funded by the government to help international victims of human trafficking and does not aim to assist domestic victims. In the LSC's summary of permissible representation of human trafficking victims, as detailed in a letter from the LSC's president to all her program managers, President Helaine M. Barnett writes that services can be provided to adult victims of trafficking "in the certification process."¹⁵⁴ The letter detailing the parameters of government funding

¹⁵³ US Department of Justice, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2006* (September 2007), 10 and US Department of Justice, Attorney General's Annual Report to Congress on US Government Activities to Combat Trafficking in Persons Fiscal Year 2006 (May 2007), 10 and US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 16.

¹⁵⁴ Legal Services Cooperation, "Case Service Report Handbook 2008," July 2007, http://www.lsc.gov/pdfs/CSR_Handbook.pdf (accessed October 8, 2007): 34.

is entitled: “Eligibility of Immigrant Victims of Severe forms of Trafficking and Family Members for Legal Services.”

The TVPRA 2008 extends existing programs that currently provide services and protection to international victims of human trafficking, to include US citizens and US ‘permanent residents’. Section 213, entitled ‘Ensuring Assistance for all Victims of Trafficking in Persons’, contains the following legislation:

“The Secretary of Health and Human Services and the Attorney General, in consultation with the Secretary of Labor, shall establish a program to assist United States citizens and aliens lawfully admitted for permanent residence ... who are victims of severe forms of trafficking. In determining the assistance that would be most beneficial for such victims, the Secretary and the Attorney General shall consult with nongovernmental organizations that provide services to victims of severe forms of trafficking in the United States.”¹⁵⁵

This represents a fundamental chance in the focus of anti human trafficking legislation in the US. It redirects US efforts from pertaining almost exclusively to international human trafficking victims to also addressing the domestic victim population. Furthermore, this Section of the TVPRA 2008 provides funds for a study to identify service gaps between foreign and domestic victims of human trafficking. The Attorney General and the Secretary of Health and Human Services should submit the service gap study jointly within one year of the enactment of the legislation.¹⁵⁶

Recommendation:

The US Government should entitle the LSC to provide services to human trafficking victims regardless of their nationality. The LSC should also record a standard data set concerning the victims of human trafficking whom it identifies and to whom it provides services.

3.2.4 Department of Homeland Security (DHS)

Department of Homeland Security (DHS), through its suboffices the Immigration and Customs Enforcement (ICE), Citizenship and Immigration Services (CIS), works with victims of human trafficking in the process of receiving a legal residence permit. The CIS is responsible for granting the T-Visa. ICE’s subdivision, the Parole and Humanitarian Assistance Branch (PHAB), grants qualified victims ‘continued presence’. This is a one-year renewable visa for victims of human trafficking who

¹⁵⁵ Ibid., Sec. 213.

¹⁵⁶ Ibid., 214, 1404f.

aid investigations. The T-Visa and the ‘continued presence’ permit have been tools to combat human trafficking since the TVPA 2000.

In 2007, 279 victims of human trafficking were granted T-Visas. This number was 182 in 2006. In the previous year, it was 112. Prior to 2007, the number of T-Visa granted remained well below the number of applications annually. For example, in 2004 the DHS’s Vermont Service Center received 520 applications for T-Visas. In that same year it granted 136 and denied 292, and had 92 pending T-Visas at the end of the fiscal year.¹⁵⁷ In the prior year, 2003, the DHS received 601 applications for T nonimmigrant status, approved 297, and denied 30, with the remaining pending at the end of 2003.¹⁵⁸ In 2002, 172 victims of human trafficking were granted T nonimmigrant status in the United States. 453 applications were submitted that year, thirteen of which were denied.¹⁵⁹ 2002 was the first year in which data was available for issued T-Visas.

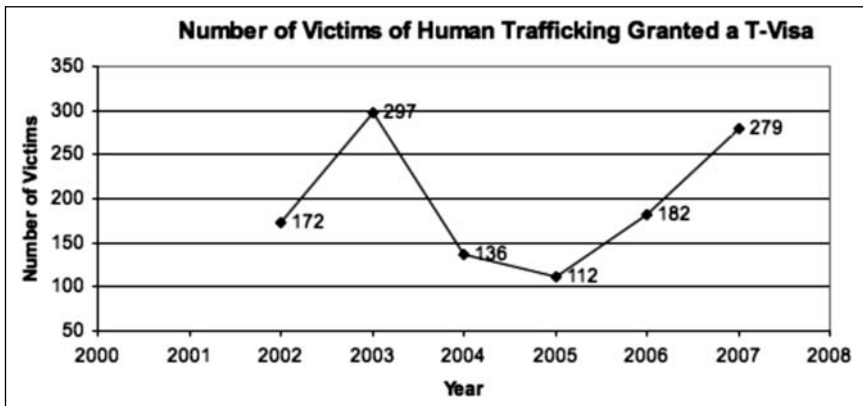


Figure 11: Number of Victims of Human Trafficking Granted a T-Visa

Source: US Department of Justice, et al., *Assessment of U.S. Activities to Combat Trafficking in Persons* (August 2003), 9; US Department of Justice, et al., *Assessment of U.S. Activities to Combat Trafficking in Persons 2004* (June 2004), 21; US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 10; US Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 12 and US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 20.

¹⁵⁷ US Department of Justice, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 15.

¹⁵⁸ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 21.

¹⁵⁹ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003), 9.

The creation of the T-Visa increased the protection of human trafficking victims by opening a legal channel of temporary or permanent immigration to the United States of America. Human trafficking victims can apply for the T-Visa on their own behalf and can, in some cases, become permanent residents of the US

“Once a trafficking victim has held T nonimmigrant status for three years, he or she may apply to adjust status; the first T nonimmigrant status recipients will become eligible to adjust status beginning in 2005. The United States is currently the only country that offers the possibility of permanent residency to victims of trafficking.”¹⁶⁰

In addition to the T-Visa, the DHS’ suboffice, the PHAB authorizes continued presence permits (temporary residency). Continued Presence is a temporary status, applied for by a law enforcement officer that permits an alien to be legally present in the United States during the investigation.¹⁶¹ Victims of human trafficking cannot apply for this status as individuals. ‘Continued presence’ is a less secure residence status than a T-Visa, the later of which is granted for three years with the possibility of transferring to a permanent residence status thereafter¹⁶²:

“In order to effectuate prosecution of traffickers, eligible victims who lack legal status but who are potential witnesses of such trafficking may receive temporary immigration relief under the continued presence provisions.”¹⁶³

According to the DoJ annual assessment reports, in 2007 122 continued presence permits were granted. This number was 112 in 2006.¹⁶⁴ In the previous year, 158 permits were awarded. As of September 30, 2004, DHS had granted 484 continued presence requests total since 2001 (the first year for which the regulation applied).¹⁶⁵ The DoJ in its 2003 Assessment writes that as of September 30, 2003, the Department of

¹⁶⁰ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 21.

¹⁶¹ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2006* (May 2007), 9–10.

¹⁶² US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 15.

¹⁶³ US Department of Justice Civil Rights Division, *Trafficking in Persons: A guide for non-governmental organizations*, <http://www.usdoj.gov/crt/crim/wetf/trafficbrochure.html> (accessed October 10, 2007).

¹⁶⁴ US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 20, and US Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 11.

¹⁶⁵ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 15.

Homeland Security had granted about 374 continued presence requests. Hence 137 continued presence permits were granted in 2004. The first year for which this statistic was published is 2003. To determine the number of continued presence permits awarded to human trafficking victims in 2001 and 2002, one must subtract 22 from 374. The number of permits granted all together in 2001 and 2002 is 352. Due to a lack of more specific information this value will be distributed equally between 2001 and 2002 in the graph below.

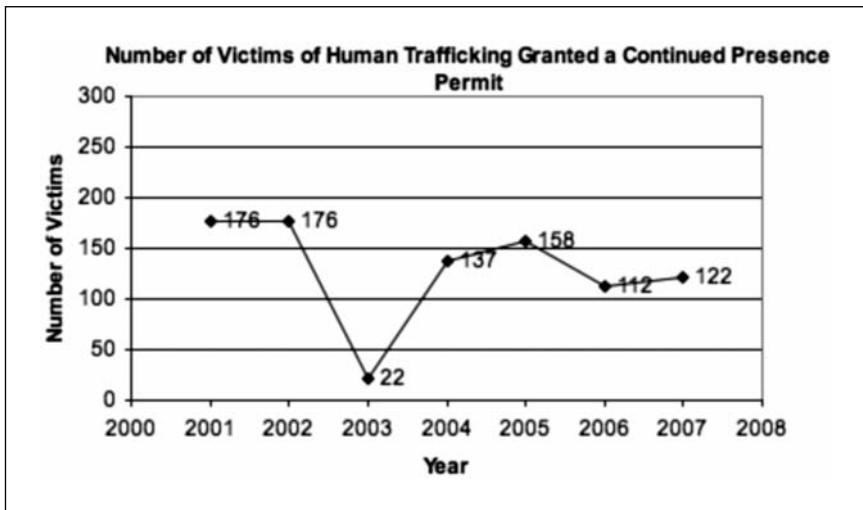


Figure 12: Number of Victims of Human Trafficking Granted a Continued Presence Permit

Source: US Department of Justice, et al., *Assessment of U.S. Activities to Combat Trafficking in Persons 2004* (June 2004), 21; US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 11 and US Department of Justice, *Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008), 20.

Human trafficking victims who are granted the T-Visa or 'continued presence' by the DHS must first be certified by the ORR. In other words, the statistics reported by both agencies count the same victim pool at different stages.

The TVPA also created the U-Visa category. This visa is designed for victims of human trafficking as well as victims of other crimes who have suffered substantial physical or mental abuse. U-Visas first became available in October 2007 although they were created by the 2000 TVPA: "It took about seven years to implement because developing rules for the visa involved federal, state and local agencies, said Maria Elena Upson, spokeswoman for US Citizenship and Immigration Ser-

vices.”¹⁶⁶ The T and the U visa are capped annually at 5,000 T-Visas and 10,000 U-Visas. This cap does not include family members.

3.2.5 *Department of Labor (DoL)*

The Department of Labor implements part of the US Government’s anti human trafficking policies. The DoL’s Employment and Training Administration (ETA) programs allow victims of human trafficking to receive career counseling and occupational training:

“The services provided at ETA ‘One-Stop Career Centers’ – notably job search assistance, career counseling, and occupational skills training – may be of significant value to trafficking victims. Any such services are provided directly by state and local grantees to trafficking victims; ETA does not collect information on the extent to which such services are offered to or utilized by trafficking victims. ETA’s Job Corps program also may provide useful job training opportunities.”¹⁶⁷

The DoL receives the most government funds to combat human trafficking,¹⁶⁸ however, does not fulfill the leading role it could play in combating human trafficking as is reflected in the text of the DoJ’s US Assessment Report 2005. The lack of committed participation on the part of the DoL and failure to record vital data on detected human trafficking in the United States is apparent. For example, the DoL does not collect information on the number of human trafficking victims it provides services to or the number of institutions it grants funds to in order to combat human trafficking. Considering that human trafficking overlaps significantly with forced labor, it is especially important for the US Department of Labor to be active in combating human trafficking.

Recommendation:

The Department of Labor should provide an annual publication regarding its domestic anti human trafficking activities. These statistics should also be included in the DoJ’s annual report to Congress and in its annual publication assessing US activities against human trafficking.

¹⁶⁶ Dale Lezon, “Immigrants here illegally can stay for 4 years if they help solve cases,” *The Houston Chronicle*, October 19, 2007, <http://www.chron.com/disp/story.mpl/headline/metro/5230368.html> (accessed October 25, 2007).

¹⁶⁷ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 9.

¹⁶⁸ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance US Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 9.

3.2.6 *Better Utilizing the Information Available to the United States Government*

The current method in the United States of America for recording information about the number of human trafficking victims identified in the United States serves the purpose of documenting government spending and government activity well. It, however, leaves gaps in documenting exactly how many victims of human trafficking US authorities in the United States identified in a given fiscal year. US Government data is fragmented at best and lacks coordination among the web of agencies and interagencies involved. It fails to account for the number of domestic human trafficking victims detected there.

Interestingly, the Department of Justice (DoJ) does not report a single annual number of human trafficking victims that have been identified by the US Government in a given fiscal year either in its Assessment of US Activities to Combat Trafficking in Persons or in its Annual Report to Congress. Consequently, in order to determine the annual number of victims that have become known to the US Government, one has to add the number of victims reported by each agency oneself. This leads to several uncertainties:

1. If victims receive support from more than one NGO, then some victims could be double counted by this method.
2. Some victims may become known to the government but not receive support from any agency. Therefore, some victims may go uncounted by this method.

The simplest solution to this uncertainty is to revert to the official number of human trafficking victims certified by the ORR. This method only counts foreign victims of human trafficking and also filters out the number of human trafficking victims that become known to national authorities, but do not cooperate with them to help prosecute their exploiters.

Providing this basic statistic, the scope of detected human trafficking in the US in a given year, is important to developing effective anti human trafficking policy. How can the Government protect human trafficking victims, if it does not prioritize determining the detected scope of the problem? This is a tremendous disadvantage in US efforts to combat human trafficking, one that could be avoided if data on human trafficking were recorded and reported more accurately. Because of the US system of recoding data on human trafficking, it is hard to determine if any patterns have emerged.

In 2006 the Government Office of Accountability described the problem of statistically documenting the number of victims based on the services provided as follows:

“Despite concerted U.S. government efforts to locate and protect victims, the government certified fewer than 900 victims in the United States during the 4 1/2 years between March 2001 and September 2005. The June 2006 Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons for Fiscal Year 2005 indicates that the 14,500 to 17,500 figure may be overstated because it was an early attempt to quantify a hidden problem. The number of certified victims may not reflect the total number of victims identified. For example, some alien victims need not seek certification because they can remain in the United States through family connections. The Justice Department indicates that further research is under way to determine a more accurate figure based on more advanced methodologies and a more complete understanding of the nature of trafficking.”¹⁶⁹

The GAO’s assessment of the problem is relatively limited. It does not address the government’s lack of protecting and reporting on its internal human trafficking population. Nor does it address the disconnect between various government efforts to consolidate, compare and coordinate their information on the known scope of human trafficking.

Despite these deficits, the DoJ in its annual Assessment Reports maintains the most comprehensive data set available to assess the number of victims identified in the United States of America. The US Government and its responsible institutions must create conditions under which it can report on the actual number of human trafficking victims identified in a given fiscal year. Currently, the following agencies record the data listed below.

Table 24: Data on Human Trafficking Maintained by US Government Entities

Agency	Trafficking data fields
Justice – Office for Victims of Crime	<ul style="list-style-type: none"> – Type of trafficking (labor, sex, other) – Identification of victims (nationality, age, gender)
Justice – Civil Rights Division	<ul style="list-style-type: none"> Trafficking cases prosecuted in the United States, including – Information about traffickers – Type of trafficking (commercial sex, involuntary servitude)
Justice – Federal Bureau of Investigation, Criminal Investigation Division	<ul style="list-style-type: none"> – Information about traffickers (names, business involved, criminal organization connections) – Type of trafficking (commercial sex, migrant farms, construction, labor camps, domestic servitude) – Identification of victims (nationality, age gender, recruitment method) – Points of entry – Logistics (use of illegal documents, funding)
Justice – Bureau of Justice Assistance	<ul style="list-style-type: none"> – Number of potential domestic victims identified by task forces – Number of identified potential domestic victims for which law enforcement has requested continued presence^a in the United States

Continued page 123

¹⁶⁹ Ibid., 17.

Table 24: Continued

Agency	Trafficking data fields
HHS	Trafficking victims certified in the United States, including <ul style="list-style-type: none"> – Age (minor or adult) – Gender – Geographic distribution of the certification (i.e., which US state) – Nationality
DHS	Trafficking victims awarded continued presence: <ul style="list-style-type: none"> – Date of birth – Gender – Nationality Information about traffickers, including: <ul style="list-style-type: none"> – Name – Nationality – Gender – Date of Birth – Violation type – Statute used to arrest the violator
Labor	Nature and extent of 144 countries' worst forms of child labor, including children involved in forced labor and sexual exploitation

Source: United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance US *Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 46.

The William Wilberforce Trafficking Victims Protection Reauthorization Act 2008 (TVPRA 2008), which was signed into law on December 23, 2008, improves the US Government's ability to estimate the number of human trafficking victims domestically and globally. It stipulates that prior to two years after the enactment of the TVPRA 2008, an integrated database will be established. In addition to providing an overview of the currently fragmented knowledge of individual US Government agencies, this amendment would increase the uniformity of data collection and make it more systematic across government agencies.

In the next section of this paper, the difficulties of determining scope will shift from the detected to the estimated scope of human trafficking.

3.3 Estimated Magnitude of Human Trafficking in the United States of America

Much deliberation surrounds the cleft between the detected scope of human trafficking and its estimated magnitude. In order to compensate for the lack of concrete information about the volume of human trafficking, governments, researchers, United

Nations institutions and NGOs have attempted to estimate the scope of human trafficking. Anti human trafficking policies in the US have been placed at the top of political agendas because it is believed that this is not only a severe form of human rights abuse, but also because governments believe that the actual scope of human trafficking is much greater than detected volume.

“‘There are probably a lot more cases than what we are seeing,’ said Principal Deputy Assistant Atty. Gen. Bradley J. Schlozman. ‘But the true breadth of the problem is unknown.’”¹⁷⁰

Anti human trafficking policies have been strongly influenced by official and unofficial estimates of its scope. For example, the US Government has recognized a deficit in its ability to detect victims of human trafficking based on its comparison of actual and estimated scope:

“Because of the significant difference between the estimated number of people trafficked into the United States annually and the number of victims that the U.S. Government has reached through investigations, prosecutions, Health and Human Services’ certifications, and provision of immigration benefits, the U.S. Government is concerned that there may be many more victims currently in the United States. The U.S. Government is employing several strategies to improve its contact with victims.”¹⁷¹

Estimates regarding the scope of human trafficking are most frequently reported in two categories:

- number of victims and
- volume of revenue.

The US Government has not produced human trafficking estimates with regularity. The methodology of estimating human trafficking is not standardized. Currently, the four organizations with databases on global trafficking in persons are the US Government, the International Labor Organization (ILO), the International Organization for Migration (IOM), and the United Nations Office on Drugs and Crime (UNODC).¹⁷²

¹⁷⁰ Anna Gorman, “Program to Fight Human Trafficking Is Underused,” *Los Angeles Times*, December 19, 2005, <http://www.latimes.com/news/local/la-me-trafficking19dec19,1,2701097,full.story> (accessed December 20, 2005).

¹⁷¹ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003), 9.

¹⁷² United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 10.

The accuracy of human trafficking victim estimates is doubted by many experts and policy makers based on methodological weaknesses, gaps in data and numerical discrepancies. For example, the US Government Accountability Office has criticized US estimates:

“The U.S. government’s estimates were developed by one person who did not document all his work, so the estimate may not be replicable, casting doubt on its reliability. Moreover, country data are not available, reliable, or comparable. There is also a considerable discrepancy between the numbers of observed and estimated victims of human trafficking. The U.S. Government has not yet established an effective mechanism for estimating the number of victims or for conducting ongoing analysis of trafficking related data that resides within government entities.”¹⁷³

The methodology that was used to create existing US Government estimates is Markov Chain Monte Carlo, a statistical method often used in medical studies and complex surveys.

“Making use of plausible values for unknown information, the technique replaces missing data under a wide range of conditions to reflect uncertainty in the reports. The estimates also underwent a Bayesian analysis, which systematically incorporates previous estimates of human trafficking or, in the absence of previous estimates, expert surveys. Therefore, the estimates rely on a weighted average of the available information, rather than on the extrapolation from known cases.”¹⁷⁴

According to US Government-sponsored research completed in 2006, approximately 800,000 people are trafficked across national borders. This estimate did not account for internal human trafficking.¹⁷⁵ In May 2004, the US Department of States published an estimate of the number of human trafficking victims exploited annually in the United States of America: 14,500 to 17,500 people are trafficked annually into the United States.¹⁷⁶ This followed estimates published by the US States Department in 2003 estimates of up to 20,000 victims and in 1999 of up to 50,000 victims. These calculations rely on the US, not the international, definition of human trafficking. Additionally, they only address international human trafficking and neglect internal trafficking. They are also not comparable to prior US Government estimates because

¹⁷³ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 2.

¹⁷⁴ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 8.

¹⁷⁵ US Department of State, *Trafficking in Persons Report* (June 2007), 8.

¹⁷⁶ US Department of State, *Trafficking in Persons Report* (June 2003), 23.

the methodology for achieving these estimates has changed over time.¹⁷⁷ The declining estimate of victims since 1999 reflects improvements in data collection and methodology rather than trends in trafficking.¹⁷⁸

Regardless of these weaknesses, the US Government's human trafficking estimates have influenced human trafficking policy significantly and have been cited at many conferences, meetings among human trafficking experts and have been quoted by policy makers and researchers alike. In summary, US Government estimates suggest the following trends in human trafficking:

“Approximately 80 percent of the victims are female; 70 percent of those females are trafficked for the commercial sex industry. Roughly two-thirds of the global victims are trafficked intra-regionally within East Asia and the Pacific (260,000 to 280,000 people) and Europe and Eurasia (170,000 to 210,000 people). The largest number of people trafficked into the United States come from East Asia and the Pacific (5,000 to 7,000). The next highest numbers come from Latin America and from Europe and Eurasia, at between 3,500 and 5,500 victims from each.”¹⁷⁹

Efforts to improve the comparability and accuracy of US data are underway, but no breakthrough has been made yet. The GOA described the state of these activities in 2006 as follows:

“Since 2005, the U.S. government has funded a project to develop a transparent methodology for estimating the number of men, women, and children trafficked into the United States for purposes of sex or labor trafficking. To date, the modeling has been limited to 10 countries of origin – Colombia, Venezuela, Ecuador, Peru, El Salvador, Guatemala, Nicaragua, Mexico, Haiti, and Cuba – and one arrival point in the United States – the southwest border. The firm developing this methodology is in the early stages of this effort and plans to continue to refine and test its methodology. Thus, it is too early to assess this methodology. The U.S. Government also recently funded an outside contractor to improve future global trafficking estimates. To date, the U.S. Government has funded few projects to improve estimates of trafficking on a regional or international basis.”¹⁸⁰

¹⁷⁷ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 2.

¹⁷⁸ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 8–9.

¹⁷⁹ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 10.

¹⁸⁰ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 18.

3.4 Recent Developments in Anti Human Trafficking Policy in the United States of America in Brief

In the United States of America, Congress established a benchmark in US anti trafficking policies in 2000 with the ‘Victims of Trafficking and Violence Protection Act of 2000’ (VTVPA 2000). Since then, the VTVPA 2000 has been renewed by three revisions one in 2003 with the Trafficking Victims Protection Reauthorization Act (hereafter TVPRA 2003), the second in 2005 with the Trafficking Victims Protection Reauthorization Act (TVPRA 2005) and the third in 2008, with the William Wilberforce Trafficking Victims Protection Reauthorization Act 2008 (TVPRA 2008).

3.4.1 The Trafficking Victims Protection Act of 2000

The ‘Victims of Trafficking and Violence Protection Act of 2000’ (VTVPA 2000) contains in Division A, one of its three divisions, the ‘Trafficking Victims Protection Act 2000’ (TVPA 2000). The VTVPA explicitly refers to US democratic evolution, highlighting national policy frameworks on which it builds. These are:

- the Declaration of Independence of 1776, which recognized the inherent dignity and worth of all people and
- the outlawing of slavery and unlawful involuntary servitude in the United States of America in 1865 by the Thirteenth Amendment to the Constitution.¹⁸¹

The TVPA 2000 also refers to relevant international policy frameworks (explored in Chapter One of this paper) that it recognizes and complements. The TVPA 2000 was signed into law on October 28, 2000, in publication L. 106–386.

The TVPA 2000 increased the US Government’s ability to combat human trafficking and demonstrated a rebirth of political will to act against modern forms of slavery. In addition to addressing human trafficking through the TVPA 2000 (Division A) the VTVPA also included two other ‘divisions’: Division B is called the ‘Violence Against Women Act of 2000’ and C includes ‘Miscellaneous Provisions’. This subchapter will focus only on the first ‘division’ of the ‘Act’, which is the TVPA 2000.

In the year 2000 the United States Government brought national policy frameworks in line with international treaties with the VTVPA 2000. President George W.

¹⁸¹ The TVPA 2000 also recognized international policy frameworks that preceded it and on which it builds. These include the following: the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1957 Abolition of Forced Labor Convention.

Bush signed the VTVPA 2000 along with all its Divisions into law on October 28, 2000. Both houses of Congress passed the new policy framework virtually unanimously; the issue of anti human trafficking encountered effectively no controversy. National sentiment and policy makers have since been in agreement that human trafficking is a grave violation of human rights and that law enforcement must invest more resources in combating it.

An example of the US Government's pledge to combat human trafficking is a statement made by the White House from February 25, 2003: "The United States is committed to the eradication of human trafficking both domestically and abroad. It is a crime that is an affront to human dignity".¹⁸² President George W. Bush reconfirmed a clear stance against human trafficking during his September 23, 2003 speech at the United Nations:

"There's a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of [the] sex trade see little of life before they see the very worst of life – an underground of brutality and lonely fear. Those who create these victims and profit from their suffering must be severely punished. Those who patronize this industry debase themselves and deepen the misery of others. And governments that tolerate this trade are tolerating a form of slavery."¹⁸³

Attorney General John Ashcroft conveyed a similar message on February 25, 2003 at a conference of the US Department of States on Path-Breaking Strategies in the Global Fight against Sex Trafficking:

"The Department of Justice's charge [is] to safeguard, nourish and protect the conditions of freedom that make America unique. One of those conditions is the respect and value that American culture places on the dignity of each and every individual. The Justice Department is committed to defending freedom and human dignity. One of the greatest threats to human dignity is human trafficking: the commodification of human beings."¹⁸⁴

The Secretary of States Condoleezza Rice is quoted in the forward of the 2007 Trafficking in Persons Report as saying:

"All nations that are resolute in the fight to end human trafficking have a partner in the United States. Together we will continue to affirm that no human life can be devalued or discounted. Together we will stop at nothing to end the debasement of our fellow men and women. And together we will bring forth a world of fuller hope, a world where people enjoy the full blessings of their God-given liberty."^{184a}

¹⁸² Kathy A. Gambrell, "Bush firms policy on human trafficking", *United Press International*, 25 February 2003.

¹⁸³ US Department of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003*, 3.

¹⁸⁴ *Ibid.*

^{184a} US Department of State, *Trafficking in Persons Report* (June 2007), 1.

The TVTPA 2000 was the culmination of efforts by the Trafficking in Persons and Worker Exploitation Task Force, an interagency group that brought the FBI, INS, Department of Labor and other agencies together, to address a problem with both domestic and global dimensions. The law established, at the national level, a definition of human trafficking and measures to combat it.

Following the abolition of organized slavery in the US in 1865, the TVPA 2000 represents a milestone in democracy building, the pursuit of social equality and improving the basic human rights of persons living inside the United States of America and abroad. The main points of the TVPA 2000 were the criminalization of human trafficking with respect to slavery, involuntary servitude, peonage or forced labor; the prosecution of nonviolent coercion when used to force victims to work in the belief they would be subject to serious harm; the prosecution of human traffickers where the victim's service was compelled by confiscation of documents such as passports or birth certificates and increased incarcerations of human trafficking perpetrators from 10 years to 20 years and life imprisonment where the violation involves the death, kidnapping, or sexual abuse of the victim. It also introduced victim restitution and state confiscation of the perpetrators assets upon conviction, witness protection and other types of government sponsored assistance fostering victim rehabilitation in line with refugee protection guidelines and the option for victims of human trafficking to gain legal immigration status during investigation and prosecution through the T nonimmigrant visa.

Furthermore, the TVPA 2000 expanded international activities to combat human trafficking, especially in the form of reporting on foreign governments' efforts to combat it. The US Department of States was tasked with this responsibility. The law equipped the this ministry to assist "foreign countries in drafting laws to prohibit and punish acts of trafficking, and to strengthen investigation and prosecution of traffickers."¹⁸⁵

Through the TVPA 2000, 5,000 T-Visa were created to allow victims of human trafficking who cooperate with law enforcement to gain legal temporary residency in the US

The TVPA 2000 increased the US Government's ability to combat human trafficking in two ways. It amended two federal laws relevant to human trafficking and it revised Chapter 77, Title 18, United States law. The federal laws amended by the TVPA 2000 are the Immigration and Nationality Act and the Foreign Assistance Act. The revision to Chapter 77 amended existing US law as well as introduced new statutes to that Chapter.

¹⁸⁵ Ibid., Sec. 4.

The TVPA 2000 made significant appropriations to protect victims of human trafficking in Section 113. These included millions of dollars of appropriations to the Secretary of State, the Secretary of Health and Human Services, the Secretary of State, the Attorney General and the Secretary of Labor.¹⁸⁶

3.4.2 *Trafficking Victims Protection Reauthorization Act of 2003*

The 2003 Trafficking Victims Protection Reauthorization Act (TVPRA 2003) evaluated the TVPA 2000's ability to fight human trafficking and introduced several changes to US laws to improve victim protection and to better fight human trafficking. President George W. Bush signed the TVPRA 2003 into law on December 19, 2003. The TVPRA 2003 re-appropriated funds to existing measures for combating human trafficking as well as to new areas of anti human trafficking funding.

The TVPRA 2003 focused mainly on combating human trafficking as a result of sex tourism by disseminating materials that alert tourists to the penalties of this crime;¹⁸⁷ prohibiting NGO funding, when that NGO's activities promote, support or advocate the legalization of prostitution;¹⁸⁸ and defining standardized domestic reporting on US Government activities to combat human trafficking.¹⁸⁹ It added a new civil action provision allowing human trafficking victims to file civil suits¹⁹⁰ and introduced an additional tier to the States Department's existing international monitoring of human trafficking.¹⁹¹ Its provisions aimed to increase international and domestic information campaigns¹⁹² and provide additional funding for research on human trafficking.¹⁹³

Prior to the TVPRA 2003, standard reporting on this issue by the US Government existed only in the form of the US TIP Report and covered only human trafficking

¹⁸⁶ *Trafficking Victims Protection Reauthorization Act of 2003*, TVPRA 2003, H. R. 2620-6, 108th Congress (January 7, 2003), Sec. 3.

¹⁸⁷ *Trafficking Victims Protection Reauthorization Act of 2003*, TVPRA 2003, H. R. 2620-6, 108th Congress (January 7, 2003), Sec. 3.

¹⁸⁸ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, *House of Representatives, Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitraficking Efforts Abroad*, GAO-06-825 (July 2006), 23.

¹⁸⁹ *Trafficking Victims Protection Reauthorization Act of 2003*, TVPRA 2003, H. R. 2620-6, 108th Congress (January 7, 2003), 6.

¹⁹⁰ *Ibid.*, Sec. 4.

¹⁹¹ *Ibid.*, Sec. 3.

¹⁹² *Ibid.*, Sec. 3.

¹⁹³ *Ibid.*, Sec. 112a.

abroad. Section 6a of the TVPRA 2003 tasked the Attorney General with an annual report to Congress, with the first report issued in 2004. The TVPRA 2003 outlined the information, which must be included in the report. This addressed the number of persons:

“Who received benefits or other services, ... who had been granted ‘continued presence’ in the United States ..., who applied for, had been granted, or had been denied T nonimmigrant status or otherwise provided status ..., who were charged or convicted ... and the sentences imposed against each such persons.”¹⁹⁴

The Attorney General’s annual report to Congress focused mainly on accounting for government spending and the prosecutions under anti human trafficking laws. The report’s focus is less an account of the known scope of human trafficking in the United States of America. For example, the report does not contain data on the total number of human trafficking victims detected by officials.

Beyond the Attorney General’s Annual Report to Congress, the DoJ has issued a report on domestic human trafficking since August 2003 entitled, *Assessment of US Activities to Combat Trafficking in Persons*.¹⁹⁵ Both reports are based on the same government data, yet they differ slightly in the depth of analysis they cover.

In 2003 the US Government targeted sex tourism not only through anti human trafficking policy frameworks, but also through other domestic and extra-territorial policy frameworks such as the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act. This act, passed in 2003, prevents child abduction and the sexual exploitation of children.

3.4.3 *Trafficking Victims Protection Reauthorization Act of 2005*

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) evaluated the TVPRA 2003’s ability to fight human trafficking. It was enacted on January 10, 2006. Similar to the TVPA 2000 and the TVPRA 2003, the TVPRA 2005 added new statutes to US laws and amended existing ones. It re-appropriated funds to existing measures for combating human trafficking as well as to new areas of anti human trafficking funding.

The TVPRA 2005 had four main foci. First, it strengthened US Government efforts to prevent human trafficking in conjunction with post-conflict and humanitarian-

¹⁹⁴ US Department of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003* (May 1, 2004), 5.

¹⁹⁵ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003).

an emergency assistance. Second, it improved the protection of human trafficking victims by creating additional and better equipped residential and rehabilitative facilities. Third, it introduced extraterritorial jurisdiction over persons employed by or accompanying the Federal Government outside the United States who commit the crime of human trafficking as defined by US law. Fourth, it amended the TVPA 2000 to unmistakably include child soldiers as victims of human trafficking.

Concerning the first point, the TVPRA 2005 initiated a report on the situation of human trafficking in post conflict areas. Previously Congress had determined that increased levels of human trafficking have been evident in post conflict areas:

“Following armed conflicts and during humanitarian emergencies, indigenous populations face increased security challenges and vulnerabilities, which result in myriad forms of violence, including trafficking for sexual and labor exploitation. Foreign policy and foreign aid professionals increasingly recognize the increased activity of human traffickers in post-conflict settings and during humanitarian emergencies.”¹⁹⁶

Concerning the second point, the TVPRA 2005 commissioned a study and pilot program on group housing and rehabilitation facilities for human trafficking victims. It aimed at improving the quality and cost effectiveness of these facilities. Among other things, the study investigated:

“Factors relating to the rehabilitation of victims of trafficking in group residential facilities, such as the appropriate size of such facilities, services to be provided, length of stay, and cost.”¹⁹⁷

Concerning the third point, the TVPRA 2005 introduced extra territorialism into US law by amending Title 18 of United States laws.¹⁹⁸ The jurisdiction and responsibility of prosecuting “offenses committed by persons employed by or accompanying the Federal Government outside the United States” is that of the United States.¹⁹⁹

Concerning the fourth point, the TVPRA 2005 amended the TVPA 2000 to designate as human traffickers those who participate in turning children into soldiers and ergo unmistakably included child soldiers as victims of human trafficking. Section 104 of the TVPRA 2005 states:

“The abduction and enslavement of children for use as soldiers, including steps taken to eliminate the abduction and enslavement of children for use as soldiers and recommendations for such further steps as may be necessary to rapidly end the abduction and enslavement of children for use as soldiers.”²⁰⁰

¹⁹⁶ *Trafficking Victims Protection Reauthorization Act of 2005*, Public Law 109–164, 106th Congress (January 10, 2006), Sec. 2.

¹⁹⁷ *Ibid.*, Sec. 102.

¹⁹⁸ *Ibid.*, Sec. 103.

¹⁹⁹ *Ibid.*, Sec. 103.

²⁰⁰ *Ibid.*, Sec. 104.

3.4.4 *The William Wilberforce Trafficking Victims Protection Reauthorization Act 2008*

The William Wilberforce Trafficking Victims Protection Reauthorization Act 2008 (TVPRA 2008) was introduced into the legislative process in October 2007. In February 2008, it underwent review by the Senate Judiciary Committee. It finally passed both houses of government on December 10, 2008. In accordance with the new law, the re-appropriation the anti human trafficking funding will include several new foci.

The TVPRA 2008 permanently anchors and expands the mandate of the Office to Monitor and Combat Trafficking through securing its role as a consultative body and providing it with prolonged funding. The TVPRA 2008 increases support to foreign governments to combat human trafficking:

“The President shall establish and carry out programs to prevent and deter trafficking in persons, including technical assistance and other support to improve the capacity of foreign governments to investigate, identify, and carry out inspections of private entities, including labor recruitment centers, at which trafficking victims may be exploited, particularly exploitation involving forced and child labor.”²⁰¹

The ability of the US Government to impose non-humanitarian and non-trade sanctions against foreign governments have been increased as indicated in Section 107 of the TVPRA 2008. This applies to those governments, who remain on the US Department of State’s ‘watch list’ (as published in their annual Trafficking In Persons Report) for two or more years consecutively. Such countries will be moved to tier three automatically. These changes reaffirm the strong international focus of US anti human trafficking policy.

Perhaps the most significant change that the TVPRA 2008 introduces is that existing programs to provide services and protection to international victims of human trafficking are expanded to include US citizens and US ‘permanent residents.’ Section 213, entitled ‘Ensuring Assistance for all Victims of Trafficking in Persons,’ includes the following legislation:

“The Secretary of Health and Human Services and the Attorney General, in consultation with the Secretary of Labor, shall establish a program to assist United States citizens and aliens lawfully admitted for permanent residence ... who are victims of severe forms of trafficking. In determining the assistance that would be most beneficial for such victims, the Secretary and the Attorney General shall consult with nongovernmental organizations that provide services to victims of severe forms of trafficking in the United States.”²⁰²

²⁰¹ US Code, *William Wilberforce Trafficking Victims Protection Reauthorization Act 2008*, Public Law H.R.7311, 110th Congress (December 23, 2008), Sec.103.

²⁰² *Ibid.*, Sec. 213.

This represents a fundamental change. It redirects US efforts from pertaining almost exclusively to international human trafficking victims to also address the domestic victim population. Furthermore, this Section of the TVPRA 2008 provides funds for a study to identify service gaps between foreign and domestic victims. The Attorney General and the Secretary of Health and Human Services will submit the study jointly within one year of the enactment of the legislation.²⁰³

A very significant improvement of US anti human trafficking efforts is the increase in the research and reporting capabilities of the US Government, as well as its ability to report on the number of human trafficking victims domestically and globally. Prior to two years after the enactment of the TVPRA 2008, the establishment of an integrated database is planned. This amendment will increase the uniformity of data collection and make it more systematic across government agencies. Furthermore, the Attorney General will expand its annual report to include activities taken by the Department of Defense.²⁰⁴

The TVPRA 2008 has placed particular emphasis on protecting minors. It will provide for interim assistance to victims under the age of 18 without requiring them to cooperate with state authorities in prosecuting human traffickers.

“Upon receiving credible information that a child ... who is seeking assistance under this paragraph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance under this paragraph.”²⁰⁵

The TVPRA 2008 acknowledges the large disparity between the number of children who are identified as victims of human trafficking in the US and the estimated scope of trafficking. The legislation enables government agencies to develop better methods of identifying child victims at borders and ports of entry and to better ensure that child victims are not repatriated into life threatening situations. Should repatriation be deemed safe, the legislation puts forth a series of checks and procedures to provide for safe repatriation of the child human trafficking victims. All children suspected of being victims shall be screened within 48 hours and placed under the jurisdiction of the Department of Health and Human Services.²⁰⁶

Children victims of human trafficking will receive further protection through Section 401 of the TVPRA 2008. It introduces the ‘Child Soldiers Prevention Act of 2008.’ The Act defines child soldiers as:

²⁰³ *Ibid.*, Sec. 203.

²⁰⁴ *Ibid.*, Sec. 231.

²⁰⁵ *Ibid.*, Sec. 211.

²⁰⁶ *Ibid.*, Sec. 235.

“Any person under age 18 who takes a direct part in hostilities as a member of governmental armed forces, where the government has failed to take all feasible measures to ensure that members of its armed forces under age 18 do not take a direct part in hostilities; any person under age 18 who has been compulsorily recruited into governmental armed forces; any person under age 15 voluntarily recruited into governmental armed forces; and any person under age 18 recruited or used in hostilities by armed forces distinct from the armed forces of a state; and includes any person . . . who is serving in any capacity, including in a support role such as a cook, porter, messenger, medic, guard, or sex slave.”²⁰⁷

Section 404 of the TVPRA 2008 stipulates that the US Government may not provide military assistance to governments or groups that recruit or use child soldiers. The Secretary of State is tasked with determining which governments or groups engage child soldiers and report on these activities. The Department of State’s Annual Human Rights Report will include a list of such governments.

Equally significant is the increased responsibility the TVPRA 2008 places on the US Government to inform certain categories of immigrants of the dangers of human trafficking and of their rights should they be victimized. This issue is addressed in Section 202 of the legislation. Persons interviewed to receive an employment- or education-based nonimmigrant visa will be given information orally and in written form in a language familiar to them.²⁰⁸ The information will include communicating:

“The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; the legal rights of immigrant victims of trafficking in persons and worker exploitation, including – the right of access to immigrant and labor rights groups; the right to seek redress in United States courts; the right to report abuse without retaliation; the right of the nonimmigrant to relinquish possession of his or her passport to his or her employer; the requirement of an employment contract between the employer and the nonimmigrant.”²⁰⁹

Additionally, recipients of A-3 and G-5 visas will have to participate in a mandatory interview according to Section 203 of the law. Such visas pertain to immigrants who will work for an officer of a diplomatic mission or consular post, or will work for an employee of an international organization in the US.²¹⁰

The TVPRA underwent several changes between February 2007 and December 2008 during judiciary review. In the draft versions of the TVPRA 2008 from February 2007, a new Section to Title 18 of US Code was foreseen, but later dropped from the law passed

²⁰⁷ *Ibid.*, Sec. 402.

²⁰⁸ *Ibid.*, Sec. 202.

²⁰⁹ *Ibid.*, Sec. 202.

²¹⁰ *Ibid.*, Sec. 203.

by Congress on December 10, 2008.²¹¹ The Section was entitled: aggravated sex trafficking. It would have broadened the US anti human trafficking focus on sex trafficking and other forms of ‘aggravated’ sexual acts. Sex trafficking would have been defined as:

“Whoever knowingly, in or affecting interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or in any territory or possession of the United States, persuades, induces, or entices any individual to engage in prostitution for which any person can be charged with an offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.”²¹²

The final version of the TVPRA 2008 also dropped a paragraph on ‘Aliens in Prostitution’. The draft law proposed the following:

“Whoever, for the purposes of prostitution or for any other sexual activity for which any person can be charged with a criminal offense ... knowingly imports or attempts to import any alien; or ... knowing or in reckless disregard of the fact that an individual is an alien who lacks lawful authority to come to, enter, or reside in the United States, knowingly holds, keeps, maintains, supports, employs, or harbors the individual in any place in the United States, including any building or any means of transportation, or attempts to do so, shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.”²¹³

The legislation removed from the final version of the TVPRA 2008 would have further blur the definition between those who subjugate others to virtual sexual slavery and those who take part in the (possibly voluntary or unforced) prostitution of others.

The final version of the TVPRA 2008 gives the Secretary of Homeland Security more discretionary authority in deciding if victims of human trafficking should be repatriated to their countries of origin and may allow for a longer than 4-year period of stay for so-called ‘nonimmigrant crime victims’ based on exceptional circumstances. Such exceptional circumstances could extend to victims who have launched a civil suit, but are not limited to this circumstance.²¹⁴ This regulation falls under the subheading: ‘Protecting trafficking victims against retaliation’.

The TVPRA 2008 also establishes a new annual award called the ‘Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons’. It will be presented to up to five individuals or institutions and presented by the Secretary of State.²¹⁵

The TVPRA 2008 reissues appropriations through 2011.

²¹¹ US House of Representatives, *The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007*, H. R. 3887, 110th Congress, (December 5, 2007), Sec 103, <http://thomas.loc.gov/cgi-bin/query/C?c110:./temp/~c110H5712u> (accessed February 4, 2008).

²¹² *Ibid.*, Sec. 221, 2430.

²¹³ *Ibid.*, Sec. 223.

²¹⁴ US Code, *William Wilberforce Trafficking Victims Protection Reauthorization Act 2008*, *Public Law H.R.7311*, 110th Congress (December 23, 2008), Sec 201.

²¹⁵ *Ibid.*, Sec. 109.

3.5 In Depth Analysis of United States Human Trafficking Policy Frameworks

In the following subchapters, each of the seven ‘problematic’ issues derived in Chapter One will be addressed in the national context of the US policy. These issues are the:

- demographic parameter: gender-specificity
- geographic parameter: internal human trafficking
- exploitation parameters: forced non-sexual labor and trafficking in human organs
- victim protection parameter: victim access to legal residence
- criminalization and punishment parameters: criminalization of links in the trafficking chain and the commercial nature of the crime.

After exploring how US policy frameworks address each ‘problematic’ issue, three other instruments will be used to evaluate these issues in the US context. First, US Government reporting on human trafficking will be examined. Second, reporting by US based NGOs will be looked at and finally a selection of online media sources will be analyzed. Investigating not only the legal framework, but also using these three additional analytical instruments to aid this in depth analysis.

It was possible to gain a comprehensive overview of government and NGO reporting on human trafficking. However, in an age of online media that is independent of national borders, it was quite challenging maintain an overview of reports by the press on this issue. Since the focus of this analysis is to detect gaps in policy and not to conduct a comprehensive survey of the media, regular samples of media reporting were relied on. These offer impressions of how the international media reports on human trafficking in the US context. This method only allows one to draw general conclusions on if there is an apparent gap in media reporting concerning the seven problematic aspects of human trafficking listed above. The international media is not a united entity that deals with any issue uniformly, so it is impossible to draw specific conclusions about ‘the media’s’ approach to this issue.

The author monitored online media sources in the English and German languages regularly. This monitoring relied primarily on two search engines: the European Media Monitor and Google News. It is important to note that reports on human trafficking in the media are infrequent in general, so a more standard approach of selecting a range of print media to survey would have yielded too few examples of reporting.

The survey of online reporting on human trafficking produced ca. 15 to 25 articles per month on human trafficking globally.²¹⁶

3.5.1 *Demographic Parameter: Gender-Specificity*

The TVPA 2000 and following revisions of 2003, 2005 and 2007 are not gender-specific, applying equally to men and women. Starting in 2000, the United States identified that human trafficking is not a crime only committed against women. However, the United States recognizes that the large proportion of victims are female. The TVPA 2000 states as its purposes, “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”²¹⁷

There is not a gender-gap concerning the political will and legislative ability of the United States Government to combat human trafficking. Beyond the gender neutral wording of US anti human trafficking policy framework, the gender neutrality of US anti human trafficking efforts is supported empirically in government reports.

Examples of Government Reporting on Actual Human Trafficking Cases

The United States Department of Justice has been assessing and reporting on anti human trafficking activities of the US Government since 2003. The reports include summaries of court cases, in which charges were brought against human traffickers whose victims were adult males. Two examples of human trafficking cases in which the victims were male are:

United States v. Maka (Hawaii)

“Starting in 2001, a landscape maintenance contractor and rock wall builder allegedly transported four Tongan men to Hawaii where they were forced to work in his businesses to repay the transporting expenses. The victims were housed in shacks on the subject’s pig farm and were required to work in excess of twelve hours a day, six days a week for approximately \$60 to \$100 per week. The contractor was first indicted in January 2003, with a superseding indictment returned in June 2003. The local U.S. Attorney’s Office, along with the Civil Rights Division, is prosecuting the case.”²¹⁸

²¹⁶ This assertion is based on over three years of monitoring the press by the author. A collection of media reports by the author can be found at: www.traffickinginpersons.org.

²¹⁷ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec 102.

²¹⁸ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 28.

United States v. Bradley and O'Dell (New Hampshire)

“In a case prosecuted by the Civil Rights Division and the local U.S. Attorney’s Office, two U.S. citizens were convicted on eighteen counts of forced labor and wire fraud for their treatment of Jamaican citizens brought to New Hampshire to work in their tree cutting business... Bradley and O’Dell were convicted of conspiracy to commit forced labor, forced labor, trafficking for the purpose of forced labor, and illegally confiscating passports for forcing two of these men to work. The convictions were the culmination of a seventeen-month investigation by the Federal Bureau of Investigation, the Diplomatic Security Service and the Litchfield Police Department and represent the second convictions at trial of violations of the TVPA’s forced labor statute, 18 U.S.C. § 1589.”²¹⁹

Examples of Non-Governmental Reporting

The Florida State University’s Center for the Advancement of Human Rights has studied, interviewed and profiled human trafficking cases. In its report “Florida Responds to Human Trafficking,” published in 2003, the Ramos Case was analyzed. This case was one of trafficking in forced labor in Florida’s agricultural sector and its victims were primarily adult males. The human trafficking operation was run near Lake Placid, Florida. The traffickers were a Mexican family, the Ramos family who were subcontractors in the US by profession. The scope of human trafficking in this case included thousands of primarily undocumented male agricultural workers. They were trafficked through a debt bondage scheme, in which the traffickers justified slave labor to their victims by asserting that the undocumented migrants owed the Ramos family money for transportation costs and other ‘services’ such as housing and food ‘provided’ by the Ramos family:

“Most [of the victims] had been transported from Arizona by the Ramoses and then made to pay \$1000 for alleged transportation costs. Held in debt bondage, the migrant workers were not allowed to leave the control of the Ramoses until they had acquitted their debt. The Ramos family charged exorbitant costs for room and board, and most of the migrant workers returned to Mexico and Central America having made little to nothing for their months of labor in Florida’s fields.”²²⁰

The Coalition of Immokalee Workers, an NGO that monitored the operations of the Ramos family and helped three victims escape. The NGO reported that the Ramos family held their farm workers captive through constant surveillance and violence.

“The Ramoses or their employees monitored the workers 24 hours a day, patrolling the worker compounds and agricultural fields with cell phones and weapons. The traffickers routinely used intimidation and violence to keep the workers subjugated.”²²¹

²¹⁹ Ibid., 29–30.

²²⁰ Florida State University, “Florida Responds to Human Trafficking,” *Center for the Advancement of Human Rights* (fall 2003): 53.

²²¹ Ibid., 54.

With the testimony of the three freed victims, a federal court sentenced the Ramos brothers to 12 years imprisonment. The assets of the brothers were confiscated because these were determined to be profits of human trafficking. The value of these assets was over 3 million USD.

The report “Florida Responds to Human Trafficking”, by Florida States University’s Center for the Advancement of Human Rights underlines that this NGO views not only females, but also males, as victims of human trafficking in its reporting:

“The oldest, age 43, was the father of six children and lived in a house built of cardboard. A second was 38, and had a wife and six children with whom he lived in a one room straw home. The third was 18 years old, and lived with his wife and infant in his mother’s home. All three eked out a subsistence living as farmhands, earning as little as five or six dollars a day when work was available. None had remained in school beyond the sixth grade. Draining their life savings or borrowing money, each managed to come up with the \$250 required to travel north and be smuggled across the border by a coyote. All three of the men found themselves penniless and stranded in an Arizona border town. Along with some thirty other migrant workers, they were able to sleep in an abandoned trailer home for about a week. Approached by a recruiter, they were packed into a van and driven to Lake Placid, Florida. The van made no stops along the way, and the farm workers were not fed or even allowed to leave the vehicle to relieve themselves. Upon their arrival in Lake Placid, the workers found themselves ‘sold’ to the Ramos brothers, who allegedly paid a thousand dollars for each of them. No contracts were signed. The Ramos brothers merely announced that the recruits owed them \$1000 each in transportation fees, and that they would ‘beat the fuck’ out of any worker who tried to leave without paying back the debt in full.”²²²

Examples of Media Reports

The media surveyed for this analysis has included reports on human trafficking victims of both sexes in the United States (gender-neutral approach) and not just on women. The majority of human trafficking reports on male victims were on adults involved non-sexual labor exploitation. Since the United States Department of States estimates that human trafficking of adult males occurs less frequently than human trafficking of adult women and of children, the conclusion drawn here that media reports are gender-neutral is based on the surveyed media’s ability to correctly pursue reporting on male victims of human trafficking. This conclusion is not based on the frequency of reporting. Furthermore, no reports were detected in which the surveyed media excluded adult males as human trafficking victims based on their gender. If the surveyed media were to have shown a gender bias toward male victims of human trafficking, then one could expect them to portray only women as human trafficking

²²² Ibid., 55.

victims or to wrongly report male human trafficking cases as smuggling or ‘only’ as ‘minor’ labor rights abuses.

In October 2003, the “Arizona Republic” reported that the state had become a hub for human trafficking:

“But a recent case with Arizona ties illustrates the state’s role in the pipeline. The Justice Department last year indicted six people in Buffalo, N.Y., on charges of forced labor, conspiracy and trafficking in human beings. The case involves more than three dozen Mexican men and boys who were recruited in Arizona to work on farms near Buffalo. According to published reports, the men and boys were placed in a van with no seats and windows that could not be opened when transported. Once there, workers could not leave until they paid \$1,000 each for the trip, plus rent and food. The workers say they were virtual prisoners, and some said they were paid as little as \$30 a week for 60 hours of work.”²²³

An analysis of surveyed media reports concerning human trafficking has led to an unexpected finding that is not directly related to the gender-specificity or gender-neutrality of human trafficking law and its implementation in the United States. This is the holding of smuggled persons in so-called ‘drop houses’ or ‘safe houses’ for ransom, threatening family members with the harm or murder of their loved ones if family members do not pay extra money to the smugglers for the release of the smuggled persons. The surveyed media has repeatedly covered the grey area between human trafficking and human smuggling in the United States. This activity is commercial, but is not a form of exploitation that extracts labor from the victims. It is, however, a ‘practice similar to slavery’ because of the forced confinement and inhumane treatment to which the victims are subjected. It also represents ‘abduction’, because the perpetrators essentially remove their cargo from their loved ones and imprison them. Abduction and practices similar to slavery are forms of human trafficking that are included in the UN definition of human trafficking in 2000, but not in US national policy frameworks.

The Indo-Asian News Service published one article on human trafficking of adult males in February 2004. It described a suit brought by Indian welders who were coerced into coming to the US:

“The suit claims that the men were victims of human trafficking and were lured to Louisiana by empty promises of well-paid jobs and then ‘kept against their will at various locations and ... not allowed to leave’. Many of them ‘were reduced to eating out of trash cans and became homeless and destitute’.”²²⁴

²²³ Chris Fiscus, “State a hub for human trafficking,” *The Arizona Republic*, October 11, 2003.

²²⁴ Vasantha Arora, “Indian workers slap slavery charges on US firms,” *Indo-Asian News Service*, February 19, 2004.

Another example of a drop house and ransom incident took place in Los Angeles in 2005:

“Los Angeles police found 148 immigrants held captive in two South Los Angeles houses Wednesday and arrested two suspected smugglers who were allegedly demanding payment for their release. The discoveries are just the latest in a string of safe houses authorities have uncovered over the last two years. Officials say Los Angeles has emerged as a center of the human-smuggling business, with immigrants shipped from Latin America, across the border and to houses in Los Angeles. Often, they are eventually put on airplanes to other parts of the country... Officers arriving at the house found bars on the rear windows and a large awning or canopy screening the back. Police said they noticed a powerful odor when they entered the house and discovered men and women shoulder to shoulder in two locked bedrooms... The house ‘was a hot oven, and these people were just crowded in,’ Lozano said... The immigrants described being held for as long as a month as smugglers, called coyotes, demanded payments of \$3,000 for their release... Residents said they had noticed nothing unusual at the property and were surprised to learn that so many people had been found inside.”²²⁵

This similarly occurred in Tucson, Arizona in 2005:

“Illegal immigrant kidnappings are becoming more common in Tucson, authorities said... [Tucson paramedics] found a man who had jumped out of a window. He told medics he and another man had been kidnapped. The man pointed to a third-floor apartment window where the second victim was waving at medics in an apparent plea for help, [Sergeant Kerry] Fuller said. Both men said they were held for ransom in an apartment, she said. When police went into the apartment, they found the second victim and an intoxicated man, Fuller said, adding three or four kidnappers had fled... Fuller said the man tied sheets and towels to form a makeshift rope and climbed down until the rope ran out... She said the victims had agreed to pay smugglers \$300 each to get them into the United States, but the smugglers decided to up the payment to \$400 each and were holding the immigrants until family members could come up with the cash... Fuller said holding illegal immigrants for ransom is an ‘up-and-coming crime’ in the Tucson area. ‘We’re starting to see a little bit more,’ she said. Russell Ahr, a Phoenix-based ICE spokesman, said such kidnappings are common there and sometimes lead to shootouts between smugglers and ‘rip-off crews.’”²²⁶

Recommendation:

The US definition of human trafficking should be amended to include forced confinement in drop houses as a form of human trafficking and to prosecute perpetrators of this crime under human trafficking policy frameworks.

²²⁵ Claudia Zequeira and Jill Leovy, “148 Immigrants Found Captive in South L.A. Homes,” *Los Angeles Times*, May 5, 2005.

²²⁶ David Teibel and Heide Rowley, “Cops: Migrant uses towel rope to flee smugglers,” *Tucson Citizen*, February 19, 2005.

3.5.2 Geographic Parameter: Internal Trafficking

Internal human trafficking²²⁷ is a recognized component of anti human trafficking policy in the United States of America. However, it has been both emphasized and ignored by the US Government. According to US law, human trafficking does not require a border crossing for it to occur.

The US Department of States highlights internal human trafficking by reminding foreign governments of the importance of combating internal human trafficking in its 2005 Trafficking in Persons Report. The US Department of States criticizes foreign governments for overlooking this aspect of human trafficking:

“Many nations misunderstand this [United Nations] definition [of human trafficking], overlooking internal trafficking or forms of labor trafficking in their national policy frameworks, and often failing to distinguish trafficking from illegal migration. Most often left out of interpretations of this definition is involuntary servitude, a form of trafficking that does not require movement. The TVPA defines ‘severe forms of 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 an act has not attained 18 years of age; or 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. These definitions do not require that a trafficking victim be physically transported from one location to another.”²²⁸

The DoJ has reported accurately that US citizens can be victims of human trafficking in America. It has also described examples of actual cases in which this has occurred. One such case was the United States versus Pipkins:

“Trafficking victims may be United States citizens, legal residents, or visitors. For example, in *United States v. Pipkins* the Department successfully prosecuted 15 pimps for trafficking women and girls, all American citizens, obtaining convictions for involuntary servitude as well as extortion.”²²⁹

Despite the anchoring of internal human trafficking in US law and the awareness of both the Department of States and the DoJ of this form of human trafficking, services and service providers focus on non-citizen victims of human trafficking:

“The funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and may not currently be used to assist U.S. citizen victims; however, U.S. citizen victims have access to other federal crime victim benefits.”²³⁰

²²⁷ For the purposes of this analysis, internal human trafficking refers to the trafficking of a citizen of a given country within that country. In other words, this is trafficking in which the citizenship of the victim is identical to the country in which he or she is trafficked.

²²⁸ US Department of State, *Trafficking in Persons Report* (June 2005), 12.

²²⁹ US Department of Justice, *Report on Activities to Combat Human Trafficking, Fiscal Years 2001–2005*, (February 2006), 9.

²³⁰ US Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 3.

Another indication that the US Government treats internal human trafficking less rigorously than international human trafficking is that its estimates only address international victims. The TVPRA 2003, in Section 112a, included ‘Research on Domestic and International Trafficking in Persons’. However, it did not introduce any concrete initiatives to enhance the protection of internal human trafficking victims. In contrast, the TVPRA 2005 initiated two research projects to increase the Government’s knowledge about domestic trafficking in persons in ‘Title II’ Section 201. This research will be based on available demographic victim data and will review legislative differences in the US Title II of the TVPRA 2005 also initiated grant programs to increase efforts for combating domestic human trafficking in Section 204.²³¹

Furthermore, the US Government Accountability Office (GAO) views the core of US anti trafficking efforts to be rooted in the Department of State, which is responsible for international human trafficking. The GAO published the following diagram in its 2006 evaluation of US anti human trafficking efforts.

Although the DoL had received the most funding and the Department of States the second most (159 vs. 130 million dollars between 2001–2005)²³² for anti human trafficking policies, the Department of States is still the focal point of how the government views its anti human trafficking work. The GAO’s institutional diagram is in



Figure 13: Principal US Government Agencies with Responsibilities for Antitrafficking Programs

Source: United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), introduction.

²³¹ *Trafficking Victims Protection Reauthorization Act of 2005*, Public Law 109–164, 106th Congress (January 10, 2006), Sec. 204.

²³² United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 9.

stark contrast to the one derived earlier in this chapter. The interagency working groups (the ITF and SPOG) share this central position of the Government's efforts in the later diagram.

Future efforts of the US Government are likely place more emphasis on internal trafficking. For example the TVPRA 2008 enhances information and services to domestic victims. Existing programs to provide services and protection to international victims of human trafficking will be expanded to include US citizens and US 'permanent residents':

"The Secretary of Health and Human Services and the Attorney General, in consultation with the Secretary of Labor, shall establish a program to assist United States citizens and aliens lawfully admitted for permanent residence ... who are victims of severe forms of trafficking. In determining the assistance that would be most beneficial for such victims, the Secretary and the Attorney General shall consult with nongovernmental organizations that provide services to victims of severe forms of trafficking in the United States."²³³

This represents a fundamental change in the focus of anti human trafficking legislation in the US It redirects US efforts from pertaining almost exclusively to international human trafficking victims to also addressing the domestic victim population. Furthermore, this Section of the TVPRA 2008 provides funds for a study to identify service gaps between foreign and domestic victims of human trafficking. The Attorney General and the Secretary of Health and Human Services are tasked with submitting a service-gap-study jointly within one year of the enactment of the legislation.²³⁴

One explanation for the belated and less rigorous approach of the US Government to combating internal human trafficking could be that the general vulnerability of nationals to human trafficking and that of non-nationals is asymmetric. Victims' vulnerability is greatest when they lack familiar social networks and legal immigration status.

The following paragraphs will examine how the US Government, US NGOs and the surveyed media have reported on internal human trafficking.

Examples of Government Reporting on Actual Human Trafficking Cases

The DoJ's annual reports on human trafficking clearly identify the nationality of foreign victims and perpetrators. Curiously they omit information on nationality, in cases, which the context suggests deal with persons who are nationals of the US

²³³ Ibid., Sec. 213.

²³⁴ Ibid., 214, 1404f.

Each of the DoJ's annual assessment reports has included cases of human trafficking in which the nationality of the victim was not identified as being foreign. Therefore, it is through deduction that one can conclude that the DoJ has reported on internal human trafficking. However, such cases were reported on much less frequently than cases in which non-citizens were victims. Internal human trafficking has taken place in Nevada, Indiana, Texas, Arizona, North Carolina, Georgia, the District of Columbia and Kansas.

The first case of detected internal human trafficking profiled by the DoJ is the *United States v. Quinton Williams*:

"The defendant, convicted of sex trafficking of children, transporting both a minor and an adult for prostitution, money laundering, and interstate travel in aid of racketeering, was sentenced to 125 months in prison and ordered to pay a \$2,500 fine. As the operator of a prostitution business, the defendant transported the 16-year-old juvenile and adult victims cross-country by car to Indiana, Texas, Arizona, and Nevada, where he supervised their prostitution activities and collected and kept all of their earnings."²³⁵

This was the first prosecution in Nevada under new anti human trafficking laws. A second such human trafficking case reported by the DoJ 2004 Assessment is the *United States v. Flores*, which took place in North Carolina.

"Wilmer Martin Flores was indicted on November 4, 2002 and later pled guilty on September 25, 2003 to charges including conspiracies to transport both a minor and an adult for the purposes of illegal sexual activity. Flores was the purported leader of a group (including two other men and a woman) who traveled interstate with the thirteen-year-old niece of one of the defendants and had the minor child and the female defendant engage in prostitution for money. The three other conspirators were similarly charged and previously pled guilty. The four coconspirators were sentenced to terms of imprisonment of 46 months, 121 months, 180 months, and 235 months."²³⁶

The Report to Congress from Attorney General Alberto R. Gonzales on US Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004 (2004 DoJ Assessment) profiles one single human trafficking case, in which the victim was not clearly a citizen of a foreign country. The origin or the victims is not entirely clear in the 2004 report, yet it appears that the victim was a citizen of US²³⁷

The 2005 Assessment profiles two further human trafficking cases, which appear to deal with domestic victims of human trafficking.

²³⁵ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (June 2003), 33.

²³⁶ *Ibid.*, 35.

²³⁷ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 35.

The first is the *United States v. Sims*, which took place in jury in Georgia.

“Maurice Sims was ‘indicted on six counts, including ... violations of the TVPA ... He had transported a 16 year-old girl from El Dorado, Arkansas to Atlanta, Georgia for purposes of prostitution and en route beat and raped the girl ... On September 20, 2004, Sims was convicted following a jury trial, and on December 15, 2004 he was sentenced to life imprisonment.’”²³⁸

The second is the *United States v. Kaufman*, which took place in Kansas.

“For nearly 20 years, beginning in 1986 and lasting through October 2004, the defendants Arlan and Linda Kaufman engaged in a conspiracy to hold mentally ill residents in involuntary servitude and forced labor in ‘The Kaufman House,’ a residential treatment group home. The defendants forced the victims to perform labor and services for the defendants’ entertainment and benefit, including engaging in nudity and sexually explicit acts. On November 7, 2005, the Kaufmans were convicted by a jury of numerous crimes, including conspiracy, involuntary servitude, forced labor, and multiple health care fraud counts. Arlan Kaufman was sentenced to 30 years of incarceration, and Linda Kaufman was sentenced to seven years of incarceration.”²³⁹

US Government reporting continues to focus primarily on international human trafficking.

Examples of Non-Governmental Reporting

The NGO community in the US reports more thoroughly on internal human trafficking than the US Government. For example, unlike the Government’s reports, US NGOs have analyzed which segments of US national populations are most vulnerable to being trafficked. A victim’s citizenship is irrelevant. They have also criticized the US Government for underemphasizing internal human trafficking. The Coalition Against Trafficking in Women reported on the negative consequences of viewing human trafficking in an international context only:

“Separating international trafficking from domestic trafficking and prostitution can also create the impression that trafficking is an immigration crime rather than a human rights violation. Traffickers and victims of trafficking can be both U.S. citizens and residents, or foreign nationals. Currently, the focus of Federal law enforcement and U.S. policy frameworks appears to be on international trafficking, traffickers and trafficked women.”²⁴⁰

Kevin Bales and Steven Lize of the Croft Institute for International Studies at the University of Mississippi have addressed the irrelevance of a victim’s citizenship re-

²³⁸ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 20.

²³⁹ Ibid.

²⁴⁰ Carol J. Gomez, Donna M. Hughes and Janice G. Raymond, “Sex Trafficking of Women in the United States,” *Coalition Against Trafficking in Women*, March 2001, 25.

garding human trafficking as well. Their reporting has not exaggerated the frequency or scope of internal human trafficking, but rather depicted this form of trafficking to be equally significant to the international version of this crime:

“It is important to note that while most trafficking victims are immigrants without legal status in the U.S., some trafficking victims are immigrants who do possess legal status. More rarely, but no less significantly, U.S. citizens have been known to be trafficked or caught up in forced labor.”²⁴¹

The Florida State University’s Center for the Advancement of Human Rights, in its publication “Florida Responds to Human Trafficking,” identified which segments of the US population are most vulnerable:

“American citizens, often street-children, runaways, or the very poor, may become human trafficking victims as well. Overall, both runaway or ‘thrown away children’ and people attempting to cross international borders are among the most vulnerable to human trafficking ... United States citizens held against their will often include homeless people who are seeking jobs and income and who also are vulnerable to falling into debt because of drug or alcohol addictions.”²⁴²

The Human Rights Center at UC Berkeley in its report “Freedom Denied Forced Labor in California”, published a case study on 57 forced labor operations in California. Among other things, the study placed a figure on the percentage of internal human trafficking victims. This case study showed that US citizens comprised 5.4% of the US human trafficking victim pool between 1998 and 2003:

“Our research identified 57 forced labor operations in almost a dozen cities in California between 1998 and 2003, involving more than 500 individuals from 18 countries. Thailand was the home country of 136 forced labor victims, with 104 and 53 arriving from, respectively, Mexico and Russia. American citizens comprise 5.4% of the total. Victims labored in several economic sectors including prostitution and sex services (47.4%), domestic service (33.3%), mail order brides (5.3%), sweatshops (5.3%), and agriculture (1.8%).”²⁴³

The Florida State University Center for the Advancement of Human Rights in its report “Florida Responds to Human Trafficking” has communicated why internal human trafficking qualifies as a form thereof as defined by the TVPA 2000. It did so by depicting a generic case and relating this to the anti human trafficking framework created by the US Government. This depiction clarifies why internal and international human trafficking are both one and the same crime. It also leaves the

²⁴¹ Kevin Blales and Steven Lize, “Trafficking in Persons in the United States,” *Croft Institute for International Studies, University of Mississippi*, November 2005, 69.

²⁴² Florida State University, “Florida Responds to Human Trafficking,” *Center for the Advancement of Human Rights* (fall 2003): 18, 86.

²⁴³ UC Berkeley, “Freedom Denied Forced Labor in California,” *Human Rights Center*, February 2005, 1.

reader with no doubt as to the irrelevance of a victim's citizenship regarding human trafficking:

"Julie was exploited in the commercial sex industry and transported across state lines and is a victim of trafficking, even though she is a United States citizen. According to the TVPA, trafficking includes transporting a person, regardless of where they came from. When the pimp recruited Julie to become a prostitute and travel to provide sex, Julie was being recruited for the purpose of committing a commercial sex act... Julie meets the criterion for subsection (a) of the TVPA definition of a victim of a severe form of trafficking."²⁴⁴

Examples of Media Reports

Due to the sparse coverage of internal human trafficking by the surveyed media, no clear conclusion can be drawn as to the approach the media takes concerning internal vs. international human trafficking. Examples were detected in which the surveyed media highlighted internal human trafficking and also examples, where readers might get the impression that one must be a non-citizen of the US to be a victim of human trafficking in America.

The Associated Press has highlighted internal human trafficking. In its article of August 20, 2006, it reported a statement by Carole Angel, Staff Attorney with the Immigrant Women Program. This program is part of the women's rights advocacy group called Legal Momentum in Washington. Angle's statement addressed the fact that in America human traffickers not only victimize immigrants, implying they also victimize nationals of the US:

"The raids should not give the impression that trafficking is limited to immigrants, who are often enticed into coming to America for legitimate jobs but then forced to work in brothels, sweatshops and restaurants to pay off debts of up to \$30,000 to their traffickers. 'There are so many faces on this,' she said. 'It happens in rural communities, big cities. It spans all education levels, different countries, different races.'"²⁴⁵

However, examples of the surveyed media also demonstrated that it often neglected to mention internal human trafficking in its reporting:

"Trafficking is a stubborn problem and a staggering one worldwide, affecting an estimated 600,000 to 800,000 victims a year. Federal officials say 14,500 to 17,500 of them are trafficked to the United States, where the myriad forms of modern-day slavery present an elusive target for those trying to eradicate it. Victims have come from at least 50 countries in almost every part of the world and are trafficked to virtually every state – to clandestine fac-

²⁴⁴ Florida State University, "Florida Responds to Human Trafficking," *Center for the Advancement of Human Rights* (fall 2003): 96.

²⁴⁵ Larry Neumeister, "Experts: Sex Slavery Widespread in US," *Associated Press*, August 20, 2006.

tories, restaurants, farms, massage parlors, even private homes where women and girls are kept in servitude.”²⁴⁶

The estimates referred to in the above article published by the Guardian reference the scope of international victims only (these are the figures reported by the US States Department on international human trafficking). As explored earlier in this chapter, this estimate does not include domestic victims of human trafficking. This example from the media surveyed for this analysis shows how there is interlinkage between the US Governments reporting on human trafficking and the resonance and foci that the issue receives in the press.

3.5.3 *Exploitation Parameters: Forced Non-Sexual Labor and Trafficking in Human Organs*

Forced non-sexual labor and trafficking in human organs were identified as ‘problematic’ exploitation parameters of anti human trafficking in Chapter One. These issues will be examined in detail at the national level for the United States of America in this subchapter.

Forced Non-Sexual Labor

Since the TVPA 2000 forced non-sexual labor has been a part of anti human trafficking frameworks in the US However with the exception of the TVPRA 2005, sex trafficking has dominated these frameworks. The TVPA 2000 contains an understanding of human trafficking which is primarily based on the idea that human trafficking is a modern form of slavery, including forced sexual and non-sexual labor: “Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today.”²⁴⁷ However, the TVPA 2000 places particular emphasis on forced sexual exploitation and the role of prostitution in human trafficking for forced sexual services: “The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services.”²⁴⁸ Despite the TVPA 2000’s emphasis on forced sexual services, it specifies

²⁴⁶ David Crary, “Groups Targets Human Trafficking in U.S.,” *The Guardian*, Saturday October 29, 2005.

²⁴⁷ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec 102.

²⁴⁸ *Ibid.*

that human trafficking is not exclusive to this: “Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.”²⁴⁹ The TVPA 2000 expanded the definition in Chapter 77 of Title 18, United States law, concerning forced labor “to reach the more insidious forms of coercion occurring in contemporary times, thus enabling the Section [of US law] to come to the aid of more victims and to bring more cases than allowed under prior laws.”²⁵⁰

The TVPRA 2003 extended the US Government’s responsibility regarding forced labor. In Section Three, it legally bound the US Government to terminate ‘certain’ grants, contracts and cooperative agreements with partners who employed forced labor. The wording of the TVPRA 2003, however, left two loopholes. It does not apply to all grants, contract and cooperative arrangements, but only to ‘certain’ ones. A second loophole is that if US contract partners employ forced labor in other projects, but not in those with the US Government, then the US Government could circumvent the TVPRA 2003 by opting not to terminate the arrangement.

Although fully acknowledging that combating human trafficking is not the same as acting to stop prostitution, the TVPRA 2003 subordinates anti human trafficking efforts to anti prostitution efforts.

“The TVPRA 2003 added the provision that no [anti human trafficking] funds ... may be used to promote, support, or advocate the legalization or practice of prostitution. In addition, no funds made available to carry out the TVPA, as amended [in 2003], may be used to implement any program that targets victims of severe forms of trafficking through any organization that has not stated in a grant application or agreement that it does not promote, support, or advocate the legalization or practice of prostitution. National Security Presidential Directive 22, signed on December 16, 2002, states that U.S. policy opposes prostitution and prostitution-related activities, such as pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons. The U.S. Government’s position is that these activities should not be regulated as a legitimate form of work for any human being.”²⁵¹

Correlation is not the same as causality. For example, a significant number of human trafficking victims have indeed been detected in the US agricultural sector. As in the case of legal, voluntary prostitution, there is no clear evidence that voluntary agri-

²⁴⁹ Ibid.

²⁵⁰ US Department of Justice, Civil Rights Division, “New Legislation,” US Department of Justice <http://www.usdoj.gov/crt/crim/traffickingsummary.html> (accessed October 14, 2007).

²⁵¹ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 23.

cultural work promotes human trafficking. It is unclear why the US Government would prevent NGOs from continuing the fight against virtual slavery due to their stance on voluntary prostitution. There is no clear evidence that voluntary, legal prostitution promotes human trafficking. This remains an assumption of the US Government, as reported by its Department of State:

“The 2005 Trafficking in Persons Report asserts that legalized or tolerated prostitution nearly always increases the number of women and children trafficked into commercial sex slavery, but does not cite any supporting evidence. However, apart from a 2005 European Parliament sponsored study on the link between national policy frameworks on prostitution and the trafficking of women and children, we found few studies that comprehensively addressed this issue. In addition, the State Inspector General report noted that some embassies and academics questioned the credentials of the organizations and findings of the research that the Trafficking Office funded.”²⁵²

The anti prostitution component of US policy has been hammered into its anti human trafficking framework since the TVPRA 2003. It can be considered the fourth ‘P’ in US Policy: prevention, protection, prosecution and *anti-prostitution*. This position has been echoed by the US DoJ: “Moreover, as a matter of policy, the US Government opposes prostitution and any related activities as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing.”²⁵³

Yet the TVPRA 2005 focused on combating human trafficking in forced labor and child labor in foreign countries, not in the United States. Section 105, ‘Additional Activities to Monitor and Combat Forced Labor and Child Labor’, maps out tools to decrease these types of labor internationally. They include developing a list of goods that are believed to be produced by human trafficking victims abroad. Within the context of post-conflict settings and humanitarian emergencies, the TVPRA 2005 determined a need to protect easily exploitable populations abroad from “being trafficked for sexual or labor exploitation.”²⁵⁴ The US Government identified the need for

“further integrated programs and strategies at the United States Agency for International Development, the Department of State, and the Department of Defense to combat human trafficking, including through protection and prevention methodologies, in post-conflict environments and during humanitarian emergencies.”²⁵⁵

²⁵² *Ibid.*, 25.

²⁵³ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003), 1.

²⁵⁴ *Trafficking Victims Protection Reauthorization Act of 2005*, Public Law 109–164, 106th Congress (January 10, 2006), Sec. 2.

²⁵⁵ *Ibid.*

Lastly, the TVPRA 2005 addressed the role of peacekeepers in the sexual and non-sexual exploitation of labor. It introduced measures to reduce the demand produced by peacekeepers deployed abroad for these forced services.²⁵⁶ These measures address international human trafficking issues, but not internal human trafficking in the United States.

The TVPRA 2008 dropped legislation that would have turned the focus of US anti human trafficking frameworks back to sex trafficking. In a draft version of the law from February 2007, it contained a new Section that would have amended Title 18 of US Code: aggravated sex trafficking.²⁵⁷ This would have broadened the US anti human trafficking focus on sex trafficking and other forms of ‘aggravated’ sexual acts.²⁵⁸ The omitted paragraph to the TVPRA 2008 would have also amend the Immigration and Nationality Act to include a paragraph on ‘Aliens in Prostitution’. Accordingly:

“Whoever, for the purposes of prostitution or for any other sexual activity for which any person can be charged with a criminal offense... knowingly imports or attempts to import any alien; or . . . knowing or in reckless disregard of the fact that an individual is an alien who lacks lawful authority to come to, enter, or reside in the United States, knowingly holds, keeps, maintains, supports, employs, or harbors the individual in any place in the United States, including any building or any means of transportation, or attempts to do so, shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.”²⁵⁹

This legislation would have blurred the definition between virtual sexual slavery and voluntary prostitution.

Recommendation:

The US Government should separate its anti human trafficking efforts from its doctrine against legal, voluntary prostitution, since these are two fundamentally different issues.

Examples of Government Reporting on Actual Human Trafficking Cases

Government reporting on human trafficking has included many cases of forced non-sexual labor. For example, the DoJ Assessment 2004 profiled a human trafficking case in New Hampshire, *United States v. Bradley and O’Dell*, in which Jamaicans

²⁵⁶ *Ibid.*, Sec. 104.

²⁵⁷ US Code, *The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007*, H. R. 3887, 110th Congress, (December 5, 2007), Sec 103, <http://thomas.loc.gov/cgi-bin/query/C?c110:./temp/~c110H5712u> (accessed February 4, 2008), Sec. 221, 2429.

²⁵⁸ *Ibid.*, Sec. 221, 2430.

²⁵⁹ *Ibid.*, 223.

were trafficked for non-sexual labor in tree cutting. The victims were housed in a shed under miserable conditions:

“Bradley and O’Dell were convicted of conspiracy to commit forced labor, forced labor, trafficking for the purpose of forced labor, and document servitude for forcing two of these men to work. The convictions were the culmination of a seventeen-month investigation by the Federal Bureau of Investigation, the Diplomatic Security Service and the Litchfield Police Department and represent the second convictions at trial of violations of the TVPA’s forced labor statute, 18 U.S.C. § 1589.”²⁶⁰

The DoJ Assessment for fiscal year 2005 also featured a human trafficking case in non-sexual labor. In the *United States v. Zavala and Ibanez*, Peruvian immigrants were smuggled to the US illegally and then trafficked for their labor in New York.

“On November 5, 2004, defendants Mariluz Zavala and Jorge Ibanez pled guilty to conspiracy to commit forced labor, document servitude, and recruiting, harboring, transporting, and housing undocumented workers; engaging in extortionate credit transactions; and transferring false alien registration cards. Between June 1, 1999, and June 21, 2004, Zavala and Ibanez orchestrated a scheme to illegally obtain visas for Peruvian aliens seeking to come into the United States. The defendants charged the aliens a smuggling fee ranging from \$6,000 to \$13,000. By confiscating their passports and threatening to turn them over to authorities, the defendants compelled the aliens to perform work for them and other employers. The defendants kept most of their paychecks, leaving the aliens with approximately \$50 or less per week on which to live and support their families. More than 60 Peruvian illegal aliens, including 13 children, who were living in cramped and squalid conditions, were granted continued presence and are receiving services through a non-governmental organization.”²⁶¹

The assets of the human traffickers were confiscated in this case. These were a residence and bank accounts valued in total at circa 200,000 US dollars. The perpetrators, through exploiting their victims’ labor, generated these assets. On November 9, 2005, one of the perpetrators, Zavala, was sentenced to 15 years of incarceration.

Examples of Non-Governmental Reporting

No cases were detected in which reporting of US NGOs completely neglected or even under emphasized the issue of non-sexual forced labor. Florida States University’s Center for the Advancement of Human Rights addresses the relationship between historical, institutional slavery and modern day slavery or human trafficking. It offers its readers a well-rounded impression of what human trafficking encompasses:

²⁶⁰ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in 2004* (June 2004), 29–30.

²⁶¹ US Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005* (June 2006), 19–20.

“Slavery involves more than labor without compensation. Modern-day slavery means controlling a person’s life through coercion, whether that coercion is physical, psychological, or cultural. Slavery includes sexual servitude, domestic servitude, and debt bondage because the use of coercion is implicit in the definition of these acts. In addition, the purposes of human trafficking are inherently tied to slavery. Whether traffickers control the person for sex, pornography, labor, services, servitude, or their bodily organs, the victims are exploited as slaves.”

A second example can be found on the Internet site of the coalition to abolish slavery and trafficking (CAST). It contains a page on ‘human trafficking facts.’ Here CAST explains human trafficking to be:

“The recruitment and transportation of persons within or across boundaries by force, fraud, or deception for the purpose of exploiting them economically. Trafficked people most commonly work in sweatshops, restaurants, on farms, in manufacturing, prostitution and as private domestic workers.”²⁶²

Examples of Media Reports

The surveyed media has reported on human trafficking for non-sexual forced labor; it has not only focused on sexual exploitation. In July 2006, the *Christian Science Monitor* reported problems associated with illegal immigration. In this article, human trafficking was featured in both its facets of sexual and non-sexual exploitation:

“Iowa, Maine, Michigan, Mississippi, and Virginia have made human trafficking a felony and, in four of those states, increased penalties for employers who might force them into sweatshops or prostitution. Those are the exceptions, however, says Jonathan Blazer, an attorney for the National Immigration Law Center, an advocacy group for low-income immigrants. ‘The state bills, almost all of which seek to ramp up penalties against employers for hiring undocumented workers, fail to address a fundamental problem: As long as employers know they will not be liable for exploiting workers by violating wage, hour, and safety laws, they continue to have an economic incentive to hire and take advantage of undocumented workers who are more hesitant to assert their rights,’ he says. ‘Rather than adding a muscular veneer to employer sanctions, legislators should focus on enforcing and strengthening work-protection laws as a way to combat unscrupulous employers.’”²⁶³

In February 2006, Fox 30 Online also featured an article on human trafficking in Florida. It concentrated on both forms of human trafficking, including non-sexual labor exploitation:

“Traffickers use torture, threats and brainwashing to sell women, men and children into domestic servitude, for sweat shop labor and for sex. ‘This is one of the most devastating

²⁶² Under US law, human trafficking does not include the trafficking in human organs. For more information of CAST, see: <http://www.castla.org/index.html>.

²⁶³ Daniel B. Wood, “States target employers of illegal migrants,” *Christian Science Monitor*, July 11, 2006.

crimes where people are trafficking in human misery,' says Dr. Carol Morgan with the Law Enforcement Academy.²⁶⁴

In October 2005, the Guardian reported on human trafficking in the US dubbing forced sweatshop labor and forced non-sexual labor as 'American style human trafficking':

"Florescia Molina's personal hellhole was a dressmaking shop on the outskirts of Los Angeles. She worked there up to 17 hours a day, seven days a week, and lived there, too, without the option of showering or washing her clothes. Other victims of American-style human trafficking have had very different venues for ordeals just as bad or worse – brothels in San Francisco, bars in New Jersey, slave-labor farm camps in Florida, a small-town tree-cutting business owned by a New Hampshire couple."²⁶⁵

Reporting on human trafficking in the surveyed press concerning the United States is not isolated to sexual exploitation. Non-sexual exploitation is also covered.

Trafficking in Human Organs

US anti human trafficking laws do not include trafficking in human organs. This type of human trafficking is, however, included in the UN 2000 Anti Human Trafficking Protocol and therefore should be integrated into US policy frameworks. Since trafficking in human organs does occur globally and it can be deduced that the US represents no exception to this global form of crime, the US should prosecute this type of human trafficking with the same rigor as other types of the crime. Victims who survive organ trafficking should be entitled to the same benefits.

Recommendation:

United States federal law should include trafficking in human organs in its definition of human trafficking.

Examples of Government Reporting on Actual Human Trafficking Cases

Since the US does not define trafficking in human organs as a form of human trafficking, the government does not profile any of these cases in its anti human trafficking publications.

²⁶⁴ WAWS Fox News, "High 'human trafficking' rate in Florida," Fox 30 Online, February 20, 2006, http://www.fox30online.com/news/local/story.aspx?content_id=1FC31A35-712C-4D52-852E-F8B7CAD6DEAE (accessed February 22, 2006).

²⁶⁵ David Crary, "Groups Targets Human Trafficking in U.S.," *Guardian Unlimited*, October 29, 2005.

Examples of Non-Governmental Reporting

There is very little reporting by anti human trafficking NGOs on the issue of trafficking in human organs. One 2004 report by the Center for Strategic and International Studies in Washington D.C. addressed this issue in a publication it prepared on human trafficking. It, however, questions the prevalence of trafficking in human organs in the US-Mexico context.

“Since the mid-1990s there have been speculative reports and rumors of organ trafficking in both Mexico and along the border. However, unconfirmed allegations aside, there is very little concrete evidence of organ trafficking in the U.S.- Mexican context. Indeed, Mexican federal investigators eventually dropped their investigation of alleged organ trafficking in the murders of young women in the Mexican border city of Ciudad Juárez, Chihuahua, when their sole informant recanted his claims that organ trafficking was involved in the murders. Thus, much more research is needed to confirm or refute the prevalence of organ trafficking in Mexico and the border region.”²⁶⁶

The issue of human trafficking in organs could be addressed with more vigor by civil society if US trafficking laws were revised and funding provided for this type of work.

Examples of Media Reports

Reporting on trafficking in organs in the US hardly exists in the surveyed media. The high profile cases in the media concerning the murdered women from Juárez touched on this issue. Yet no clear tie was made between the sale of organs and human trafficking:

“Two Juárez men living in the United States as undocumented immigrants are now accused of the rape and murder of a 17-year-old high-school student kidnapped in 2001, and are suspected in 16 other sexual murders of Juárez women in the past six years, the Chihuahua state attorney general said Thursday in Juárez. During the years, various theories have attributed many of the murders to the drug cartels, large gangs of men and even international organ traffickers.”²⁶⁷

Again, there is a correlation between an absence of government recognition for organ trafficking as a form of human trafficking and low activity of the surveyed media on reporting this issue. This correlation does not necessitate causality, yet it gives reason for the US Government to reexamine its incomplete (as compared to the UN) definition on human trafficking.

²⁶⁶ Shirk, David and Alexandra Webber, “Slavery Without Borders: Human trafficking in the U.S.-Mexican context,” In *Hemisphere Focus* 7, no. 5, Center for Strategic and International Studies (January 23, 2004).

²⁶⁷ Louie Gilot, “Deported suspect is charged in teen’s slaying,” *El Paso Times*, September 8, 2006, http://www.elpasotimes.com/news/ci_4303180 (accessed September 16, 2006).

3.5.4 *Victims Protection Parameter: Victim Access to Legal Residence*

The TVPA 2000 offers victims of human trafficking the option of residency when they cooperate with authorities to prosecute human trafficking perpetrators.²⁶⁸ It does not guarantee human trafficking victims the right to reside in the US. The 2000 law created the T-Visa and conceptualized the U-Visa especially for victims of human trafficking. With the TVPA 2000 and its subsequent revisions, the US Government aims to protect victims, prosecute perpetrators and prevent human trafficking. The maximum number of T-Visas that may be issued in a given fiscal year was limited to 5,000. This quota only applies to victims and not to the nuclear family with whom they may be allowed to reunite in the US.²⁶⁹ Non-citizen victims of human trafficking who hold a T-Visa are legally allowed to work in the US.²⁷⁰ However, the Attorney General has the jurisdiction to remove victims of human trafficking from the US if the conduct of the victim following his or her entry to the US is unlawful.²⁷¹ In fiscal year 2005, the DHS approved 122 T-Visas, a small fraction of the visas available.²⁷² In fiscal year 2004, the DHS granted 136 such visas.²⁷³ In the prior year, 2003, the DHS approved 297 victims of human trafficking T-Visa.²⁷⁴ In 2002, 172 victims of human trafficking were granted T non-immigrant status in the United States.²⁷⁵ 2002 was the first year in which data is available for issued T-Visas.

The revisions to US immigration law that were introduced by the TVPA 2000 allow victims of human trafficking who have been in the country legally for at least three years to transform their temporary immigration status to permanent status:

“If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States ... has been physically present in the United States for a continuous period of at least 3 years

²⁶⁸ Minor victims of human trafficking are exempt from the requirement that victims must cooperate with authorities in the prosecution of traffickers in order to receive a residence permit.

²⁶⁹ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec 107.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*, Sec 111.

²⁷² US Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005* (June 2006), 12.

²⁷³ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2005* (September 2006), 1.

²⁷⁴ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 21.

²⁷⁵ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003), 9.

since the date of admission as a nonimmigrant . . . has, throughout such period, been a person of good moral character, and has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States, the Attorney General may adjust the status of the alien (and any person admitted under that section as the spouse, parent, or child of the alien) to that of an alien lawfully admitted for permanent residence.²⁷⁶

With the TVPA 2000, the US Government recognized the particular vulnerability of immigrants who become victims of human trafficking and, since 2000, the US Government has the legal ability to provide immigrant victims of human trafficking with protection in the form of temporary or permanent residency:

“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. . . Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.”²⁷⁷

Indeed the TVPA 2000 considers the additional challenges that irregular immigrant victims face in seeking justice and escaping modern day slavery:

“Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”²⁷⁸

The TVPA 2000 reformed the Immigration and Nationality Act to allow human trafficking victims access to visas based on their cooperation with national authorities to prosecute perpetrators. The conditions of non-immigrant status were also amended in section 214 of the Immigration and Nationality Act, so that persons who have been convicted of, or there is substantial reason to believe that the persons in question have committed human trafficking (as defined by US law) are barred from entering the United States of America.²⁷⁹

Despite the comprehensive understanding the US Government has concerning the hardship that irregular human trafficking victims face, it still insists on the cooperation of adult victims in order to certify him or her and hence qualify him or her for a

²⁷⁶ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec 107.

²⁷⁷ *Ibid.*, Sec 102.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*, Sec 107.

residence permit. Resultantly, the number of T-Visas issued annually is lower than the number of identified (yet not certified) victims of human trafficking; the number of T-Visas issued annually also remains far below the number available to human trafficking victims.

The TVPRA 2008 represents an improvement in the use of US residence permits as a policy tool to combat human trafficking. It, however, stops short of anchoring the right of the victims to continue to reside in the US independent of their role in prosecuting offenders into national policies. The legislation gives the Secretary of Homeland Security more discretionary authority in deciding if victims of human trafficking should be repatriated to their countries of origin and may allow for a longer than 4-year period of stay for so-called ‘nonimmigrant crime victims’ based on exceptional circumstances. This could allow for an increased number of human trafficking victims to remain in the US beyond the period of police cooperation. The US Government could extend so-called ‘exceptional circumstances’ to victims who have launched a civil suit, but is not limited to this circumstance.²⁸⁰ These regulations fall under the subheadings: ‘Protecting victims against retaliation.’

The following examples all represent the granting of legal residence permits to human trafficking victims as an optional policy tool, not as a right of the victim.

Recommendation:

US anti human trafficking policy frameworks should make the issue of T-Visas to human trafficking victims independent of the victims’ decision to cooperate (or not) with authorities who are prosecuting human trafficking perpetrators. This should apply to both child and adult victims.

Examples of Government Reporting on Actual Human Trafficking Cases

Gathering evidence to prosecute human traffickers is extremely difficult, because of the clandestine nature of the crime. Undoubtedly, the testimony of human trafficking victims is of importance in order to prosecute human trafficking cases. However, the US Government does not report on how many victims were granted residency per case, or if the prosecution of the perpetrator in a given case was specifically dependent on victims’ testimony. The TVPRA 2003 further anchored victim-cooperation in prosecuting human traffickers as a requirement for adult victims to qualify for a residence permit into anti human trafficking law.

²⁸⁰ Ibid., Sec 201.

“The TVPRA [2003] also codified the requirement that victims cooperate with law enforcement. Specifically, the Department of Health and Human Services, as part of its certification process, may now consider statements from state and local law enforcement that the victim has ‘been willing to assist in the investigation and prosecution of state and local crimes’ in connection with the victim’s application for a T-Visa. The TVPRA [2003] also relieved victims under the age of 18 from having to show a willingness to assist in the investigation in order to be eligible for the T-Visa.”²⁸¹

This requirement can take various forms and is not restricted to court testimony.

Examples of Non-Governmental Reporting

Non-governmental reporting criticizes the Government’s requirement for human trafficking victims to cooperate in prosecuting the perpetrators who have exploited the victim in the most dehumanizing ways. The University of California Berkeley’s Human Rights Center published a report in February 2005 called: *Freedom Denied- Forced Labor in California*. This report concludes that the T-Visa is a progressive tool for combating human trafficking. Yet it states that the requirement placed on the victim of cooperating with the Government in prosecuting the perpetrators has created a policy gap in combating human trafficking.

The United States places its ability to control immigration through repatriation of ‘undesirable’ human trafficking victims (i.e., those that are not ‘useful’ in the government’s efforts to combating human trafficking) above the need to protect human trafficking victims.

“Still, gaps in the law remain. For one thing, it is up to the discretion of law enforcement officials to decide whether the victims have cooperated sufficiently to be certified for purposes of eligibility for immigration relief. Yet, in many cases, survivors are too terrified of their captors to collaborate with the authorities, especially soon after they escape or are rescued. In the case of a prostitution ring in San Diego broken up by federal authorities in January of 2001, all but one of 26 women and girls trafficked in from Mexico were arrested and deported because they felt too frightened to cooperate, said an attorney involved with the case.”²⁸²

Another reason that non-governmental organizations view current T-Visa regulations as faulty is that victim protection and residency are not guaranteed to extend beyond the period for which the victim is useful to the Government in prosecuting human traffickers. Victims fear retaliation of persons involved in their exploitation.

²⁸¹ US Department of Justice, *Report on Activities to Combat Human Trafficking, Fiscal Years 2001–2005*, (February 2006), 20.

²⁸² UC Berkeley, “Freedom Denied Forced Labor in California,” Human Rights Center, February 2005, 5.

Evidence available in a given case is not usually adequate to put all actors involved in victim exploitation on trial or to sentence them. On the contrary, the perpetrators involved at various levels of recruitment, transport, harboring and exploitation may be motivated to threaten, harm or murder victims who cooperate with the Government and or their families long after a given trial has been concluded.

Hence, the incentive to cooperate with government authorities in prosecuting human traffickers remains low when compared with the disincentive human traffickers confront their victims with by means of threats. The aforementioned example shows that in one specific case the disincentive was greater in 25 out of 26 cases. Additionally, other NGOs criticize the failure of national authorities to correctly identify human trafficking victims, their aim to remove undocumented immigrants and the lengthy, multi-government-office process of being certified as a victim.²⁸³

Examples of Media Reports

The surveyed media reports have frequently addressed the issue of residence as a policy measure for foreign human trafficking victims. The reports indicate that human trafficking and controlling immigration have been competing policy areas in which controlling immigration is given greater priority.

“Anna Rodriguez, founder of the Florida Coalition Against Human Trafficking, said people are reluctant to publicly support her efforts because of fear that it might be construed as favoring amnesty for immigrants . . . Rodriguez is particularly bothered at the lack of support from the area’s Hispanic community and from the Southwest Florida Hispanic Chamber of Commerce.”²⁸⁴

The surveyed media has also covered cases in which human trafficking victims face removal despite their having to face severe hardship as a result.

“No one disputes that at 15, Ana Cristibel Sandoval was a victim of abuse and human trafficking, first by her family in her native Honduras, then by smugglers who drugged, raped and held her captive in a house in Phoenix in 2002. But in the four years since the police found her there, one arm of the federal government has treated her as a traumatized teenager in need of care and refuge, while another arm keeps trying to deport her. As immigration enforcement grows more aggressive, the case of Ms. Sandoval, now 19 and living in Freeport, N.Y., with her infant son, is in some ways typical of the government’s conflict over how to handle the 5,000 unaccompanied minors apprehended in the United States each year. But it took on unusual drama on Thursday, as the larger tug of war between the Department of

²⁸³ Free the Slaves Washington and Human Rights Center University of California, Berkeley, “Hidden Slaves: Forced labor in the United States,” September 2004, 23.

²⁸⁴ Amy Bennett Williams and Jeff Cull. “Immigration flap muddles human trafficking struggle.” 1 September 2006. News-Press.

Health and Human Services and the Department of Homeland Security played out in a windowless immigration office in Lower Manhattan. After Ms. Sandoval, carrying her baby, reported to the office at 10 a.m. for what officials had called ‘a redetermination of her custody conditions,’ immigration officers insisted that they had to send her that same day to immigration detention in Phoenix.”²⁸⁵

Undocumented immigration in the United States has increased in the 21st century. Each of its 50 States as well as the Federal Government are struggling with the issue of better controlling immigration. A multitude of draft laws have avoided proposing a general amnesty, because the majority of the US population opposes the idea. The pressure the US Government is under to better control border crossings is not isolated from other policy areas such as anti human trafficking policy.

“In January 2005, federal agents raided two apartments owned by [Luisa] Medrano, of Cliffside Park [USA]. Eleven of the illegal immigrants arrested in the raids told investigators that Medrano did not arrange their smuggling and that the women voluntarily lived and worked together. They were then deported. Ten others, including girls as young as 14, were declared to be victims of human trafficking and given special visas to remain. They told investigators Medrano lured them to the U.S. with the promise of waitress jobs but forced them to live together and work as hostesses six days a week at her bars until they repaid thousands of dollars in smuggling fees.”²⁸⁶

The correlation between pressure to reduce immigration and the low number of human trafficking victims granted T-Visas cannot be determined to be a causal relationship. Yet articles like the one above lead one to question if authorities may be disinclined to identify all human trafficking victims they detect, when they have identified ‘enough’ victims to secure the prosecution of traffickers.

3.5.5 *Criminalization and Punishment Parameters: Links in the Trafficking Chain Including the Consumer and the Commercial Nature of the Crime*

Criminalization of Links in the Trafficking Chain Including the Consumer

Punishing persons involved at all stages of the human trafficking process is a clear aim of United States anti human trafficking law. From the beginning of the process –

²⁸⁵ Nina Bernstein, “For a smuggling victim, a precarious quest for refuge,” *New York Times*, September 30, 2006.

²⁸⁶ Associated Press, “Judge Orders Back 11 Deported Hondurans,” *San Francisco Gate*, June 14, 2006, (accessed <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2006/06/14/national/a100836D67.DTL> October 14, 2007).

such as recruitment and transport to the last link, which is obtaining a victim for the ‘consumption’ of the victim’s services – all persons involved are considered to be human traffickers under US law.

“Severe forms of trafficking in persons means 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 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.”²⁸⁷

Additionally, the TVPRA 2005 specifically addressed the last link in the human trafficking chain, the consumer, but only for the purpose of sexual exploitation. It issued a study to examine the activities of persons who purchase the sexual services of human trafficking victims:

“The second study shall address sex trafficking and unlawful commercial sex acts in the United States and shall include, but need not be limited to the estimated number and demographic characteristics of persons engaged in sex trafficking and commercial sex acts, including purchasers of commercial sex acts.”²⁸⁸

There are two key controversies on to what extent the consumer should be held accountable for human trafficking. One is to what extent anti human trafficking frameworks should differentiate between consumers who knowingly purchase victims services versus those who unknowingly do so. Because the consumer is not necessarily involved in the other links of the trafficking chain, he or she might not know that the victim is a virtual slave. The consumer may also not directly use force, fraud or coercion to obtain victims’ services. The consumer often ‘only’ pays another person, who ensures that the victim will provide the customer with forced services. For example, a consumer might utilize the sexual services of a human trafficking victim, who is coerced by a pimp or trafficker.

A second difficulty of including the consumer as part of the human trafficking chain concerns the purchase of goods produced by slave labor. In this case, it is important that only those who do this knowingly be punished. For example, those who buy Florida orange juice in a California grocery store, unaware that some of those oranges may have been harvested through forced labor should not be considered as human traffickers.

²⁸⁷ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec 103.

²⁸⁸ *Trafficking Victims Protection Reauthorization Act of 2005*, Public Law 109–164, 106th Congress (January 10, 2006), Sec. 201.

Recommendation:

The US definition of human trafficking should make clearer that only those persons in full knowledge of the victims' circumstances who purchase the services of human trafficking victims directly, are an integral part of the human trafficking chain.

Examples of Government Reporting on Actual Human Trafficking Cases

The US Government has reported on cases of human trafficking in which the person constituting the last link in the human trafficking chain was prosecuted as a human trafficker. This is isolated to two types of human trafficking: domestic servitude and sex tourism concerning children (this later case was pursued under the PROTECT Act).

In cases of domestic servitude, the consumer uses force directly on the victim to secure services; there is no ambiguity as to the consumers 'knowledge' of the victim's situation. A second distinguishing characteristic of the consumer in domestic servitude situations is that the consumption of services takes place over a prolonged period of time. These are not cases in which a consumer temporarily buys the services of a victim (e.g. temporary sexual services), without exercising force on the victim directly.

In the *United States v. Satia and Nanji*, the US held the consumers of human trafficking accountable for this crime. This was a case of domestic servitude, in which a teenager from Cameroon was victimized:

"Two defendants convicted of holding a teenage Cameroonian girl in involuntary servitude and illegally harboring her in their home to use her as their domestic servant were each sentenced to 108 months in prison and ordered to pay \$105,306.64 restitution to the victim. The defendants were convicted of involuntary servitude, conspiracy, and harboring the victim for their own financial benefit. The defendants recruited the 14-year-old female Cameroonian national to the United States with false promises of attending a U.S. school. Once the young girl arrived here, she was isolated in the defendants' home and forced through threats, sexual assaults, and physical abuse to work for them for several years as their personal servant."²⁹⁰

A second example of domestic servitude is the *United States v. Elizabeth and James Jackson*, which took place in California. Again, the final link in the human trafficking chain, the consumer, was held accountable for this crime:

"The defendants were charged with a forced labor conspiracy to compel a former Filipina school teacher to work as their domestic servant. The husband, a former Sony executive, and

²⁹⁰ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003), 16.

his wife fraudulently obtained a visa for the victim, who was confined to their home and subjected to verbal and physical abuse, humiliation, debt bondage, and other forms of punishment to compel her continued service. They also confiscated her passport and return airline ticket. The victim had previously filed a civil suit in which she was awarded \$825,000.²⁹¹

A third example of US Government reporting on domestic servitude is the United States v. Calimlim, et al., which took place in Wisconsin:

“Two affluent doctors and their son in Milwaukee, Wisconsin were convicted in a forced labor conspiracy for coercing for more than 20 years a young Filipina national into providing domestic labor and services for them. The defendants allegedly told the victim that she would be imprisoned if she left their service and used a variety of other coercive means to break her will, including forbidding her from having social contacts, monitoring and limiting her mail, forbidding her use of the telephone, and requiring her to hide in her basement room when guests were in the house. The parents were sentenced to 48 months in prison and ordered to pay over \$900,000 in back wages to the victim for her 15-hour work days over those two decades. Their son was sentenced to 120 days of home confinement, three years of supervised release, and ordered to pay a \$5,000 fine.”²⁹²

The US Government has also held the consumer of the services of under-aged human trafficking victims accountable when it comes to sex tourism. Again, the issue of knowingly consuming the services of a virtual slave is clear-cut, when sex tourists seek to engage in intercourse with minors. As is the use of force, since minors are not considered capable of consenting to sexual acts with adults. The DoJ’s 2006 “Report to Congress” profiled several cases of sex tourism in which the final link of the human trafficking chain was a focus of prosecution efforts; however, the consumer was prosecuted under the PROTECT Act. One such case was the US vs. Anthony Mark Bianchi, which took place in Pennsylvania:

“In March 2005, ICE agents in Philadelphia initiated an investigation of Anthony Mark Bianchi after he arrived at the Philadelphia International Airport from Romania. Customs and Border Protection Inspectors referred Bianchi for a secondary inspection. ICE agents who were present during the secondary exam discovered a piece of paper with a boy’s name, telephone number, and address in Romania. Preliminary investigation by ICE agents revealed that in March 2000, Bianchi was arrested in Moscow, Russia for engaging in sex with children. He was sentenced to three years imprisonment but was granted amnesty by a Russian court and was expelled from Russia. The ICE Attaché Vienna, with the assistance of Moldovan and Romanian authorities, determined that Bianchi had engaged in sexual activity with a Moldovan child who was in the company of the boy from Romania. Analysis of seized documents led to the identification of Ion Gusin, a co-conspirator of Bianchi. During an interview with Moldovan authorities, Gusin admitted that during a trip to Cuba in December 2004, Bianchi paid Gusin \$600 to have sex with Gusin’s thirteen-year-old brother. In January 2006, ICE agents arrested Bianchi at his residence in Wildwood, New Jersey, and Moldovan authorities arrested Gusin in Moldova with the

²⁹¹ US Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006* (May 2007), 43.

²⁹² *Ibid.*, 47.

assistance of the ICE Attaché Vienna. Bianchi was charged with child sex tourism (PROTECT Act) violations. Moldovan authorities charged Gusin with trafficking in persons violations. Bianchi was subsequently indicted for child sex tourism violations.²⁹³

A second case was the United States v. George Hoey Morris, which took place in Alabama:

“In 2004, ICE’s Cyber Crimes Center investigated the Internet website www.virginbride.net for possible child exploitation violations. This website was owned and operated by George Hoey Morris, a citizen and resident of the United States. Morris claimed on his website that he had sex with numerous underage girls in Vietnam. Morris also wrote a book, ‘How to Marry a Bride,’ to promote his website and teach other pedophiles how to obtain underage females in Vietnam. The ICE Attaché Ho Chi Minh City, Vietnam worked with the ICE agents in Alabama to locate victims based on images posted on Morris’ website and in his book. The ICE Attaché Ho Chi Minh City was successful in identifying one of the female victims from Morris’ publications, and the victim agreed to cooperate with the ICE investigation. In June 2006, ICE Attaché Ho Chi Minh City personnel escorted Morris’ victim from Vietnam to Montgomery, Alabama to provide grand jury testimony and depositions regarding Morris. Morris was subsequently indicted in the Middle District of Alabama on several charges, including violations of the PROTECT Act. In October 2006, Morris was convicted of child sex tourism violations, federal firearms violations, and passport and visa fraud. He is currently awaiting sentencing on those charges.”²⁹⁴

The third case was the United States v. Obert, which took place in California:

“On February 1, 2006, Timothy Ronald Obert, a former Peace Corps volunteer, pleaded guilty in the Northern District of California to sexual abuse of a minor for engaging in sexual acts with a minor boy, who was 14 years old, while Obert was working in the Peace Corps in Costa Rica. Obert had been charged with traveling in foreign commerce and engaging in illicit sexual conduct, in violation of 18 U.S.C. § 2423 (c), and sexual abuse of a minor within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. § 2243 (a) and 18 U.S.C. § 7 (9)(B). Obert admitted to knowingly and intentionally engaging in illicit sexual conduct with a Costa Rican minor in the apartment in which he was residing. This case is the first prosecution of a Peace Corps volunteer for sexually assaulting a minor while serving in the Peace Corps in a foreign country. In addition, this case is one of the first prosecutions making use of 18 U.S.C. § 7 (9), a statute enacted under the PATRIOT Act, which expanded the special and maritime jurisdiction of the United States to encompass residences in foreign countries that were being used by U.S. personnel on U.S. missions. This case is pending sentencing.”²⁹⁵

Yet there are many cases of human trafficking reported by the US Government, in which the last link of the human trafficking chain, the consumer, is not a focus of the prosecution. This is usually when the consumer is a short-term, or temporary consumer of a human trafficking victim’s services and in which it is not entirely clear if the consumer acted in full knowledge of the victim’s situation. The following are two

²⁹³ *Ibid.*, 50–51.

²⁹⁴ *Ibid.*, 51.

²⁹⁵ *Ibid.*, 53.

examples, profiled by the US Department of Justice, in which prosecution of the consumer is absent. The first case is the *United States v. Jimenez-Calderon*, which took place in New Jersey:

“A Mexican family lured and smuggled girls and women from small towns in Mexico to the United States with false promises of marriage, only to force them into prostitution in New Jersey and maintain their service through physical violence and threats. Two defendants who pled guilty to conspiracy and sex trafficking charges were sentenced to 210 months incarceration and a county jail employee who pled guilty to obstruction of justice for assisting the traffickers was sentenced to sixteen months incarceration. As of this writing, restitution amounts are under review by the court and three other members of the conspiracy are awaiting sentencing, having pled guilty to sex trafficking charges. Two other members of the family are fugitives and remain charged with a number of trafficking violations, including involuntary servitude, sex trafficking, and transportation for immoral purposes.”²⁹⁶

The second case is the *United States v. Martinez-Uresti*, which took place in Texas:

“Through Operation Dead End, the San Antonio U.S. Immigration and Customs Enforcement office investigated and the local U.S. Attorney’s Office prosecuted a situation in which the defendant Martinez-Uresti executed employment contracts with minor females and their parents, falsely representing that the minor females would work for one year in a restaurant to repay their \$1,500 smuggling fee. Once the girls reached the United States, they were held against their will and forced to engage in prostitution to repay the smuggling fee. On October 10, 2003, defendant Maricela Martinez-Uresti pled guilty to sex trafficking of children and human smuggling violations, and was sentenced to 108 months in prison. The co-defendant, Violeta Juanita de Hoyos-Hernandez, pled guilty to human smuggling violations and was sentenced to seven months in prison.”²⁹⁷

US Government reporting does not offer an analysis as to why in cases of domestic servitude, the final link in the trafficking chain, the consumer, is held accountable and in other situations, the final link is not pursued. The consumers of human trafficking, who knowingly consume the service of virtual slaves, should be increasingly targeted by anti human trafficking law. Those consumers who intentionally and repeatedly consume the services of trafficking victims are essentially maintaining the market for further exploitation and should be prosecuted for their illegal activity.

Examples of Non-Governmental Reporting

US NGOs have reported on a need to better define the final link in the human trafficking chain, the consumer. When a consumer purchases services provided to them directly by virtual slaves, the consumer interacts with the human trafficking victim

²⁹⁶ Ibid.

²⁹⁷ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 29.

and has an opportunity to recognize that they, the consumer, are engaging in forced labor. When a consumer purchases goods produced by slave labor and does not have any understanding of who produced the product, the consumer is harder to hold accountable. The report “Florida Responds to Human Trafficking” touches on this issue. When victims of human trafficking produce agricultural goods that are widely consumed, issues such as corporate and consumer responsibility are challenged. Yet it would be impossible to the average orange juice or tomato buyer as human traffickers:

“Human trafficking, or modern-day slavery, is not new. Yet, it is a very new topic to many people in Florida – from consumers who eat tomatoes harvested by farmworker slaves, to the service provider who doesn’t know whether or not victims of trafficking number among her clients.”²⁹⁸

When the consumer is included as part of the human trafficking chain, it is important that this last link be defined clearly as a person who knowingly and tangibly engages in the exploitation of trafficked services.

Additionally, greater awareness should be raised among general consumers of commercial goods that are produced in agricultural and entertainment sectors of the economy, which have exploited trafficking victims in the past. The organization Global Rights reported on this issue:

“Taco Bell and YUM are major buyers of Florida tomatoes. We are asking Taco Bell to use their vast buying power to eliminate all labor abuses in their supply chain, up to and including slavery... The very existence of these underpaid and exploitative jobs is fuelled by consumers’ desire for cheap goods and services. Explains Ann Jordan, Global Rights’ director of the Initiative against Trafficking in Persons, ‘We as individuals also shoulder a responsibility for encouraging such conditions to exist. We are unwilling to pay more for our products so that workers could be paid a fair wage or work under decent conditions. We are unwilling to ask who is making our meals, cleaning our offices, picking our vegetables. We just want it all cheap.’”²⁹⁹

Examples of Media Reports

The surveyed media has rarely addressed the final link in the human trafficking chain, the consumer. One example of an article in which it did address this issue deals with the Florida agricultural sector:

²⁹⁸ Florida State University, “Florida Responds to Human Trafficking,” *Center for the Advancement of Human Rights* (fall 2003): 205.

²⁹⁹ Voices, “Slavery in our Midst: The human toll of trafficking,” Global Rights, Fall 2004, www.globalrights.org/site/DocServer/Fall2004_Voices.pdf?docID=1683 (accessed October 15, 2007): 7.

“Most consumers know little about the dilemma posed by farmers’ profit margins vs. the migrants’ struggle for survival ... In Florida, agribusiness is a prime beneficiary of that economic shift through the employment of as many as 81,000 farm workers, mostly migrants, in a peak harvest week, according to the state Department of Agriculture and Consumer Services. For Florida’s growers of fruits, vegetables and nursery plants, cheap migrant labor helps generate a positive annual economic impact of \$62 billion... The fresh produce these mainly Hispanic workers pick may well be sold with the premium Fresh from Florida label, but the workers themselves are more likely to be fresh from the dire poverty of rural Mexico, Guatemala or El Salvador.”³⁰⁰

Based on an evaluation of surveyed media sources, the media could do more to investigate and report on consumer responsibility in combating human trafficking. It could draw attention to the US Government’s inaction to prosecute consumers of trafficking services except in the context of domestic servitude and sex tourism. It could call for greater clarity on the definition of human trafficking regarding the consumer. It could raise awareness of the challenges the US Government faces regarding the consumer as part of the human trafficking chain.

The Commercial Nature of the Crime

The commercial nature of human trafficking is clear-cut in cases of forced labor for non-sexual services. Yet in some cases of sex trafficking, there is a grey area between sexual abuse and sex trafficking as well as between voluntary prostitution and sex trafficking.

Concerning the former issue, the TVPA 2000 makes a clear distinction between sexual offenders who act based on a purely sick sexual motivation to abuse their victims for their own satisfaction and those persons who engage in human trafficking for the purpose of sexual exploitation. This distinction it bases on the commercial nature of exploitation. In order for human trafficking to occur, severe sexual abuse must be commercially motivated, at least in part: “The term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”.³⁰¹ According to the TVPA 2000, the term ‘commercial sex act’ means, “any sex act on account of which anything of value is given to or received by any person”.³⁰² The term ‘commercial sex act’ is broadly defined, yet it makes human trafficking for sexual labor distinct from cases of sexual abuse or domestic violence in which there was no commercial gain.

³⁰⁰ Jane Daugherty, “Modern-Day Slavery: The real cost fresh from Florida,” *The Palm Beach Post*, December 9, 2003.

³⁰¹ *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106–386, 106th Congress (October 28, 2000), Sec 103.

³⁰² *Ibid.*

Concerning the later issue, focusing on the commercial nature of human trafficking, US law creates a close link between sex trafficking and ‘unlawful commercial sex acts’. The later may be illegal, yet voluntary sexual labor services. Yet they are not handled separately by the US Government in the following study designed by the TVPRA 2005:

“The Attorney General shall use available data from State and local authorities as well as research data to carry out a biennial comprehensive research and statistical review and analysis of severe forms of trafficking in persons, and a biennial comprehensive research and statistical review and analysis of sex trafficking and unlawful commercial sex acts in the United States, and shall submit to Congress separate biennial reports on the findings.”³⁰³

The wording of the TVPRA 2005 reveals a policy gap already addressed in this analysis in the United States anti human trafficking agenda. US policy makers have built anti prostitution policy into anti human trafficking policy, without distinguishing between voluntarily and forced prostitution. This melting of two separate agendas distorts, confuses and dilutes US anti human trafficking efforts. It turns a useful distinction between the commercial motivations of human trafficking versus purely sexually driven abuse into an ideological debate, coupling of anti human trafficking with anti prostitution policies. Whether there is a relationship between the demand for sexual services that are provided without force voluntary prostitution and human trafficking remains unclear:

“The connection between the demand for sex services and the sexual exploitation of women and children in the United States has not been researched in a comprehensive and conclusive way. We lack quantitative data on the magnitude of the demand for sex services, the organization of the sex service economy, and its regulation.”³⁰⁴

Highlighting the commercial nature of human trafficking is also necessary because it underlines the role of profit in human trafficking. US anti human trafficking policy frameworks rightfully target and confiscate the profit of human traffickers as a form of punishing them and deterring others from engaging in this dreadful crime.

Examples of Government Reporting on Actual Human Trafficking Cases

Indeed, according the US anti human trafficking policy frameworks, each and every case of human trafficking that has gone to court must be of a commercial nature.

³⁰³ *Trafficking Victims Protection Reauthorization Act of 2005*, Public Law 109–164, 106th Congress (January 10, 2006), Sec. 201.

³⁰⁴ Free the Slaves Washington and Human Rights Center University of California, Berkeley, “Hidden Slaves: Forced labor in the United States,” September 2004, 15.

This is regardless of whether it was a case of sexual or non-sexual exploitation. Yet, the commercial nature of the crime does not have to involve selling the services of the human trafficking victim to others. For example, in the *United States v. Alamin and Akhter* the commercial nature of the crime was embodied by the ‘free’ labor the defendants extracted from the domestic servant they enslaved:

“A Bangladeshi couple brought the victim from Saudi Arabia to the United States to work for them as a live-in housekeeper and nanny, forcing the victim to perform domestic work for little or no pay by repeatedly beating her and threatening to harm her and her family in Bangladesh if she ran away. Akhter, who pled guilty to an immigration violation, was sentenced to 16 months in prison. Alamin was convicted of conspiracy and involuntary servitude charges at trial and was sentenced to 135 months in prison. Both defendants were ordered to pay \$ 125,819 restitution to the victim.”³⁰⁵

The commercial nature of the crime can also be a situation of indentured servitude in which labor is exploited to provide services to third parties. This was the case in a human trafficking charge brought to trial in fiscal year 2006 in Florida: *United States v. Orozco and Santizo*:

“Two men were charged with trafficking with respect to forced labor after smuggling two female victims, including a 14-year-old girl, from Mexico through Arizona, and then to Ft. Myers, Florida. Once in Florida, the women were sold and told they would not be working in the fruit fields as expected, but instead had to work as prostitutes to pay off a \$2,700 debt. One defendant entered a guilty plea to alien smuggling and was sentenced to nine months in prison.”³⁰⁶

In ‘safe houses’ where smuggled migrants are kept along a smuggling route before reaching their final destination, human smuggling can transform into a case of human trafficking. The determination of whether human trafficking occurred has been dependent on US authorities judgment on the conditions at the safe house, the level of the victim’s restricted-freedom and also on the commercial nature of what is ‘extracted’ from the smuggled persons during their stay at the safe houses. The *United States v. Soto-Huarte* in Texas depicts a case in which smuggling turned trafficking. One of the reasons for this can be discerned from the commercial nature of the exploitation that took place at the safe house:

“In February 2003 ... investigators from U.S. Immigration and Customs Enforcement and the Federal Bureau of Investigation and prosecutors from the Civil Rights Division and the local U.S. Attorney’s Office discovered that from January through March 2003, alien smugglers brought newly-arrived illegal aliens across the U.S.-Mexico border to trailer ‘safe hous-

³⁰⁵ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* (August 2003), 16.

³⁰⁶ US Department of Justice, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2006* (September 2007), 44.

es' where women were kept and forced to cook, clean, and submit to rapes at the hands of the smugglers. Seven defendants pled guilty, one of whom fled after entering his plea and is a fugitive... The ringleaders were also required to pay restitution to the victims."³⁰⁷

Examples of Non-Governmental Reporting

Non-governmental reporting on human trafficking in the United States addresses its commercial component. No reporting was detected in which the US NGO community questioned this aspect. The report 'Trafficking in Persons in the United States' by Kevin Blales and Steven Lize is one example of NGO reporting on the significance of the commercial nature of the crime:

"Commercial and other records are the 'Achilles heel' of traffickers and exploiters of forced labor; this is especially the case with those involved in trafficking into forced prostitution."³⁰⁸

However, the reporting NGOs have expressed reserve about the US Governments blurring of voluntary commercial prostitution with sex trafficking. One example of this can be found in the report 'Hidden Slaves':

"More research needs to be conducted on the demand for commercial sex services so as to design a public awareness campaign to combat forced labor in this sector."³⁰⁹

US NGOs have a clear understanding of the US definition of human trafficking and its incorporation of the commercial nature of the crime. Some NGOs have expressed concern about how the US Government interprets the relationship between the commercial nature of sex trafficking and voluntary prostitution.

Examples of Media Reports

The surveyed media in the United States have often reported on the commercial nature of human trafficking when it has profiled human trafficking cases. No cases of surveyed media reporting challenged the commercial link. For example, in El Paso Texas, 2006 was a year in which human trafficking surged. The article 'Human Trafficking Cases Increase in El Paso', profiles several human trafficking cases. Each has a clear commercial link:

³⁰⁷ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in 2004* (June 2004), 28–29.

³⁰⁸ Kevin Blales and Steven Lize, "Trafficking in Persons in the United States," *Croft Institute for International Studies*, University of Mississippi, November 2005, 6.

³⁰⁹ Free the Slaves Washington and Human Rights Center University of California, Berkeley, "Hidden Slaves: Forced labor in the United States," September 2004, 52.

“Gardes showed the photograph of a field worker standing on top of a large farm truck – a scene common across the Southwest. His name is Ricardo, she said. He was smuggled across the border in Arizona and abandoned in the desert for eight days with only three days’ worth of food and water. He was found by another smuggler who offered to guide him, for a fee. When Ricardo couldn’t pay, the smuggler sold him to a Florida labor contractor for \$1,100. This became Ricardo’s debt. He worked in a field for \$80 a week to repay it. At the same time, his trafficker overcharged him for rent and other necessities. Gardes said he was never meant to be able to repay the debt. One day, another trafficking victim escaped, was recaptured and was beaten in front of Ricardo and the others. ‘At this point, Ricardo realized this was really slavery,’ Gardes said. Ricardo eventually escaped and testified against his traffickers. He still receives death threats. In a recent case in El Paso, police rescued a 15-year-old Salvadoran girl at the Downtown Greyhound bus station after her smuggler asked her family in California for ransom.”³¹⁰

Another case in Kansas dealt with the forced servitude of mentally ill patients. This case is also recorded in the DoJ Human Trafficking Assessment. The Associated Press described this case, referring to the large profits the traffickers were able to achieve, not only through the forced labor of their victims but also by billing the Government for their ‘health care’:

“The Kaufmans were first charged under a law that makes it illegal to hold or sell another person into ‘any condition of involuntary servitude,’ which is prohibited by the 13th Amendment banning slavery. Subsequent indictments also alleged the couple physically, psychologically and sexually abused group home residents, kept two people in involuntary servitude for 14 years and defrauded the federal Medicare program. The indictment also seeks the return of \$283,000 that authorities allege the Kaufmans received from their activities, including nearly \$217,000 in Medicare payments. In 1998, Arlan Kaufman was the highest biller in the state of Kansas for psychotherapy, court filings show. At the time, he had just nine patients compared with 52 for the next highest billing service provider.”³¹¹

A domestic servitude case in Denver, as described by the Denver Post clearly identified the commercial advantage that the alleged traffickers gained through their activity:

“Al-Turki and his wife, Sarah Khonaizan, are accused of enslaving an Indonesian woman in their home for four years, forcing her to cook and clean for almost no pay. Al-Turki also is accused of sexually assaulting the woman. He faces rape charges in state court. Some of the charges carry penalties of life in prison.”³¹²

Table 25 summarizes the main components of anti-trafficking policy frameworks and tracks the development of each component.

³¹⁰ Louie Gilot, “Human Trafficking Cases Increase in El Paso,” *El Paso Times*, November 11, 2006.

³¹¹ Roxana Hegeman, “Newton servitude case goes to trial Tuesday,” *Associated Press*, October 2, 2005.

³¹² Alicia Caldwell, “Bail set for Saudi man accused of raping, enslaving housemaid,” *Denver Post*, July 29, 2005.

Table 25: Summary of Human Trafficking Parameters

Key Areas	Policy frameworks	TVPA 2000	TVPRA 2003	TVPRA 2005	TVPRA 2008
Demographic Parameter					
Gender-Specificity		No	No	No	No
Geographic Parameter					
Exclusion of Internal Human Trafficking		No	No	No	No
Exploitation Parameters					
Inclusion of Forced Non-Sexual Labor		Yes	Yes	Yes	Yes
Inclusion of Traffic in Human Organs		No	No	No	No
Victim Protection Parameter					
Inclusion of Victim Access to Legal Residence		Yes	Yes	Yes	Yes
Criminalization and Punishment Parameters					
Criminalization of Links in Trafficking Chain Including the Consumer		Yes	Yes	Yes	Yes
Inclusion of the Commercial Nature of the Crime		Yes	Yes	Yes	Yes

Source: Original representation

The areas of anti human trafficking policy frameworks that were ‘problematic’ in the development of international human trafficking policies at the international level have been widely resolved in the US. The only exception is trafficking in human organs, which has consistently been left out of US frameworks.

Despite this robust framework, an exploration of the ‘problematic’ components of human trafficking in the US context revealed that policy gaps still exist, some of which result from hidden policy agendas. There is therefore significant room for improvement in US policy frameworks.

These policy gaps can be summarized to be in the following categories:

- **Definition of human trafficking:** The US Government’s definition of human trafficking omits trafficking in organs; the definition does not clarify the responsibility of the consumer as the final link in the trafficking chain; it offers little guidance as to under what conditions drop-house situations can be defined as human trafficking. Lastly, the definition of human trafficking does not draw a clear line between sex trafficking and voluntary prostitution.
- **Government organization:** The US Government’s capabilities to record, exchange and evaluate data on detected human trafficking are deficient. It is not even in a position to report the number of detected human trafficking victims that

its various agencies have serviced in the US. However, the TVPRA 2008 will provide funding to improve data collection and data sharing.

- **Victim protection:** Despite the US Government's proclaimed victims-approach to combating human trafficking, international human trafficking victims in the US remain dependent on their 'usefulness' to the US Government to secure legal stay. This equates to a prosecution-approach to human trafficking.
- **Internal human trafficking:** Combating international human trafficking dominates the US Government's approach to human trafficking; this approach has neglected internal human trafficking in the US in many ways, such as the appropriation of funding, supply of rehabilitation services or the proper recording of data. The TVPRA 2008 represents an improvement in combating internal human trafficking in the US.

The exact means to improve anti human trafficking efforts in the US were addressed as policy recommendations throughout this chapter.

The next chapter will analyze anti human trafficking policy frameworks in the Federal Republic of Germany.

4 Anti Human Trafficking Policy Frameworks in The Federal Republic of Germany

Remaining consistent with the methodology of Chapters One and Three, Chapter Four will take a multifaceted approach to evaluating anti human trafficking policies in the Federal Republic of Germany. It will explore the roots of anti human trafficking policies in the Federal Republic of Germany. Then it will examine current data on the known and estimated scope of human trafficking there. Two further building blocks of this chapter will be to investigate the institutional distribution of responsibilities on this issue between government agencies and analyze the most recent developments in German anti human trafficking policies. Finally, this chapter will evaluate the development and current situation of the ‘problematic’ aspects of anti human trafficking policy by focusing on the afore defined ‘problematic’ aspects of anti human trafficking frameworks. Newspaper articles, NGO and inter-governmental reporting will be referenced to establish the current state of anti human trafficking policy in Germany.

The ‘problematic’ components of anti human trafficking frameworks that were identified in Chapter One are the:

- demographic parameter: gender-specificity
- geographic parameter: internal human trafficking
- exploitation parameters: forced non-sexual labor and trafficking in human organs
- victim protection parameter: victim access to legal residence
- criminalization and punishment parameters: criminalization of links in the trafficking chain and the commercial nature of the crime.

4.1 Historical Roots of Combating Human Trafficking in the Federal Republic of Germany and the European Union

Unlike the United States of America, predecessor states of the Federal Republic of Germany included monarchy and dictatorship governments. Germany lost its sovereignty completely after the Second World War, was divided into two nation states and reunited into one democratic state in 1990. Germany, therefore, does not have one continuous

democratic tradition and its policy frameworks have undergone dramatic changes over time. A second difference as compared with the United States of America is that the Federal Republic of Germany is tied to the regional integration processes of the European Union, which has a significant impact on its national legislation. Therefore, the analysis of anti human trafficking policies in the Federal Republic of Germany requires a somewhat different approach than the one used for the United States of America.

Modern day Germany's democratic development is anchored in the evolution of the European Union and the German Basic Law (*Grundgesetz*). The initial West German Basic Law, drafted following the Second World War, was written to include all German citizens, even those of the communist (and independently sovereign) East German state (the German Democratic Republic). However, it was only after German unification in October 1990 that German Basic Law was legally applicable to former East Germans. Because of the dissolution of the East German state, only the surviving democratic traditions, which set the foundation for current policy frameworks will be analyzed in this subchapter. This subchapter will not examine policy frameworks in the totalitarian and racist regime of the Third Reich. It also does not consider democratic movements and traditions, related to anti human trafficking, which existed in Germany during Monarchical rule for two reasons. First, Germany's historically late and interrupted establishment as a single nation state in the 19th century depicts a labyrinth of segmented and contradictory political courses that have not significantly influenced current anti human trafficking policy frameworks. Secondly and more importantly, policy frameworks prior to the conclusion of World War Two in the 20th century, especially during the Third Reich and the German Democratic Republic (East Germany),³¹³ do not represent a continual development or a tradition out of which current policy frameworks in Germany have evolved.

This subchapter will focus its analysis on post War, West German policy frameworks and the development of anti human trafficking policy rooted in post 1990 unified Germany as well as in the European Union.

4.1.1 *The Basic Law (Grundgesetz)*

German Basic Law is the cornerstone of democratic, societal values in Germany. It is the unifying social contract to which all residents (citizens and non-citizens) in Germany are bound. The first two articles of the Basic Law ensure the human dignity and personal freedoms of all persons regardless of their citizenship or legal status:

³¹³ The author does not equate the abuses of these two regimes.

“Article 1 Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world ... Article 2 Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law. Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.”³¹⁴

Indentured servitude, forced labor and sexual exploitation, which comprise human trafficking are, therefore, violations of the Basic Law governing all persons residing in Germany, regardless of their immigration status.

Furthermore, Article 12 of the Basic Law specifically addresses occupational freedom and the prohibition of forced labor. Its clauses protect not only German citizens from forced labor, but also all residents regardless of their immigration status:

“Article 12: No person may be required to perform work of a particular kind except within the framework of a traditional duty of community service that applies generally and equally to all. Forced labor may be imposed only on persons deprived of their liberty by the judgment of a court.”³¹⁵

Only persons who have been convicted of crimes and are serving sentences may be forced to work against their will.

The rights to life, freedom, physical integrity and protection from forced labor are principles, which make up the fabric of the Federal Republic’s social order. They stand in strong contrast to the political and social order of the Third Reich and are the basis of Germany’s first sustainable democracy.

4.1.2 *European Union Policy Frameworks Prior to 2000*

Unlike the United States, the Federal Republic of Germany is closely tied to a regional political-process, which strongly impacts its national legislation. European Union Directives and Framework Decisions on human trafficking must be adapted into the national law of EU Member States and, therefore, play an important role in tracking the historical roots of anti human trafficking in the Federal Republic of Germany. Policy aims issued in other forms by the European Union are also directional regarding national policy objectives in Germany. Joint action plans, Communications of the European Commission and European-wide anti human trafficking strategies heavily influence German national policy frameworks.

³¹⁴ Basic Law for the Federal Republic of Germany, Art. 1, 2.

³¹⁵ *Ibid.*, Art. 12.

The European Union's anti human trafficking frameworks are about a decade old. But its founding treaties embody the principles of freedom, human rights and personal liberty, which are essential for societies and governments' determination to combat human trafficking. Between 1996 and 2000, it developed its anti human trafficking approach, resulting the Framework Decision on Combating Trafficking in Human Beings and other EU Directives on fighting human trafficking in 2000 and thereafter. The European Union's anti human trafficking groundwork will be included in this subchapter on historical roots. Even though these EU initiatives in the late 1990s are fairly recent, they form the 'historical' basis from which current anti human trafficking policies have grown.

Communications of the EU and the 1997 Treaty of Amsterdam

Since 1996, the European Union has begun developing an organized approach to combating human trafficking within EU Member States. Three joint action plans kicked-off its efforts:

- Council Joint Action of 29 November 1996 establishing an incentive and exchange program for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP program),
- Council Joint Action of 16 December 1996 extending the mandate given the Europol Drugs Unit to traffic in human beings,
- Council Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and the sexual exploitation of children.

Since initiating these action plans, the European Union has emphasized combating human trafficking, including the various links in the trafficking chain. It is not just fighting the final exploitation of the victim, but also acting against victim recruitment, transportation and intermediaries. Since 1996, the EU has also recognized that prevention, victim protection and working with countries of origin are essential elements of combating human trafficking.

The Treaty of Amsterdam was signed in 1997 and was enacted in 1999. It continued a tradition within the European Union, which had begun in the 1950s. The tradition is one of democratic and regional integration in Europe, stemming from the Treaties of Paris and Rome in the 1950s and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It built on the Merger Treaty and Single European Act of the 1980s. It succeeded the 1993 Maastricht Treaty, which is also known as the Treaty of the European Union.

Article six of the Treaty of Amsterdam, which amended the Treaties originally establishing the European Union, entered into force in May 1999, states:

- “1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.”³¹⁶

The Treaty of Amsterdam explicitly refers to trafficking in persons in Title VI on provisions on police and judicial cooperation in criminal matters, in article 29:

“Without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud...”³¹⁷

Tampere European Council Conclusions 1999

The Conclusions from the European Council in Tampere, Finland, of October 1999 also include anti human trafficking objectives. These addressed international human trafficking resulting from irregular migration for the most part. The anti human trafficking measures are framed in the Conclusions.

“The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants.”³¹⁸

The Conclusions addressed preventing human trafficking through cooperation with countries of origin and transit as well as through information campaigns. They stated that prevention should also be carried out through better cooperation of Member States concerning visas and false documents.³¹⁹ The Tempare Council Conclusions aimed at building the capacities of origin countries to combat human trafficking effectively and to readmit foreign nationals who are repatriated by Member States.³²⁰

³¹⁶ European Council, *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts*, Art. 6.

³¹⁷ *Ibid.*, Art. 29.

³¹⁸ European Council, *European Council Tampere 15–16. 10. 1999: Conclusions of the Presidency*, Art. 23.

³¹⁹ *Ibid.*, Art. 22.

³²⁰ *Ibid.*, Art. 26.

Additionally, the Tampere Council Conclusions addressed human trafficking in the context of co-operation against organized crime. The document stated that for international human trafficking across borders in Member States, joint investigative teams should be formed that cooperate with Europol when necessary. Lastly, the Conclusions addressed creating common definitions and sanctions concerning human trafficking as well as for other select crimes.³²¹

4.2 Organizational Structures of Combating Human Trafficking and Detected Scope of Human Trafficking in the Federal Republic of Germany

As is the case for the United States of America, the German Government and academics working on human trafficking are uncertain about its full scope in Germany, regionally or globally. This is due to the clandestine character of thereof and to underdeveloped systems of identifying and recording information that would more accurately reveal the level of human trafficking present in a country (stock) or the annual change thereof (flow). Its detected scope in the United States and Germany, as well as in any given country or region is thought to be only a portion of the actual size.

The detected scope of human trafficking is measured in several ways. The most common are:

- Number of victims,
- Number of human trafficking cases,
- Number of suspected perpetrators and
- Volume of confiscated revenue.

This subchapter, in parallel to the one on the United States of America, will use the number of detected human trafficking victims in the Federal Republic of Germany as a basis for comparison. This data set will be used for two reasons:

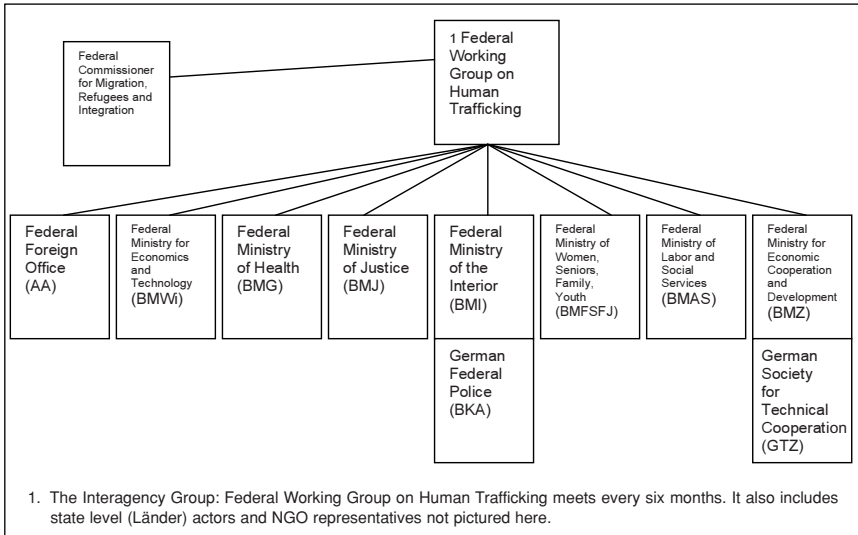
1. Unlike the number of cases, perpetrators and revenue, one person is a unit that does not vary. The other units: cases, perpetrators and revenue vary in relation to the number of victims trafficked dependant on circumstance. For example, one perpetrator could traffic one or several victims. One trafficking case could deal with one or a multitude of victims and perpetrators. Trafficking revenue from one victim per day can vary based a circumstance as well.

³²¹ Ibid., Art. 48.

- The detected number of human trafficking victims has a parallel data set concerning human trafficking estimates at the national level.

The structural multitude of government offices involved in combating human trafficking is evident in Chart B.

Chart B: Organizational Structure of Combating Human Trafficking in the Federal Republic of Germany



Source: Original representation

4.2.1 The German Federal Police (BKA)

The Ministry of the Interior has tasked the German Federal Police (Bundeskriminalamt BKA), to record and publish data on human trafficking. This data is reported annually in: Lagebild Menschenhandel. The official English title is: Situation Report Trafficking in Human Beings. The report contains a summary of public data available on human trafficking in Germany, including the number of human trafficking victims detected by authorities in Germany.

It is important to note that prior to the 2003 edition of Lagebild Menschenhandel, the report was gender-specific, excluded non-sexual exploitation and did not include victims carrying German citizenship. In other words, these did not contain data on adult male victims of human trafficking. They only included the number of foreign

female adult victims and children of both genders trafficked to Germany for the purpose of sexual exploitation. This restriction was based on then existing legal definition of trafficking under German law, which excluded adult men and internal victims (those with German citizenship).³²²

In 2004, the human trafficking law in Germany was reformed. Although the reformed law was first passed in 2004 and published in the ‘Bundesgesetzblatt’ (German Law Gazette) in February 2005, the 2003 Lagebild Menschenhandel report (published in 2004) already reflected two of the three main changes the reformed law would later stipulate as being part of human trafficking. The 2003 Lagebild Menschenhandel contained statistics on internal human trafficking victims and adult male victims.

The 2006 Lagebild Menschenhandel report (published in 2007) is the first to contain information on victims of human trafficking exploited for non-sexual labor. Therefore, analyzing this data, which has been published by the German Government since 1994, presents a challenge. The reports between 1994 and today essentially count three different segments of the known human trafficking victim population in Germany. The pre 2003 reports count female adult victims and child victims of both genders, who were foreign nationals and were exploited for their sexual labor (but not for other types of labor). The Lagebild Menschenhandel 2003–2005 reports include domestic victims of human trafficking, and adult male victims but still exclude all victims who were exploited for non-sexual labor. Finally, the 2006 Lagebild Menschenhandel and following reports include all known victims of human trafficking regardless of gender, nationality or the type of labor for which they were exploited. However, the 2006 Lagebild Menschenhandel report does not include much detail on the victims of non-sexual labor exploitation. In 2006, 83 victims of human trafficking for non-sexual labor migration were detected by the police. Of those, 61 were male and 22 were female. The report does not contain detail on the countries of origin of the victims or their age.³²³ These details are, however, provided for human trafficking victims exploited for sexual labor.

The Lagebild Menschenhandel reports cannot be compared without accounting for the change in the human trafficking population that they reference. This consideration must also be taken into account when comparing the scope of human trafficking in the Federal Republic versus that of the United States of America.

³²² This change in national anti human trafficking policy frameworks will be explored in detail later in this subchapter.

³²³ Bundeskriminalamt, *Bundeslagebild Menschenhandel 2006* (August 2007), 9.

Table 26: Overview of Human Trafficking Data Sets in Germany

Lagebild Menschenhandel Report	Included domestic victims	Included adult male victims	Included non-sexual forced labor victims
1999 (which included data from 1994–1999)	No	No	No
2000	No	No	No
2001	No	No	No
2002	No	No	No
2003	Yes	Yes	No
2004	Yes	Yes	No
2005	Yes	Yes	No
2006	Yes	Yes	Yes

Source: Original representation

Despite this discrepancy in the German Government’s human trafficking data, the BKA’s reporting on the known number of human trafficking victims in the Federal Republic of Germany is the most complete database available concerning the detected number of human trafficking victims in Germany. The data is collected in each of the 16 German States and reported annually to the Interior Ministry’s BKA.

Since 1994, the detected number of human trafficking victims in Germany has oscillated between 1,521 (peaking at this number in 1995) and 642 (reaching its lowest point in 2005). There has not been a clear trend, neither a clear increase nor decrease, in the number of detected human trafficking victims in the Federal Republic of Germany. Even though a larger segment of the human trafficking population was being counted since 2003, this has not resulted in a clear increase in the total detected scope of human trafficking victims. Figure 14 (see p. 186) contains the data on the number of human trafficking victims published in the BKA’s annual Lagebild Menschenhandel reports.

Additional data categories recorded by the Federal Police for the detected number of human trafficking victims in Germany allows one to gain further insights into the human trafficking situation there.

The top four nationalities of human trafficking victims from 2003–2007³²⁴ in the Federal Republic of Germany have been German or Eastern European. German citi-

³²⁴ Since 2003, German victims have been reported in the BKA’s annual report. German victims are one of the largest victims groups. Therefore the year 2003 will be used as a base year.

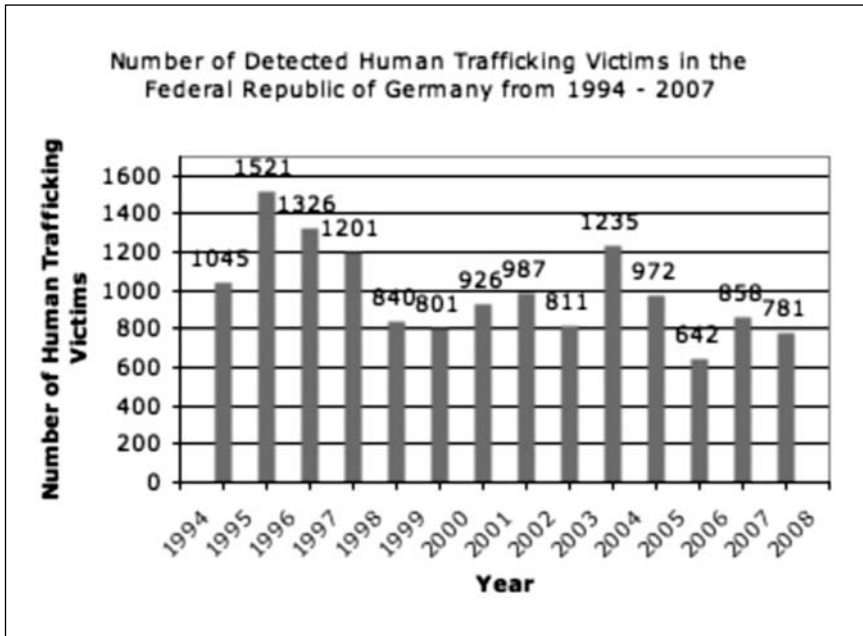


Figure 14: Number of Detected Human Trafficking Victims in the Federal Republic of Germany from 1994–2007

Source: Bundeskriminalamt, *Lagebild Menschenhandel 1999* (2000), 8. Bundeskriminalamt, *Bundeslagebild Menschenhandel 2003* (July 2004), 14. Bundeskriminalamt, *Bundeslagebild Menschenhandel 2004* (August 2005), 9. Bundeskriminalamt, *Bundeslagebild Menschenhandel 2005* (July 2006), 3–4. Bundeskriminalamt, *Bundeslagebild Menschenhandel 2006* (August 2007), 6, 10. Bundeskriminalamt, *Bundeslagebild Menschenhandel 2007* (2008), 8, 11.

zens have been the most frequent with 734 detected victims in Germany from 2003–2007 years. Russian citizens were the second most frequently detected victim population in Germany (612 victims) in the same time frame, followed by Romanians (517 victims). Bulgarian citizens (434 victims) represented the fourth most frequent country of origin for detected human trafficking to Germany.³²⁵ There is however a large fluctuation in the number of human trafficking victims from each country of victim origin. For example, 155 victims from the Czech Republic were detected in 2006 and only 11 in 2005. The number of human trafficking victims from

³²⁵ For 2006, the German Federal Police only reported the countries of origin for human trafficking victims of forced sexual labor. This data is not available for forced non-sexual labor human trafficking victims. are one of the largest victims groups. Therefore the year 2003 will be used as a base year.

Lithuania and the Ukraine were not listed in the 2006 and 2007 Lagebild Menschenhandel report because they did not account for a significant part of the victim pool in 2006; they had however been significant countries of origin from 2003–2005. Figure 15 offers an overview of the top four countries of detected human trafficking victim origin in the period from 2003–2007.

German authorities have collected empirical data that shows that the majority of detected human trafficking victims entered Germany legally. In 2004, they reported this to be 72.3% of all detected victims (463 victims), for which the German Federal Police was able to determine how the victims entered the Federal Republic of Germany.³²⁶

Knowing the main countries of origin is important for anti human trafficking policy. In Germany, the large number of internal victims indicates that authorities have to look beyond border initiatives in their efforts to identify a greater portion of the human trafficking population.

Concerning immigrant victims of human trafficking, the detailed data collected by German authorities reveals that victims, who had access to state services such as legal and psychological counseling have a much better chance of gaining temporary regular residency. Whereas over 40% of victims who received counseling in 2004



Figure 15: Countries of Detected Human Trafficking Victim Origin in the Federal Republic of German from 2003–2007

Source: Annual BKA Lagebild Menschenhandel Reports 2003 to 2007.

³²⁶ Bundeskriminalamt, *Bundeslagebild Menschenhandel 2004* (August 2005), 15.

were issued temporary residency in Germany, less than 10% of those without these services did so.³²⁷ Victims who are repatriated immediately to their country of origin can neither help prosecute traffickers, nor do they have a strong ability to protect themselves from being re-victimized. Unfortunately, the Lagebild Menschenhandel reports in 2005 and 2006 did not publish or comment on the relationship between counseling and residency.

4.2.2 *Federal Working Group on Human Trafficking*

In February 1997, the Federal Republic of Germany created the Interagency Group “Bundesarbeitsgruppe Frauenhandel”, which translates to the Federal Working Group on Trafficking in Women.³²⁸ In 2004, this group was renamed the “Bund-Länder-Arbeitsgruppe Frauenhandel”, which translates to The Federal-State-Working Group on Trafficking in Women. The working group addresses human trafficking issues.

This Interagency Group is chaired by the Federal Ministry for Family, Seniors and Youth (BMFSFJ). It includes the following Federal Government Institutions:

- The Federal Ministry of the Interior (BMI) and the Federal Police (BKA), which is a division of this Ministry
- The Federal Ministry of Justice (BMJ),
- The Federal Ministry for Health (BMG),
- The Federal Ministry of Labor and Social Affairs (BMAS),
- The Federal Ministry for Economics and Technology (BMWi),
- The Federal Ministry for Economic Cooperation and Development (BMZ),
- The German Society for Technical Cooperation (GTZ)
- The Federal Foreign Office (AA) and
- Commissioner for Migration, Refugees, and Integration.

It also includes the following German NGOs:

- The German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration (KOK),
- Solwodi e.V. and

³²⁷ Ibid., 18.

³²⁸ Bundestag, “Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Rainer Funke, Daniel Bahr (Münster), Rainer Brüderle, weiterer Abgeordneter und der Fraktion der FDP,” Drucksache 15/1938, <http://209.85.129.104/search?q=cache:R3LduKiHWgAJ:dip.bundestag.de/btd/15/020/1502065.pdf+Bundesarbeitsgruppe+Frauenhandel&hl=en&ct=clnk&cd=4&gl=de> (accessed October 19, 2007).

- The Federal Working Group of Non-Statutory Welfare Services (Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege BAG FW).

The following States level (Länder) institutions are also members of the Federal-State-Working Group on Trafficking in Women:

- The States (Länder) Ministries concerning Social Affairs (ASMK),
- The States (Länder) Ministries concerning Home Affairs (IMK),
- The States (Länder) Ministries concerning Justice (JUMIKO),
- The States (Länder) Ministries concerning Equality and Women (GFMK) und
- A representative from the Berlin States Ministry for Economics, Labor and Women.

The group meets semi-annually.

The working group aims to improve the German Government's ability to combat human trafficking. It worked out a 'Concept of Cooperation between the Victim Counseling Organizations and Police for the Protection of Human Trafficking Victim-Witnesses' in 2001. This concept has been implemented in many of the German States (Länder).

The Federal-State-Working Group on Trafficking in Women is the convening point for inter-ministry information exchange on human trafficking. It links the federal ministries with state level government authorities. It also serves as a platform for dialogue between NGO-service-providers with various government agencies. Through the working group, diverse actors come together to analyze real problems of combating human trafficking in Germany. Common anti human trafficking initiatives are concluded by the Working Group. These have included the following: Awareness raising publications distributed in countries of origin warning of the dangers of human trafficking, recommendations for procedural law concerning treatment of human trafficking victims by national authorities, creating a draft cooperation model for victims who do not want to be included in standard victim protection programs, publishing and distributing information for public authorities, who are responsible for administering public aid to victims of human trafficking in accordance with refugee service laws and social security laws, writing a guide to the victims' restitution law for the States (Länder), writing a guide to labor market access for victims of human trafficking who are in the witness protection program and conducting training exercises for the Federal Police.³²⁹

³²⁹ Bundesministerium für Familie, Senioren, Frauen und Jugend, "Bund-Länder-Arbeitsgruppe Frauenhandel," <http://www.bmfsfj.de/Politikbereiche/gleichstellung,did=73008.html> (accessed October 19, 2007).

4.3 Estimated Magnitude of Human Trafficking in the Federal Republic of Germany

As is true for the US, much deliberation surrounds the cleft between the detected scope of human trafficking and its estimated magnitude in the German context. Estimates regarding the scope of human trafficking are most frequently published in two categories:

- Number of victims and
- Volume of revenue.

Unlike in the US, the German Government does not produce estimates on the scope of human trafficking. However, two non-governmental institutions have reported on the estimated scope of human trafficking in the Federal Republic of Germany:

1. The European Institute for Crime Prevention and Control (HEUNI), which is UN affiliated and
2. Research commissioned by the ILO and conducted by Norbert Cyrus.

Anti human trafficking policies in the US and Germany have been placed at the top of political agendas because it is believed that human trafficking is not only a severe form of human rights abuse, but also because governments think that the scope of human trafficking is much greater than the detected volume.

“The undetected number of women [in Germany] who fall victim to human trafficking and the number of perpetrators should be estimated to be very large in scope.”³³⁰

Since anti human trafficking policies have been strongly influenced by – official and unofficial – estimates of its scope, these estimates an important aspect of human trafficking policy.

4.4 Recent Developments in Anti Human Trafficking Policy in the European Union in Brief

German anti human trafficking policy frameworks are heavily reliant on the regional processes of the European Union. This section will look first at major EU regional policy frameworks.

³³⁰ Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V., “Strafverfolgung und Bekämpfung des Frauenhandels in Deutschland: Ausgangsvoraussetzungen in Deutschland,” unofficial Trans. Christal Morehouse, <http://www.kok-potsdam.de/index.php?idcat=41&lang=1&PHPSESSID=b6d2db8ac22dda8b87c3471c51e53ced> (accessed October 19, 2007).

4.4.1 *Charter of Fundamental Rights of the European Union Amended in 2000*

The Charter of Fundamental Rights of the European Union is based on the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. Amendments made in 2000 strengthened its anti human trafficking content. Articles one and two of the Charter addressed human dignity and the right to life. They state that human dignity is inviolable and that everyone has a right to life. Articles three and four ensured every individual's right to physical and mental integrity, and they prohibited torture, inhumane and degrading treatment. These are all rights that are violated, when a person is subjugated to human trafficking.

The Charter goes beyond protecting these basic human rights. It specifically states that human trafficking, slavery, servitude, forced and compulsory labor are prohibited in article five.

“No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labor. Trafficking in human beings is prohibited.”³³¹

4.4.2 *Framework Decision of 2002 on Combating Trafficking in Human Beings Approximating the Criminal Laws of the Member States*

The European Commission's Framework Decision to combat trafficking in human beings of July 2002 created a common definition of trafficking for the purposes of labor and sexual exploitation. In Article one of the Framework Decision, human trafficking is defined as follows:

“The recruitment, transportation, transfer, harboring, subsequent reception of a person, including exchange or transfer of control over that person, where: use is made of coercion, force or threat, including abduction, or use is made of deceit or fraud, or there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labor or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used. When the conduct referred to in paragraph one involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.”³³²

³³¹ European Council, *Charter of fundamental rights of the European Union*, (2000/C 364/01), Official Journal C 364/7, December, 2000.

³³² European Council, *Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings*, 2002/629/JHA, Official Journal L 203, August 2002.

The Framework Decision stipulates that attempted human trafficking is punishable such as aiding, abetting or instigating this crime in Article two. The penalty for human trafficking in all Member States must be not be less than eight years imprisonment. The deadline for Member States compliance with this Framework Decision, in force since July 2002, was August 2004. Germany transposed this law in August 2007.

4.4.3 *Council Directive on the Residence Permit Issued to Third-Country Nationals who are Victims of Trafficking in Human Beings 2004*

The 2004 Council Directive on ‘The residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities’ introduced a residence permit for adult victims of trafficking who are third-country nationals. The permit can be issued to victims who cooperate with authorities even if they are in the country irregularly. Victims are entitled to a reflection period according to the 2004 Council Directive, the duration of which was to be determined by Member States individually.³³³ Human trafficking victims are protected from repatriation during the reflection period. The reflection period does not lead to any further rights to residence in the country of exploitation. It can also be terminated immediately, if the victim resumes contact with the perpetrators.

Article seven of the Council Directive details the public services human trafficking victims are entitled to during the reflection period.

“Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance... Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.”³³⁴

The Directive does not contain a minimum standard for the duration of the reflection period because Member States could not reach agreement on this issue in 2004.

³³³ European Council, *Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit Issued to Third-country Nationals who are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities*, Official Journal L 261, August 2004, Art. 6.

³³⁴ *Ibid.*, Art. 7.

4.4.4 *European Convention on Action Against Trafficking in Human Beings Concluded in 2005*

The Council of Europe Convention on Action Against Trafficking in Human Beings moved anti human trafficking policy frameworks forward, especially in the area of victims' rights and victim protection. In Articles twelve and thirteen it specified that victim assistance is the responsibility of the state. The state must assist the victims' physical, psychological and social rehabilitation during a recovery period, period of at least 30 days. This reflection period may apply to all immigrants though to be victims of human trafficking. The minimum reflection period is for the victims to escape the influence of their traffickers, to begin recovering and to make a decision about cooperating with state authorities to prosecute their traffickers. The Convention also provided for victim access to the labor market for those who obtain a lawful residence permit under Member States laws. Those states which subscribe to the Convention may not make assistance to the victim conditional on the victim's willingness to act as a witness, however may require some cooperation of the victims with authorities. According to Article 14, signatories of the Convention may also issue residence permits to victims independent of the victim's cooperation with authorities and may issue the permit based on the needs and safety of the victim. The duration of such an 'independent' permit is not specified in the Convention, yet it does state that the permits must be renewable. The Convention also asks signatories to consider punishing those persons who knowingly use the services of trafficked persons and to provide protection from retaliation to witnesses.

Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Malta, Moldova, Montenegro, Norway, Poland, Portugal, Romania, Slovakia and the United Kingdom have ratified the Council of Europe Convention on Action against trafficking in Human Beings.³³⁵ Germany signed the Convention on November 17, 2005, but has not yet ratified it. The Convention has been signed by 19 other Council of Europe member states: Andorra, Belgium, Finland, Greece, Hungary, Iceland, Italy, Ireland, Lithuania, Luxembourg, Netherlands, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and Ukraine. The Convention is open to membership by non-European states. The US has neither signed nor ratified the Convention to date.

³³⁵ Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings CETS No.: 197*, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT197&CM=8&DF=2/24/2008&CL=ENG> (accessed December 27, 2008).

4.5 Recent Developments in Anti Human Trafficking Policy in the Federal Republic of Germany in Brief

Two milestones in the evolution of anti human trafficking policies in Germany took place in 1992 and 2005. Additionally, in 2007 the 2004 Council Directive on Human Trafficking Victim Residence Permits was transposed. This formalized and improved the conditions of the residence permit, which human trafficking victims have been entitled to under humanitarian guidelines of German immigration laws.

4.5.1 *Introduction of Human Trafficking to the Criminal Code 1992*

The concept of human trafficking was introduced into German law on July 14, 1992 through the 26th change to the German Criminal Code (StGB). This change introduced paragraph 180b on trafficking in human beings (Menschenhandel), and paragraph 181 on aggravated trafficking in human beings (schwerer Menschenhandel). The term ‘trafficking in human beings’ replaced the language ‘fostering prostitution’ (Förderung der Prostitution), which was the law that addressed human trafficking prior to 1992. The legal reform came closer to identifying the unique and severe abuse embodied in what we today understand as human trafficking. However, the 1992 law made only partial progress in correctly defining the crime it was trying to address.

Paragraph 180b defined trafficking in human beings as:

“(1) Whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution, shall be punished with imprisonment for not more than five years or a fine. Whoever, for his own material benefit, exerts influence on another person, with knowledge of the helplessness associated with the person’s stay in a foreign country, to get the person to engage in sexual acts, which the person commits on or in front of a third person or allows to be committed on the person by the third person, shall be similarly punished.

(2) Whoever exerts influence: 1. on another person with knowledge of the helplessness associated with the person’s stay in a foreign country; or 2. on a person under twenty-one years of age, to induce the person to take up or continue prostitution or to get the person to take it up or continue it, shall be punished with imprisonment from six months to ten years.

(3) In cases under subsection (2) an attempt shall be punishable.”³³⁶

Paragraph 181 defined aggravated trafficking in human beings as follows:

“(1) Whoever: 1. with force, threat of appreciable harm or trickery induces another person to take up or continue prostitution; 2. recruits another person through trickery or abducts person against the person’s will by threat of appreciable harm or trickery, with knowledge of the

³³⁶ German Penal Code, “Chapter Thirteen: Crimes against sexual self-determination,” Unofficial Translation as of August 2005, <http://www.legislationline.org/legislation.php?tid=178&lid=1849&less=false> (accessed October 20, 2007).

helplessness associated with the person's stay in a foreign country, in order to get the person to commit sexual acts on or in front of a third person, to allow them to be committed on the person by a third person; or 3. professionally recruits another person, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to induce the person to take up or continue prostitution, shall be punished with imprisonment from one year to ten years.

(2) In less serious cases the punishment shall be imprisonment from six months to five years.³³⁷

The 1992 revision of the German Criminal Code narrowly defined human trafficking as a violation of sexual self-determination. It did not address human trafficking as a violation of human rights and personal freedoms. Therefore, forms of human trafficking that are non-sexual, such as forced agricultural labor, domestic servitude or sweatshop labor, were not defined as such. The law in its 1992 form was accordingly placed in the 13 chapter of German Criminal Code devoted to sex crimes.

What the law did accurately address in its 1992 form was the aspect of 'helplessness' through which the victims could be forced into human trafficking. Force was not limited to physical force. A form of force was identified as the abuse of the victim's helplessness – especially helplessness resulting from the victim's living abroad. The perpetrator had to do this for his or her material benefit in order for human trafficking to occur. According to the German NGO, the KOK, this material self-benefit was difficult to prove in some cases and was dropped in the 2005 revision of German human trafficking law. According to the 1992 definition, the recruitment of a victim and his or her abduction were explicitly named as forms of human trafficking; attempted human trafficking was also a crime if the victim was under 21 years of age. Paragraph 181 was a felony, punishable with up to 10 years in prison. Paragraph 180b was a misdemeanor.

4.5.2 *Reform of the German Criminal Code on Human Trafficking 2005*

The 37th change to the German Criminal Code, which went into force on February 19, 2005, expanded the definition of human trafficking to equate it to that of the 2000 UN Protocol on human trafficking. The offence was moved to the 18 Chapter of German Criminal Code, which deals with crimes against an individual's personal freedom. Paragraphs 180b trafficking in human beings and 181 aggravate trafficking in human beings were replaced with paragraph 232 trafficking in human beings for the purpose of sexual exploitation (*Menschenhandel zum Zweck der sexuellen*

³³⁷ Ibid.

Ausbeutung) and paragraph 233 trafficking in human beings for the purpose of labor exploitation (Menschenhandel zum Zweck der Ausbeutung der Arbeitskraft). Paragraph 233a fostering trafficking in human beings (Förderung des Menschenhandels) was also introduced in 2005.

Paragraph 232 defines trafficking in human beings for the purpose of sexual exploitation as follows:

“(1) Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, to take up or to continue prostitution or forces the person to perform sexual acts on or in front of the perpetrator or a third person or to have them performed by the perpetrator or a third person, shall be punished with imprisonment of six months up to 10 years. Whoever forces a person under 21 years of age to take up or to continue prostitution or other sexual acts listed under Section (1) shall be punished as well.

[(2) Attempting to do the acts in Section (1) shall be punished.] ...

(4) Punishment shall also be imposed for whomever: 1. forces another person by violence, by threat with a substantial evil or by coercion to take up or continue prostitution or the other sexual acts listed in Section (1) Subsection 1 or, 2. Seizes another person by violence, by threat with a substantial evil or by coercion, in order to force the other person to take up or continue prostitution or the other sexual acts listed in Section (1) Subsection 1.”³³⁸

Paragraph 233 defines trafficking in human beings for the purpose of non-sexual labor exploitation as follows:

“(1) Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, into slavery, bondage or debt servitude or to take up or continue an employment relationship with him or a third person under working conditions which are in no way equal to the working conditions of other workers who do the same or a similar job, shall be punished with imprisonment of six months up to 10 years. Whoever forces a person under 21 years of age into slavery, bondage or debt servitude or to take up or continue an employment relationship listed in Section 1 shall be punished as well.”³³⁹

Attempted human trafficking is also punishable under paragraph 233.

Furthermore, paragraph 233a on fostering trafficking in human beings made those persons punishable who aid human traffickers. Abetting human traffickers, as well as recruiting, transporting, harboring of victims, were made punishable. The final link in the human trafficking chain, the consumer of the services of human traffickers, was not addressed by the 2005 human trafficking law reform.

The main changes in the law were the introduction of non-sexual exploitation as a form of human trafficking in Germany, and the elimination of material self-benefit as

³³⁸ Ban Ying, “Trafficking in Human Beings,” <http://www.ban-ying.de/pageeng/definition.html> (accessed October 20, 2007).

³³⁹ Ibid.

a prerequisite of human trafficking. Instead of having to prove that the perpetrator benefited materially through the exploitation of the victim, it was merely necessary to prove that a victim had been economically exploited in order for human trafficking to have taken place. The 2005 reform of German human trafficking law did not address the trafficking of human organs. This activity is illegal in Germany and is punishable under the human organ transplantation laws.

4.5.3 *Migration Reform to Transpose Directives of the European Union 2007*

In August 2007, an additional reform of immigration law went into force, which impacted human trafficking regulations in Germany. The immigration reform was given the complicated name, which translates roughly to: Law to Transpose Residence and Asylum Directives of the European Union. German immigration laws are composed of several laws governing residence, entry, asylum and work. In accordance with the 2007 reform of immigration laws, victims of human trafficking were explicitly accounted for in German residence law. Previously, their residence had been possible under humanitarian protection included in asylum stipulations. In the 2007 immigration reform, changes were made to paragraph 25 of the residence law, which allows non-citizens to reside in Germany based on humanitarian reasons. Under paragraph 25, subsection 4a was introduced. Accordingly, a non-citizen who is a victim of human trafficking (as defined in paragraphs 232, 233 or 233a of the German criminal code) can receive a temporary residence permit, even if he or she is unlawfully in Germany. Victims of human trafficking are eligible for a temporary residence permit if:

1. A court of law deems the individual's presence as essential for prosecuting the case.
2. The person in question breaks ties with suspects accused of trafficking the victim.
3. The person in question agrees to testify as a witness in the case.

Paragraph 50, subsection 2a was also amended in the 2007 reform of German immigration laws. It transposed into national law the minimum reflection period of four weeks, set by the 2005 European Convention on Trafficking in Human Beings, for suspected victims of human trafficking. This reflection period had been in place in practice prior to 2007.

The German umbrella organization for anti human trafficking NGOs in Germany, the KOK, was asked to review the first draft the 2007 immigration law reform. Concerning those human trafficking victims that receive a visa, it successfully argued for

the right of these international human trafficking victims from outside the European Union to have unrestricted access to the labor market (without the so-called Vorrangprüfung, which entitles third-country nationals to take a job, only when no German or EU national equally qualified has applied). A second improvement that the KOK lobbied for was the right of human trafficking victims, who receive a human trafficking visa in Germany to reunite with family members aged 21 or younger (instead of 18 or younger). Based on a precedent set by the Federal Constitutional Court on June 11, 2006, the KOK successfully sought to prevent money paid as compensation for damages to human trafficking victims to be viewed by national authorities as 'income'. This is significant in cases where human trafficking victims are eligible for social benefits. These benefits are only awarded in cases where the person in question does not have enough income to care for himself or herself.

The KOK criticized the 2007 reform of German immigration laws relating to human trafficking because it still requires victims to testify against their traffickers in order to be eligible for a visa. The KOK would have wanted the reflection period to be extended and the access of human trafficking victims to medical services to better meet the needs of the victims. Improved and more individual housing for victims of human trafficking was unsuccessfully argued for by the KOK.³⁴⁰

4.5.4 *The Prostitution Law 2002*

Germany's prostitution law reform, enacted in January 2002, was based on the clear separation of voluntary prostitution from that of forced prostitution. It followed the idea of self-sexual-determination. The law deemed the contract that prostitutes make with clients legally binding; a client is legally obliged to pay for the agreed upon and performed sexual service regardless of his opinion of how 'good' the service was.³⁴¹ The client cannot demand additional services from the prostitute. The law intended to increase the legal authority of prostitutes, reduce the power of pimps over prosti-

³⁴⁰ Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V., "Aktualisierte Stellungnahme des KOK e.V. zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union," <http://www.kok-potsdam.de/data/Medien/KOKaktuelleStellungnahmeZuw.G.pdf?PHPSESSID=45dde2665e8c7e31aa049a876f0b9674&PHPSESSID=9b0365e28d045defaa6db1f85c7d469e&PHPSESSID=afd0c53dec7cef99b5ba0f6385bc6ba> (accessed October 20, 2007): 1–2.

³⁴¹ Deutscher Bundestag, "Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten," Bundesgesetzblatt, <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/PRM-15320-Gesetz-zur-Regelung-der-Rechts.property=pdf.pdf> (accessed October 20, 2007), Art. 1.

tutes, decriminalize commercial sexual services that are voluntarily provided for the self-profit of the sex-worker and reduce stigmatism associated with sex workers. Sex workers in Germany can legally register their economic activity to receive health insurance, workers compensation insurance and have the right to contribute taxed income to their pension fund.

In 2002, the prostitution law caused a change in human trafficking law. It made the fostering of prostitution illegal only when this lead to the exploitation of the sex worker and not when the sex worker voluntarily engaged in prostitution. However, the 2002 prostitution law reform did not change the regulations regarding irregular migrants. Irregular immigrants are not eligible to legally practice prostitution in Germany.

4.6 In Depth Analysis of German Human Trafficking Policy Frameworks

The schema derived in Chapter One will be applied at the national level for the Federal Republic of Germany. Only the ‘problematic’ aspects that were identified in Chapter One will be explored in this chapter on Germany.

These aspects are:

- The demographic parameter: gender-specificity
- The geographic parameter: internal human trafficking
- The exploitation parameters: forced non-sexual labor and trafficking in human organs
- The victim protection parameter: right to residency
- The criminalization and punishment parameters: criminalization of links in the trafficking chain and the commercial nature of the crime.

After exploring how German policy frameworks address each ‘problematic’ issue, three other instruments will be used to evaluate these issues in the German context. First, reporting on human trafficking cases in Germany will be examined. Unlike in the United States of America, the German Government does not report on the details of human trafficking cases. However, the International Labor Organization (ILO) reported on actual cases of human trafficking in Germany in its 2005 report: ‘Menschenhandel und Arbeitsausbeutung in Deutschland.’ Case examples, which will be referred to in the following subchapter, are based on this ILO report. The information in the ILO’s report stems from interviews conducted by the ILO report’s author with service providers, police, victims and other experts in the field. Unlike in the

previous chapter on the United States of America, it should be noted that the actual cases of human trafficking reported by the ILO did not all go to trial.

Second, reporting by German NGOs will be looked at and finally a selection of online media sources will be analyzed. Investigating not only the legal framework, but also using these three additional analytical instruments will aid this in depth analysis of the seven ‘problematic’ aspects of human trafficking in the German context.

It was possible to gain a comprehensive overview of government and NGO reporting on human trafficking. However, in an age of online media that is independent of national borders, it was quite challenging maintain an overview of reports by the press on this issue. Since the focus of this analysis is to detect gaps in policy and not to conduct a comprehensive survey of the media, regular samples of media reporting were relied on. These offer impressions of how the international media reports on human trafficking in the German context. This method only allows one to draw general conclusions on if there is an apparent gap in media reporting concerning the seven problematic aspects of human trafficking listed above. The international media is not a united entity that deals with any issue uniformly, so it is impossible to draw specific conclusions about ‘the media’s’ approach to this issue.

The author monitored online media sources in the English and German languages regularly. This monitoring relied primarily on two search engines: the European Media Monitor and Google News. It is important to note that reports on human trafficking in the media are infrequent in general, so a more standard approach of selecting a range of print media to survey would have yielded too few examples of reporting. The survey of online reporting on human trafficking produced ca. 15 to 25 articles per month on human trafficking globally.³⁴²

4.6.1 *Demographic Parameter: Gender-Specificity*

The 1992 introduction of human trafficking into the German Criminal Code and its 2005 reform were not gender-specific. The text of the law referred to ‘persons’ and not to ‘women’ who are exploited sexually. Therefore, it was not gender specific and the police discovered and counted male victims of human trafficking. Male victims made up a negligible portion of the known victim population. In 1999, two of 801 known victims were male. In 2000, 2001 and 2002, all known victims were female.

³⁴² This assertion is based on over three years of monitoring the press by the author. A collection of media reports by the author can be found at: www.traffickinginpersons.org.

In 2003, the authorities registered eight male victims. In 2004 this number was 13. In 2005, the Federal Police did not report the exact number of male human trafficking victims, but did state that ‘nearly all’ victims were female in their report *Lagebild Menschenhandel 2005*.

The 2005 revision of German human trafficking law, which expanded the definition of human trafficking to include forced non-sexual labor, expanded the focus of anti human trafficking policy. In 2006, the number of detected persons who were exploited for non-sexual labor was 83.³⁴³ The majority was male: 61 victims. Of the 775 victims of human trafficking for the purpose of prostitution, 98.5% were female.³⁴⁴

The 2007 reform of migration laws, which impacted the residence visas available to certain victims of human trafficking, was not gender-specific.

Examples Reporting on Actual Human Trafficking Cases

In this subchapter, two human trafficking cases in which the victims were male will be detailed. Both are contained in the 2005 ILO report: ‘*Menschenhandel und Arbeitsausbeutung in Deutschland*’.

In an unspecified year, a young African boy was brought to Berlin, Germany through Paris, France. He entered Germany with false documents and was registered as a tourist based on this documentation. Prior to his journey a relative told him that he would easily be able to secure a legal resident’s permit in Germany once he arrived. In Germany, a man took custody of the boy and told the boy that he was in Germany irregularly and that he would have to work for the man, or the man would report the young African boy to the police. The man told the boy that the police would repatriate the boy. The boy was forced to work renovating the man’s home, doing garden work and housework. The perpetrator carefully monitored the young boy’s movements. After some time, the boy was able to escape with the help of an acquaintance.³⁴⁵

A second example involves a 49-year-old man from Kazakstan, Vassili J. He entered Germany on a tourist visa, which he received under false pretenses with the help of a Kazak tourist agency. A demolition company in Germany employed him illegally. Upon arrival in Germany, Vassili J.’s employer picked him up and escorted him to his housing. His employer was a subcontractor in the demolition business

³⁴³ Bundeskriminalamt, *Bundeslagebild Menschenhandel 2006* (August 2007), 9.

³⁴⁴ *Ibid.*, 6.

³⁴⁵ Unofficial English summary of: Norbert Cyrus, *Menschenhandel und Arbeitsausbeutung in Deutschland*, Internationale Arbeitsorganisation, Internationale Arbeitsorganisation (2005), 21.

working on the deconstruction of an atomic energy plant in Kalkar, Germany. Vassili J. and circa 30 other Kazak workers were employed to do this work for 2,50 Euro an hour. The working conditions were poor: for example, safety regulations were not met, wages were at an exploitative level and much overtime was demanded of the workers. Although labor authorities inspected the site, the abuse continued undetected. Only when Vassili was killed in an accident on-site during a night shift, did German labor authorities become aware of the labor exploitation. The demolition company immediately deported the remaining Kazak workers and told authorities that they did not know who the worker that was killed on the job was. It was only through a missing persons report filed by Vassili J.'s wife and the pursuing investigation that Vassili J.'s identity and the circumstances of his death become known. The case went to court and the subcontractor was forced to pay a penalty of 2,250 Euro for not enforcing worker safety. The penalty was so low because it was based on the income of the worker and not on the severity of the crime. In a second case against the subcontractor, the company was found guilty of human smuggling, not of human trafficking.³⁴⁶

Although no human trafficking conviction was obtained in these cases, this case has several attributes of human trafficking, such as recruitment, organized transport, provisional housing and severe exploitation, which ended in death. The fact that the perpetrator was tried for human smuggling and not for human trafficking was not due to way the German law addresses the issue of gender. German human trafficking frameworks are not gender specific.

Examples of Non-Governmental Reporting

German human trafficking NGOs have grown out of initiatives created by women's issues groups and pro sex-worker organizations. This infrastructure is largely gender-specific to females. For example, the NGOs AGRISA, Amnesty for Women, Ban Ying, Frauenberatungsstelle Duesseldorf, Frauenrecht ist Menschenrecht (FIM), FRANKA, HYDRA, In Via, eine Welt Zentrum, JADWIGA, Aktionsbündnis gegen Frauenhandel, KOOFRA, and ONA have traditionally focused on helping women.

Germany's leading anti human trafficking NGO, the German Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Process of Migration (KOK) is the umbrella organization for all anti human trafficking NGOs in the Federal Republic of Germany. Its mandate is one that

³⁴⁶ Ibid., 35.

is gender-specific and only applies to women. Indeed the organization refers to human trafficking as trafficking in women (Frauenhandel). It has produced excellent research, analysis and data on the situation of gender-specific human trafficking in Germany. Its most comprehensive report is the ‘shadow report’ on human trafficking, which was published in 2001. Due to the gender-specific infrastructure of German anti human trafficking NGOs, these do not address the lack of services for male human trafficking victims.

The Max Planck Institute published a criminological evaluation of police reports and court cases on human trafficking. The report was co-authored by Dr. Annette Herz and is entitled: “Straftatbestand Menschenhandel. Verfahrenszahlen und Determinanten der Strafverfolgung.” This roughly translates to: “The State of Human Trafficking – The number of processes and determinates of prosecution.” This report points out that circa one percent of known human trafficking victims in the Federal Republic of Germany have been male.³⁴⁷

There is otherwise a complete absence of reporting on gender-neutral human trafficking by German NGOs.

Recommendation:

Members of German anti human trafficking NGOs should expand their mandates to include victims of both genders. Government funding of victim protection and rehabilitation projects should be expanded so that NGOs can aid a larger segment of the trafficked population in Germany.

Examples of Media Reports

There is a clear absence of media coverage concerning male human trafficking victims in Germany. This can be attributed to the sheer lack of known victims that were male. Media reports on human trafficking in Germany have focused on women. Even during Germany’s largest scandal, which was rooted in human smuggling, but also touched on human trafficking, the media took a gender-specific approach.

The scandal surrounded a series of events, which mixed the issues of human smuggling and human trafficking. Large scale Schengen Visa abuse was uncovered and tracked to German embassies in 2005.

³⁴⁷ Annette Herz and Eric Minthe, “Straftatbestand Menschenhandel. Verfahrenszahlen und Determinanten der Strafverfolgung. München, Luchterhand,” *Bundeskriminalamt Kriminalistisches Institut* (Munich: Luchterhand 2006), 126.

The so-called Vollmer-Directive of 2000 was the starting point of the visa abuse that followed. It had stipulated that in cases in which German consular immigration officers doubt a tourist's legitimacy (sometimes labor migrants destined for the informal economy attempt to enter Germany on a tourist visa), immigration officers should issue a tourist visa to the person in question. The German Government's recognition of so-called 'travel protection documents', which were a type of commercial travel insurance, replaced the need for tourists from the Ukraine and Belarussia to obtain an invitation from a German citizen or long-term resident in Germany. This had been required prior to the Vollmer-Directive. Visas into the European Union's Schengen territory via Germany were virtually being sold in the Ukraine and Belarussia at German Embassies in the Ukraine and Belarussia. Whoever possessed travel protection documents and was a citizen of those two countries could gain entry into any country of the Schengen area.

Consequently, a black market for the travel protection documents evolved. An organized criminal network operating transnationally in Eastern Europe and in Germany set up travel agencies as a front for their operations. The Federal Police became aware of almost 400 agencies in this criminal network.³⁴⁸ These travel agencies would create imaginary itineraries for groups of tourists from the Eastern European countries. The travelers would enter the Schengen area and in many cases overstay their visas, becoming part of Germany's or other Schengen countries' informal labor market. Organized human smuggling networks operated in this way until March 2003, when the Voller-Directive was reversed.

The German Federal Police's Wostok Report became public in early 2005. It detailed the impact of the Vollmer-Directive. The main opposition party, the Christian Democrats, created a parliamentary investigation into the scandal and sought to place the responsibility for it on the Foreign Minister Josef Fischer (Greens). The Foreign Minister was called to speak in front of the responsible parliamentary committee. During this investigation, human trafficking was addressed. It was speculated that a number of persons who entered Germany and the Schengen area on a tourist visa and overstayed had become victims of human trafficking. Although the reporting on human smuggling was gender-neutral, the reporting on human trafficking focus only on potential female victims:

"That there was massive abuse in issuing visas between 2000 and 2002 at German embassies in Eastern Europe was never in question and was not denied by the German Foreign Ministry. Just looking at the number of visas issued reveals this fact. The German Embassy in

³⁴⁸ Unofficial translation: Ntv, "Wahrheiten aus dem Osten: Der 'Wostok'-Bericht," *Ntv*, Februar 24, 2005, <http://www.n-tv.de/5498432.html> (accessed October 20, 2007).

Kiev alone doubled the number of visas it issued between 1999 and 2002 from 150,000 to 300,000 respectively. Undocumented workers could enter Germany and the European Union, as could women who were forced into prostitution.”³⁴⁹

Press releases by the then opposition party, the Christian Democrats, also took a gender neutral approach to human smuggling, but a gender specific approach to human trafficking.

“Through the visas which were issued by the German Embassy in Kiev large numbers of undocumented workers and later women who were forced into prostitution could easily enter Germany and other Schengen countries, under the pretext of tourism.”³⁵⁰

A second human trafficking related issue, which the press frequently covered on Germany, was the soccer world cup in 2006. The exclusive focus of this coverage was on the sex trafficking of women.

Human trafficking coverage by the surveyed media in Germany has been gender-specific.

4.6.2 *Geographic Parameter: Internal Human Trafficking*

In 2003, the German Federal Police began to publish statistics on the number of internal human trafficking victims.³⁵¹ Internal human trafficking victims are those whose citizenship is identical to the country in which he or she is trafficked; in this case, victims who are German citizens. Internal human trafficking is a recognized component of human trafficking in Germany.

What is particularly interesting is that the 2003 introduction of statistics on internal human trafficking victims in Germany was not based on legal reform. The 1992 introduction of human trafficking to German Penal Code did not specify that victims of human trafficking had to be foreigners. The 1992 law on human trafficking, which was in force during the 2003 decision of the German Federal Police to report statistics

³⁴⁹ Unofficial translation: Sigrid Aversch and Damir Fras, “Im Circus Maximus, Fischer räumt ein, dass die Visa-Affäre ein Ruecktrittsgrund ware,” *Berliner Zeitung*, March 5, 2005, <http://www.berlinonline.de/berliner-zeitung/politik/427678.html> (accessed March 7, 2005).

³⁵⁰ Unofficial translation: Juergen Gehb, “Schleuser-Ausschuss vor seiner ersten Arbeitssitzung – Untersuchungsausschuss soll Vorgänge in Kiew aufklären,” *CDU CSU Fraktion*, January 19, 2005, http://www.cducsu.de/section__1/subsection__5/id__1366/Meldungen (accessed January 22, 2005).

³⁵¹ For the purposes of this analysis, internal human trafficking refers to the trafficking of a citizen of a given country within that country. In other words, this is trafficking in which the citizenship of the victim is identical to the country in which he or she is trafficked.

on internal human trafficking, referred to the ‘helplessness of a person originating from a foreign country’ only as one factor, which could contribute to a victim’s exploitation. This factor was not a prerequisite for human trafficking to occur.

However, until 2003, internal human trafficking was literally ignored as a dimension of human trafficking in Germany by the Federal Police and was excluded from its annual report on human trafficking. The change in the Federal Police’s reporting can be traced to a decision the administration of the police force made during an October 2003 federal meeting.³⁵² Internal human trafficking is a controversial part of policies in Germany only because national authorities largely ignored German citizen victims.

Human trafficking legislation was reformed in 2005. Internal human trafficking victims became the second largest group in Germany the same year. This reform highlighted the vulnerability of foreign victims even more so than the 1992 law, further neglecting internal human trafficking victims. It did so by moving ‘the helplessness of foreign victims’ from the second to the first sentence of the law. The first sentences of the 1992 law in paragraph 180b and 181 respectively read:

“Whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution, shall be punished with imprisonment for not more than five years or a fine.”³⁵³

“Whoever with force, threat of appreciable harm or trickery induces another person to take up or continue prostitution shall be punished with imprisonment from one year to ten years.”³⁵⁴

Neither of these sentences distinguishes between internal and foreign human trafficking victims.

In comparison, after the 2005 reform of German anti human trafficking legislation, the first sentences of paragraph 232 and 233 of the 2005 law read respectively:

“Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, to take up or to continue prostitution or forces the person to perform sexual acts on or in front of the perpetrator or a third person or to have them performed by the perpetrator or a third person, shall be punished with imprisonment of six months up to 10 years.”³⁵⁵

³⁵² Bundeskriminalamt, *Lagebild Menschenhandel 2003*, (July 2004), 2.

³⁵³ German Penal Code. “Chapter Thirteen: Crimes against sexual self-determination.” Unofficial Translation as of August 2005. <http://www.legislationline.org/legislation.php?tid=178&lid=1849&less=false> (accessed October 20, 2007).

³⁵⁴ *Ibid.*

³⁵⁵ Ban Ying, “Trafficking in Human Beings,” <http://www.ban-ying.de/pageeng/definition.html> (accessed October 20, 2007).

“Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, into slavery, bondage or debt servitude or to take up or continue an employment relationship with him or a third person under working conditions which are in no way equal to the working conditions of other workers who do the same or a similar job, shall be punished with imprisonment of six months up to ten years.”³⁵⁶

Following the 2005 reform of human trafficking laws, these include a more immediate reference to international human trafficking victims. The 2005 law encompasses, however, both internal and international human trafficking.

The 2007 reform of migration laws, which impacted the residence options to victims of human trafficking were specific to non-citizens for obvious reasons. German citizens of human trafficking do not require a residence permit to live in Germany.

Examples of Reporting on Actual Human Trafficking Cases

The 2005 ILO report: ‘Menschenhandel und Arbeitsausbeutung in Deutschland’ does not profile any cases, in which victims of human trafficking were German citizens. The report focuses on the human trafficking of immigrants. The delayed recognition of internal human trafficking victims in the annual reports of the German Federal Police is echoed by the absence of reporting on this segment of the human trafficking population in Germany by the ILO.

Examples of Non-Governmental Reporting

German NGOs that are specialized in human trafficking focus on non-nationals victims. There is a clear absence of German NGO reporting on domestic human trafficking victims. Indeed the umbrella organization for anti human trafficking in the Federal Republic of Germany, the KOK, defines itself as Combating Trafficking in Women and Violence Against Women in the Process of Migration.

Examples of Media Reports

The surveyed media has largely ignored the issue of internal human trafficking in Germany and has focused on international human trafficking. Indeed, the surveyed media has instead focus almost exclusively on the sex trafficking of immigrant women to Germany. This parallels the focus that NGOs and the government have placed.

³⁵⁶ Ibid.

Recommendation:

The Government, NGOs and media in the Federal Republic of Germany should draw more attention to internal human trafficking.

4.6.3 *Exploitation Parameters: Forced Non-Sexual Labor and Trafficking in Human Organs*

Forced Non-Sexual Labor

In 2005, legislative reform expanded the definition of human trafficking in Germany to include non-sexual forced labor for the first time.

Paragraph 233 defines trafficking in human beings for the purpose of non-sexual labor exploitation as follows:

“Whoever forces another person by exploiting a situation of coercion or helplessness which is linked to the person’s stay in a foreign country, into slavery, bondage or debt servitude or to take up or continue an employment relationship with him or a third person under working conditions which are in no way equal to the working conditions of other workers who do the same or a similar job, shall be punished with imprisonment of six months up to ten years. Whoever forces a person under 21 years of age into slavery, bondage or debt servitude or to take up or continue an employment relationship listed in Section 1 shall be punished as well.”³⁵⁷

The 2005 reform was a breakthrough in the way anti human trafficking policy had been framed in the Federal Republic of Germany. Prior to 2005 human trafficking had been narrowly defined as only sex trafficking. The 1992 version of human trafficking law had targeted the sexual freedom of persons residing in Germany. The 2005 reform of human trafficking law changed the aim of anti human trafficking policies to protecting the personal freedoms of individuals. It is, therefore, only since 2005 that Germany has had anti human trafficking policies that coincide with the UN’s human trafficking policy framework. As a result, it is not surprising that reporting on non-sexual forms of human trafficking is scarce.

The 2007 reform of migration laws, which impacted the residence options available to victims of human trafficking were not specific to sex trafficking. The visas can be granted to victims of sexual or non-sexual human trafficking.

Examples of Reporting on Actual Human Trafficking Cases

Human trafficking for non-sexual labor was introduced to the German Criminal Code in 2005 and is relatively new to German law. The Lagebild Menschenhandel 2006 re-

³⁵⁷ Ibid.

port published statistics on the number of victims it detected who were enslaved for non-sexual labor. For 2006, 78 cases and 83 victims were detected. Sixty-one of the victims were male and 22 were female. The majority of people were victimized for labor in restaurants or in private households.³⁵⁸ Details on the circumstances of these cases are not profiled by the German Federal Police. However, there have been reports collected by the ILO, in their 2005 report: ‘Menschenhandel und Arbeitsausbeutung in Deutschland,’ from service providers that demonstrate that human trafficking for non-sexual labor has been occurring in the Federal Republic of Germany.

Two areas of legal work in which cases of exploitation have resembled human trafficking are: international seasonal work and ‘contracted work’ (Wertvertragsarbeit). Based on the large size of the international seasonal workforce, the scope of human trafficking in this area certainly goes beyond the scope of the following detected cases. In the past half decade, Germany has certified between 200,000 and 290,000 seasonal workers per year to work mainly in agriculture.³⁵⁹ Germany has also recruited between 70,000 and 56,000 ‘contracted workers’ in the same time period.³⁶⁰ Indeed these are the two largest areas of international labor legally recruited into Germany today. Seasonal workers and ‘contract workers’ are one of over thirty labor market categories that are exempt from the 1973 stop on foreign labor.³⁶¹ Germany has a substantial need for agricultural workers on a seasonal basis.

The ILO’s 2005 report: ‘Menschenhandel und Arbeitsausbeutung in Deutschland’ profiled the following case:

“In 2002, legally contracted workers from Romania were recruited in large numbers, 3,500 people, to work at a slaughterhouse in Germany. The workers were promised a salary of 1,200 Euro per month over one year’s time. Each worker paid an 800 Euro fee to be eligible for employment. Once they arrived in Germany, they were forced to work ten to fourteen hours per day and allowed only two 15 minute breaks per day. They were paid 900 Euro per month. They were not paid for overtime. The employer charged the workers for the overcrowded housing he provided. He also charged the workers for the tool they needed in order to do their work (knives, work boots, etc.). The workers were forced to sign blank pay stubs and were instructed how to answer questions from authorities, should these pay a surprise visit to the worksite to control labor conditions. One of the workers was forced to surrender his passport to the employer and was given only a copy of this document. He was told that he could not take any vacation because his visa had expired in the passport, which he could not access. After about one year, some of the contracted workers threatened to contact the labor

³⁵⁸ Bundeskriminalamt, *Bundeslagebild Menschenhandel 2006* (August 2007), 9.

³⁵⁹ Sachverständigenrat für Zuwanderung und Integration, *Migration und Integration – Erfahrungen nutzen, Neues wagen* (Bonifatius GmbH, Paderborn, 2004), 141.

³⁶⁰ Ibid.

³⁶¹ Rita Süßmuth, *Migration und Integration: Testfall für unsere Gesellschaft* (München: DTV, 2006), 102.

authorities in Germany, demanding to receive the pay that was agreed to at the time they were recruited to work in Germany. The employers then threatened to fire the Romanian workers and attacked them physically, injuring several severely. Three of the workers contacted the labor union in Germany and took their employers to court. They demanded 15,000 Euros in unpaid wages. The German courts at first referred them to the Romanian courts. The workers contacted the police and the German labor union once again. The case then went to court in Germany in 2003.³⁶²

The second example profiled by the ILO's 2005 report: 'Menschenhandel und Arbeitsausbeutung in Deutschland' is one in which women from Lithuania were exploited for sweatshop labor in Frankfurt am Main:

"In 2001, the labor office in Frankfurt/Main reported to the ILO on a case of the exploitation of women from Lithuania, who were forced to work in a textile sweatshop sewing garments. Authorities uncovered the illegal labor on April 10, 2001. The building was equipped with video cameras and was sealed with an iron door. Authorities uncovered the operation by posing as customers and were able to access the building. They discovered 15–20 sewing machines and four frightened women from Lithuania. The women were freed from the situation and described to authorities that they were forced to work 12–15 hour days and received 400 Euros for six weeks of labor. This equates to an hourly wage of 1.25–1.50 Euros per hour. The women were locked in the building when they were not working. They were not allowed to go out without one of the traffickers company. They said they feared the employer, a man from Jordan. The operation had been in business for several years and had exploited up to twelve irregular employees at one time; employees were constantly rotated in and out. The profit made by the operation was estimated to be about 1 million Euros. The irregular workers were repatriated following their cooperation with authorities."³⁶³

Examples of Non-Governmental Reporting

The majority of NGOs in Germany do not only follow a gender-specific approach to human trafficking focusing on women, they also focus on sex trafficking. Therefore, non-governmental reporting on human trafficking for non-sexual labor is virtually non-existent. One exception to this is a report by the NGO Ban Ying. The authors, Nivedita Prasad and Babette Rohner provide a summary of the 2005 human trafficking legal reform. In this summary the authors clearly state that human trafficking also includes forced non-sexual labor:

It [the 2005 human trafficking law] is clear that human trafficking is no longer defined as only forced prostitution; it emphasizes that human trafficking can take place in any industry, as well as in a marriage / intimate relationship.³⁶⁴

³⁶² Unofficial English summary of: Norbert Cyrus, *Menschenhandel und Arbeitsausbeutung in Deutschland*, Internationale Arbeitsorganisation, Internationale Arbeitsorganisation (2005), 28.

³⁶³ *Ibid.*, 40.

³⁶⁴ Unofficial translation: Nivedita Prasad and Babette Rohner, "Einführung-Menschenhandel in Deutschland," <http://www.ban-ying.de/downloads/Einf%FChrung-Menschenhandel%20in%20Deutschland.pdf> (accessed October 22, 2007).

There are many examples in which NGOs have reported on human trafficking only in the context of forced sexual labor. The NGO FIM is one that correctly reports on the legal definition of human trafficking in Germany, but chooses to focus on forced prostitution in its further reporting on human trafficking.³⁶⁵ Hydra is another German NGO that provides services to human trafficking victims. It is an organization that focuses on the needs of prostitutes. Consultation for victims of human trafficking is one of several services this NGO provides and this is offered almost exclusively to human trafficking victims of sexual exploitation in Germany currently.³⁶⁶

Recommendation:

The German NGO community should work to expand the focus of anti human trafficking services to victims who are forced into non-sexual labor. The German Government should provide adequate funds and capacity-building resources to support NGOs in their efforts. Information exchange with US NGOs could be beneficial to building additional capacity in the German NGO community.

Examples of Media Reports

The surveyed media has reported almost exclusively on human trafficking for sexual labor in Germany. One exception to this was the September 7, 2006 article in the Frankfurter Allgemeine Zeitung entitled Migration is Feminine.³⁶⁷ The article describes a press conference at which the German Development Minister Wieczorek-Zeul and the former President of the German Parliament Rita Süßmuth presented the findings of the 2006 UN World Population Report in Germany. The Report highlighted challenges that women face during and as a result of migration. It also described the many contributions women make to development and to the economy. The article's coverage of human trafficking of women did not focus on sex trafficking. Rather it made an example out of human trafficking of women in private households, forced into labor such as cleaning and caretaking.

“The world population report states that women and girls, who are forced migrants, are subject to many dangers, for example sexual assault. Of the 600,000 to 800,000 persons, who

³⁶⁵ Frauenrecht ist Menschenrecht, “Hintergrundinformationen: Strafrechtsnorm,” http://www.fim-frauenrecht.de/menschenhandel_hintergrundinfo.html (accessed October 22, 2007).

³⁶⁶ Hydra, “Treffpunkt und Beratung für Prostituierte,” <http://www.hydra-ev.org/master/start.html> (accessed October 22, 2007).

³⁶⁷ Unofficial translation: Axel Wermelskirchen, “Migration wird weiblich,” *Frankfurter Allgemeine Zeitung*, Politik: Deutschland und die Welt, September 7, 2006, 9.

are trafficked internationally each year, 80% of them are women. Women, who work illegally are especially vulnerable to being exploited. This is especially true for female migrants who work in private households.³⁶⁸

Recommendation:

The media should convey a broader picture of human trafficking, including human trafficking for non-sexual labor exploitation in its reports on Germany.

Trafficking in Human Organs

German anti human trafficking laws do not include trafficking in human organs. The German organ transplant law covers this crime in paragraphs 17 and 18. The crime is punishable with up to five years imprisonment. Attempting to commit the crime is also punishable. This type of human trafficking is, however, included in the 2000 UN Anti Human Trafficking Protocol and should be integrated into German anti human trafficking policy frameworks. Since trafficking in human organs does occur globally and has occurred in the Federal Republic of Germany, it should be prosecuted with the same rigor as other types of human trafficking; victims who survive this type of human trafficking should be entitled to the same benefits as other victims of this crime. In 2005, three times the number of human organs was officially registered as being needed by patients as became available by official donors.³⁶⁹

Recommendation:

German federal law should include human trafficking in organs in its definition as stated in the 2000 UN Anti Human Trafficking Protocol.

Examples of Reporting on Actual Human Trafficking Cases

No cases have been detected by authorities, in which an organ of a trafficked person was transplanted in Germany. Any resident in Germany who undergoes a transplantation in a foreign country like China would be detectable for a long period of time if resident in Germany because they would have to receive significant out patient care following their return to Germany. It is unclear how rigorously doctors may report

³⁶⁸ Ibid.

³⁶⁹ Unofficial translation: Dennis Stute, "Organhandel in China: Hinrichtung auf Bestellung?" *Deutsche Welle*, <http://www.dw-world.de/dw/article/0,2144,1975233,00.html> (accessed October 23, 2007), April 21, 2006.

such patients to authorities in Germany. According to the German transplantation law, if a resident of Germany were to receive an illegal organ transplant abroad, they would have to answer for this crime in Germany.

“Whoever undergoes an organ transplant abroad is not able to hide this fact after returning to Germany because of the medical care that is necessary following such an operation explains Mr. Oduncu, expert for organ transplantation und bioethics at the university clinic of Munich. ‘I have never heard of such a case happening in Germany’, he said. ‘The transplantation law has proven to be deterrent.’”³⁷⁰

If an operation on a German resident were to occur out of the country, upon the patient’s return, doctors in Germany conducting out patient care would be the only group of people, who might help German police determine who participated in the trafficking of human organs. Without the help of such doctors, German authorities will have difficulty combating this form of human trafficking.

Examples of Non-Governmental Reporting

Anti human trafficking NGOs in the Federal Republic do not provide services for victims of human trafficking, who were trafficked for their organs and survived this exploitation. NGOs that specialize in organ transplants do raise awareness about the rule of law concerning the rightful and illegal means by which human organs can be acquired for organ transplants. One such NGO is the Selbsthilfe Lebertransplantiert-er Deutschland e.V. another federal umbrella organization for all forms of human organ transplants is the Bundesverband der Organtransplantierten e.V. However, because this group of human trafficking victims has not been detected in Germany and is not defined under German law as being a victim of human trafficking, the relevant NGO reporting within the anti human trafficking community on this subject is also non-existent.

Examples of Media Reports

The surveyed media has focused on the trafficking of organs abroad, especially in China. In a few reports, the surveyed media makes the connection to potential organ trafficking in Germany. As early as the year 2000, the Tagesspiegel wrote about a company in the bordering country of the Czech Republic that engaged in trafficking in organs. This company was marketing its services in Germany and was indeed financed by a German businessman.

³⁷⁰ Ibid.

“The company presented itself in a letter as an ‘international self-help organization for people with kidney disease’. Its purpose was to help people with kidney disease find donors. The flyer attached claimed the organization could ‘provide for kidney transplants without a waiting list’... The company presented itself as a branch office of the ‘International Transpla-Cent Clinic’ in Nevada, USA... A 35-year-old Russian citizen allegedly headed the company. According to documents from the Czech Department of Commerce, the company’s start-up capital (circa 11,000 DM) was provided by a 37 year old German doctor Edgar Rudolf from Schwäbisch Gmuend.”³⁷¹

Since no law on the transplantation of human organs existed in the Czech Republic in 2000, the International Transpla-Cent Clinic was sent up there to cater to German residents and to circumvent German anti organ trafficking laws.

In 2007, a media report published by “Die Zeit” focused on the trafficking of human tissues and the involvement of patients from Western Europe including Germany. The human tissue of an Estonian man was illegally and without the consent of his family sold to a German pharmaceutical company.

“Gunars [a man from Estonia, who committed suicide] would not have wanted to donate his tissue. Inara Kovalevska [Gunars’ wife] can say this with certainty. The couple had discussed the issue while watching a TV show on the topic of organ donation. Now she has learned from the police that Gunars’ bones were delivered to a company in Germany to be prepared for transplantations... This outraged Inara Kovalevska. Yet this is the daily business for the Tutogen Medical company in Neunkirchen, Germany near Erlangen. For nine years, from 1994 until 2003, the forensic medical center in Riga, Estonia delivered raw human tissue to the company Tutogen and its predecessor company Biodynamics International. The company needed raw human tissue to produce bone material for transplants. The company also acquires the human tissues of diseased persons from other European countries. The demand for medical transplant material derived from human tissue could not be satisfied with human tissue donated by diseased persons in Germany... Tutogen sells its products in 40 countries. For example for dental implants its business has grown up to 30%... Only around 4,500 patients received an organ transplant annually in Germany. The number of persons who receive a tissue implant lies in the 10,000s. These include implants of bone, eye tissue, ear tissue, heart valves, arteries, tendons or skin. The business of tissue implants is booming.”³⁷²

This example of illegal tissue trafficking goes beyond the limitations of international law on human trafficking, which does not include the trafficking of human tissue. It does, however, highlight a direct connection between the demand in Germany for more human tissue and obtaining illegally human tissue from abroad. As in the case of donated human organs, there is a higher demand for human tissue than official donations can satisfy. As a result, the excess demand was satisfied by exploitative business abroad.

³⁷¹ Unofficial translation: Ludmila Rakusan, “Nieren ohne Warteliste Illegaler Handel von Tschechien nach Deutschland aufgedeckt,” *Tagesspiegel*, November 12, 2000.

³⁷² Unofficial translation: Martina Keller, “Frische Leichenteile weltweit,” *Die Zeit*, <http://www.zeit.de/2007/08/Leichenteile> (accessed October 23, 2007), February 15, 2007.

The article on trafficking in human tissue demonstrates a need in Germany for collecting better information on tissue and organ transplants in Germany or conducted on German citizens abroad, as well as on the activities of companies who make profits from human tissue or organs.

4.6.4 *Victim Protection Parameter: Victim Access to Legal Residence*

The German Government grants international human trafficking victims access to residence in Germany; however, victims do not have a right to reside in Germany independent of their cooperation with judicial authorities. This regulation has little to do with the German Penal Code on human trafficking. Rather this access is determined by a part of immigration laws called Residence Law (*Aufenthaltsgesetz*). Since 2000, the access that international human trafficking victims are granted to reside in the Federal Republic of Germany has improved. Their access to residence is regulated in two steps. First, all detected international human trafficking victims have the right to a one-month reflection and recovery period, during which they cannot be forcefully repatriated.³⁷³ Thereafter, only those human trafficking victims who:

1. were regarded by national authorities (police and/or district prosecutor's office) to be necessary to prosecuting their trafficker and
2. were willing to cooperate with the police,

are offered the option of temporarily residing in Germany for the duration of the trial against their exploiters.

Until the 2005 reform, if a victim of human trafficking was deemed necessary for prosecuting his or her perpetrator and he or she was willing to testify against the trafficker, then a so-called *Duldung*, or Tolerated Persons status in accordance with paragraph 55, subparagraph three of the then existing Foreigners' Law (*AuslG*) was issued. This paragraph of the Foreigners' Law was designed primarily for temporary refugee protection in Germany, but was also applied to regulate the residence of human trafficking victims. The tolerated persons status prohibited the repatriation of a human trafficking victim, but did not grant him or her access to the labor market. The permit was reissued every three months, requiring the victim to frequently go through bureaucratic procedures reaffirming the temporary nature of the victim's

³⁷³ This was stipulated in the *Allgemeine Verwaltungsvorschrift zum Ausländergesetz*, nr. 42.3.2., prior to the 2005 reform of immigration law.

stay in Germany. The Duldung did allow the victim access to basic social and medical services, as well as state housing. Human trafficking victims, prior to the 2005 reform of immigration laws, were eligible to have this permit repeatedly extended along the lines of the asylum seeker regulations in Germany if they fulfilled the two criteria explained above. In exceptional cases, such as proof of danger to life upon return, human trafficking victims could become permanent residents under general asylum regulations. The ability of human trafficking victims to obtain extended residency in the Federal Republic of Germany during their cooperation with national authorities to prosecute their exploiters was regulated in paragraph 53 of the Residence Law prior to the 2005 and 2007 immigration reforms.

The German Federal Police has published the following data on the residence and return of human trafficking victims for the years 1999–2004.³⁷⁴ In the 2005 and 2006 Lagebild Menschenhandel reports, the German Federal Police stopped reporting this data.

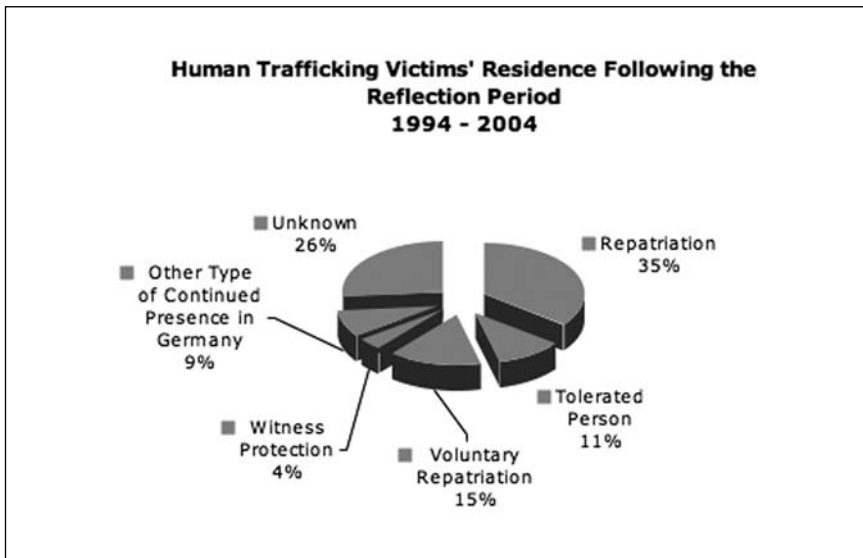


Figure 16: Human Trafficking Victims' Residence Following the Reflection Period

Sources: Bundeskriminalamt, Lagebild Menschenhandel 1999, (2000), 12; Bundeskriminalamt, Lagebild Menschenhandel 2000, (2001), 15; Bundeskriminalamt, Lagebild Menschenhandel 2001, (August 2002), 20; Bundeskriminalamt, Lagebild Menschenhandel 2002, (July 2003), 16; Bundeskriminalamt, Lagebild Menschenhandel 2003, (July 2004), 14; Bundeskriminalamt, Bundeslagebild Menschenhandel 2004 (August 2005), 17.

³⁷⁴ Bundeskriminalamt, *Bundeslagebild Menschenhandel 2004* (August 2005), 17.

The largest segment of the detected human trafficking victim population was repatriated either voluntarily (15%) or involuntarily (35%) between 1994 and 2004. Altogether, 50% of the total detected human trafficking population in this time period was repatriated. Only a little under a quarter of detected victims, 24%, received a temporary or permanent residence permit. The category ‘other type of continued presence in Germany’ refers to persons who received residence permits as refugees, spouse or for other reasons. The German Federal Police did not publish statistics on the duration of stay granted to Tolerated Persons. It is possible that some persons with this status were later repatriated. It is also possible that a person granted Tolerated Persons status later was recognized as a refugee.³⁷⁵

The 2005 immigration reform improved the rights of human trafficking victims who cooperate with the police. Following the 2005 immigration law reform, a human trafficking victim’s right to residency in the Federal Republic is established in paragraphs 24 and 25 of the Residence Law.³⁷⁶ Paragraph 25 stipulates the right to residency for humanitarian reasons and is designed primarily for refugees. Paragraph 24 of the reformed Residence Law specifies that temporary humanitarian protection can also apply to victims of human trafficking.³⁷⁷ For example, the reflection period guaranteed to suspected victims of human trafficking is regulated in paragraph 24. It solidified the same provision that was previously contained in a procedural directive and provides for the same reflection period of at least four weeks, during which the human trafficking victim may not be forcefully repatriated.

The 2005 reform of the Residence Law allowed human trafficking victims who cooperate with national authorities to receive a temporary residence permit. This was an improvement over the Tolerated Persons status. The temporary residence permit was to be issued for a duration of at least six months at a time and was to grant its carrier access to the labor market. Having access to the labor market was a second improvement compared to the prior regulation. For the most part, human trafficking victims were treated like recognized refugees following the 2005 reform. The changes made by the 2005 reforms to the immigration laws concerning the residency of human trafficking victims were based on the EU’s 2004 Council Directive on Human Trafficking Victim Residence Permits and the European Convention on Action

³⁷⁵ Bundeskriminalamt, *Lagebild Menschenhandel 1999* (2000), 12.

³⁷⁶ Deutscher Bundestag, “Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet,” *Bundesministerium für Justiz*, http://bundesrecht.juris.de/aufenthg_2004/index.html (accessed October 24, 2007).

³⁷⁷ *Ibid.*

Against Trafficking in Human Beings. The NGO Ban Ying summarizes the changes impacting human trafficking victims' rights since the 2005 overhaul of immigration laws in the following way:

A temporary residence permit for six months according to paragraph 25 of the residence law was introduced. Following a period of 18 months legal residence, the temporary permit is re-issued for a minimum duration of one year at a time. The Government provides the right to emergency housing for traumatized persons and social security payments along the lines of asylum applicant laws, in order to secure their financial existence (194 Euro/month). It also provides basic medical care with the possibility of additional medical care, which has to be applied for separately and approved on an individual basis (i.e. psychological treatment). The Government provides the right to legal representation if they chose to file a suit as a joint plaintiff. This is only possible in cases of aggravated human trafficking. The right to work is also allotted. However, this right is difficult to exercise in practice based on the short duration of stay (six months) granted to victims of human trafficking.³⁷⁸

Victims of human trafficking still do not have a right to reside in Germany beyond the duration of their 'usefulness' to the prosecution. It is, therefore, not possible to speak of a victim-approach to human trafficking in the Federal Republic of Germany, since regulations focus on prosecuting the perpetrator and not on protecting the safety of human trafficking victims in the long-term. Uta Ludwig, a social worker for the organization Belladonna told to Germany's Südwestrundfunk on March 19, 2007:

"Each time we are dealing with a human life. And we don't see that. We only see one big court case. We only need the victim to prosecute the perpetrator. The goal is the perpetrator and it is never the protection of the victim."³⁷⁹

In August 2007, an additional reform of immigration law went into force, which impacted human trafficking regulations in Germany. This immigration reform was given a complicated name, which translates roughly to: Law to Transpose Residence and Asylum Directives of the European Union. In accordance with the 2007 reform of immigration laws, victims of human trafficking are explicitly accounted for in German residence law. Previously, their residence had been possible under humanitarian protection included in asylum stipulations. Under paragraph 25 of the 2007 reform, subsection 4a was introduced. Accordingly, a non-citizen who is a victim of human trafficking (as defined in paragraphs 232, 233 or 233a of the German crimi-

³⁷⁸ Unofficial summary in translation: Nivedita Prasad and Babette Rohner, "Einführung-Menschenhandel in Deutschland," <http://www.ban-ying.de/downloads/Einf%FCChrung-Menschenhandel%20in%20Deutschland.pdf> (accessed October 22, 2007).

³⁷⁹ Unofficial translation: Beate Klein, "Zwangsprostitution – Opferschutz unterentwickelt?," *Suedwestrundfunk Report Mainz*, March 19, 2007, <http://www.swr.de/report/-/id=2036888/property=download/nid=233454/nq5r6m/index.rtf> (accessed October 24, 2007).

nal code) can receive a temporary residence permit, even if he or she is unlawfully in Germany. Victims of human trafficking are eligible for a temporary residence permit if:

1. A court of law deems the individual's presence as essential for prosecuting the case.
2. The person in question breaks ties with suspects accused of human trafficking.
3. The person in question agrees to testify as a witness in the case.

Paragraph 50, subsection 2a was also amended in the 2007 reform of German immigration laws. It further anchored into national law the minimum reflection period of four weeks.

Improvements made by the 2007 immigration reforms included the right of human trafficking victims, who receive a visa in Germany to reunite with family members aged 21 or younger. A further improvement was that money paid as compensation for damages to human trafficking victims was no longer viewed by national authorities as 'income'. This is significant in cases where human trafficking victims are eligible for social benefits. These benefits are only awarded in cases where the person in question does not have enough income to care for himself or herself. The 2007 reform of German immigration laws relating to human trafficking still requires victims to testify against their traffickers in order to be eligible for a human trafficking visa.

Despite the improvements made for international human trafficking victims to reside in Germany, their access to residency following the reflection period continues to be dependent on the state's 'use' of the victim as a witness.

Recommendation:

German anti human trafficking policy frameworks should make the issue of visas to human trafficking victims independent of the victims' decision to cooperate (or not) with authorities who are prosecuting human trafficking perpetrators. This should apply to both child and adult victims.

Recommendation:

While protecting the identity of the victim, the German Federal Police should profile select cases in which human trafficking victims have received residency. They should also reintroduce the statistics published from 1994–2004 on the residence status of detected human trafficking victims.

Examples of Reporting on Actual Human Trafficking Cases

Since the Federal Police does not profile human trafficking cases in which victims were granted residency, this subchapter will rely on information provided by the ILO's 2005 report: 'Menschenhandel und Arbeitsausbeutung in Deutschland.'

According to an interview conducted by Norbert Cyrus with the NGO Agisra, a Moroccan woman who had been trafficked to Germany through a family network and forced into domestic servitude and sexual exploitation received a residence permit in Germany.

"The victim migrated to Germany with false documents and under the pretense that a friend of her brother would help her receive job training in Germany. What awaited her was labor and sexual exploitation. After several years of domestic servitude, the trafficker decided that he would also sexually exploit his victim by prostituting her to others. When the victim refused to provide sexual services, her trafficker reported her to the police as an irregular migrant. The victim was placed in detention where she was referred to the anti human trafficking NGO Agisra. She received a residence permit for Germany on humanitarian grounds. She would have faced a life-threatening situation should she be returned to the Islamic country of Morocco, since her family was informed through its personal networks that the victim had engaged in prostitution."³⁸⁰

Examples of Non-Governmental Reporting

The KOK and Ban Ying have reported on the state of legal reforms concerning residence laws in Germany and have successfully advised the German Government during these reforms. For example, the 'Updated Position Paper' of the KOK on the 2007 reform of German law not only provides an overview of the current policy framework on human trafficking, it also addresses continuing need for reform.³⁸¹ Another example is the 'Introduction to Human Trafficking' published by Ban Ying.³⁸²

Furthermore, in 2005, the KOK reported that their service providers have witnessed the repatriation of women who were suspected victims of human trafficking

³⁸⁰ English summary of: Norbert Cyrus, *Menschenhandel und Arbeitsausbeutung in Deutschland*, Internationale Arbeitsorganisation, Internationale Arbeitsorganisation (2005), 20.

³⁸¹ Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e. V., "Aktualisierte Stellungnahme des KOK e. V. zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union," <http://www.kok-potsdam.de/data/Medien/KOKaktuelleStellungnahmeZuw.G.pdf?PHPSESSID=45dde2665e8c7e31aa049a876f0b9674&PHPSESSID=9b0365e28d045dcfaa6db1f85c7d469e&PHPSESSID=afd0c53dec7cef99b5ba0f6385bc6ba> (accessed October 20, 2007).

³⁸² Unofficial translation: Nivedita Prasad and Babette Rohner, Ban Ying, Einführung: Menschenhandel in Deutschland, <http://209.85.129.104/search?q=cache:gEWWx8yivloJ:www.ban-ying.de/downloads/Einf%25FChrung-Menschenhandel%2520in%2520Deutschland.pdf+Menschenhandel+Prozess+site:.de&hl=en&ct=clnk&cd=41&gl=de>.

because the suspected victim had irregular migration status. Such repatriation was not supposed to take place; rather the victims should have been entitled to a reflection period and to recovery services in Germany. The KOK stated that the 2005 regulation had not quickly been taken up in procedure and that the law was being implemented to different degrees in the federal states.³⁸³

Examples of Media Reports

The German newspaper the *Berliner Zeitung* reported on a Ukrainian human trafficking victim who received a residence permit. The victim, whose identity is protected in the article, is referred to as Olga. She received temporary residence in Germany after being detected by the police and agreeing to testify against her traffickers.

“The 29 year old woman does not want her identity to be known. She does not want anyone whom she is acquainted with to learn what she experienced. Olga is from a small village in the Ukraine. She was a teacher, but did not earn enough money to make ends meet. It was not enough to support herself and pay for the medicine that her son needed to treat his lung disease. Olga thought she might be able to work abroad, maybe in Poland or in Germany. A friend of hers introduced her to his friend Borys. Borys told her that he could arrange for her to work in Germany: as a prostitute. Olga needed the money for her son and agreed. Borys had a tourist visa for Germany already. When Olga arrived in Berlin, Borys presented her with a bill for 11,000 German Marks. This sum allegedly covered the cost of the visa and travel. She would have to pay him back before she could consider going back home... A year after her enslavement, Olga was detected by the police during a raid. She was placed in detention. She agreed to cooperate with the police in prosecuting Borys and to testify against him. That was in 2003 when the police were heavily investigating Borys and his criminal ring. This was the same ring that supplied the TV talk show host, Michael Friedmann with human trafficking victims [for the purpose of forced sexual exploitation].”³⁸⁴

In 2003 the German newspaper the *Tagesspiegel* reported on the situation of one human trafficking victim, who received a long-term residence permit in Germany and is part of the victim protection program. The victim, who is referred to as Christina to protect her identity holds a degree in marketing and belonged to the Ukrainian middle class back in the 1990s. She had a good job with a Spanish company until it closed its office in Kiev. Christina’s cousin who lived in Germany and exported BMW cars from

³⁸³ Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V., “Auswirkungen des Aufenthaltsgesetzes auf Betroffene von Menschenhandel to the German Institute for Human Rights,” May 13, 2005, www.kok-potsdam.de/data/Medien/AHG_VersionDIM_13-05-05.pdf (accessed October 24, 2007).

³⁸⁴ Unofficial translation: Frank Nordhausen, “Handelsware Mensch – Die deutsche Botschaft in Kiew gab in kurzer Zeit hunderttausende Visa für den Westen aus – viele verdienten daran, das Auswärtige Amt wusste davon,” *Berliner Zeitung*, March 24, 2004, <http://www.berlinonline.de/berliner-zeitung/archiv/.bin/dump.fcgi/2004/0324/blickpunkt/0001/index.html> (accessed October 24, 2007).

Germany to the Ukraine recommended to her that she work in Germany cleaning in private homes and babysitting. He told her she could earn 2,000 German Marks per month and that after three months, she could return to the Ukraine with the money she made. Christina agreed and went with a girl friend to Germany. Both women were received by her cousin's contact upon arrival at the train station, who drove them to her house:

“While they drank coffee, the woman said to Christina and her friend: ‘I don't need a house-keeper. The two of you can work as prostitutes. I bought you from a man. However, you are free people. If you don't want to work as prostitutes then I will drive you back to the train station, no problem. You just have to pay me back the money I paid to bring you here. That is 6,000 Marks per person. The visa alone cost me 3,000 Marks.’³⁸⁵

After about six months, the brothel in which Christina was forced to work was raided and she was arrested by the police. After spending one night in detention, she was identified as a victim of human trafficking and agreed to testify against her trafficker.

“Four years passed before the case went to court. In the mean time, Christina was able to have her son join her in Germany, she learned German, completed job training in Germany in marketing and found a job somewhere in Germany. She suffers from heart problems that her doctors says are psychosomatic and she usually sleeps three hours per night.”³⁸⁶

Christina was the only victim in her case, who was willing to testify against her traffickers. The other victims would rather be repatriated and did not want to cooperate with German police to bring their traffickers to trial. Christina's traffickers were sentenced to two years on probation.

4.6.5 *Criminalization and Punishment Parameters: Links in the Trafficking Chain Including the Consumer and the Commercial Nature of the Crime*

Criminalization of Links in the Trafficking Chain Including the Consumer

The 1992 version of human trafficking laws in the Federal Republic of Germany only included recruitment and abduction, in paragraph 181, as links in the trafficking chain that qualify as human trafficking. Transport, harboring and the final link consumption of the services of a human trafficking victim were not addressed in the 1992 version of the human trafficking law.

The 2005 reform of human trafficking law in Germany addressed links in the chain of human trafficking prior to the victim's exploitation of labor in paragraph

³⁸⁵ Unofficial translation Harald Martenstein, “Die Zeugin der Anklage,” *Tagesspiegel*, March 8, 2004. <http://www.tagesspiegel.de/zeitung/Die-Dritte-Seite;art705,1978399> (accessed October 24, 2007).

³⁸⁶ *Ibid.*

233a: “Whoever abets trafficking in human beings according to Section 232 or Section 233 by recruiting, promoting, passing on, harbouring, or picking up another person“ will be punished.³⁸⁷

The final link in the chain of human trafficking is not addressed by German law: the consumption of the services of human trafficking victims. This link was heavily debated during the reform of human trafficking law in cases where the consumer was aware of the victim’s exploitation. The debate in Germany centered mainly on the consumption of forced sexual services. The debate ended in the final link in the human trafficking chain’s exclusion from the 2005 law. The German Ministry of Justice issued a statement summarizing the reason why the final link was excluded from the 2005 law:

“The suggestion of punishing ‘Johns’ raises many legal questions that have to be carefully considered. One such consideration is that up until now sex offenses have not included negligence as a crime, and premeditation would be hard to prove in practice.”³⁸⁸

This evaluation by the Ministry of Justice demonstrates how deeply rooted thinking on human trafficking is dominated by the idea that it is a sex crime. Germany must move away from this type of thinking, and it should view human trafficking as a human rights violation.

The German Ministry for Family, Seniors, Women and Youth sees an acute need to punish the last link in the trafficking chain (regarding sex trafficking), in its review of the prostitution legalization law:

“The administration sees a need for a broad approach to regulate prostitution, in particular a need for forcefully combating human trafficking, forced prostitution and the prostitution of minors. This approach should provide for maximum protection of prostitutes from violence and exploitation, which would include the introduction of legal measures to punish the Johns, who buy the services of forced prostitutes and clearly addresses this demand.”³⁸⁹

The 2007 reform of migration laws, did not address combating links in the trafficking chain.

³⁸⁷ German Penal Code. “Chapter Thirteen: Crimes against sexual self-determination.” Unofficial Translation as of August 2005. <http://www.legislationline.org/legislation.php?tid=178&lid=1849&less=false> (accessed October 20, 2007).

³⁸⁸ Unofficial translation: Bundesministerium für Justiz, “Bundestag stimmt neuen Strafgesetzen gegen Menschenhandel zu,” *Newsletter*, Ed. Referat Presse- und Öffentlichkeitsarbeit des Bundesministeriums der Justiz, October 28, 2004.

³⁸⁹ Unofficial translation: Bundesministerium für Familien, Senioren, Frauen und Jugend, “Bericht der Bundesregierung zu den Auswirkungen des Prostitutionsgesetzes,” <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/bericht-bureg-auswirkungen-prostitutionsgesetz,property=pdf,bereich=rwb=true.pdf> (accessed October 25, 2007), 80.

Recommendation:

German human trafficking law should include punishing the final link in the human trafficking chain: the consumer of a victim's services, when the consumer knowingly exploited a human trafficking victim.

Examples of Reporting on Actual Human Trafficking Cases

No cases are profiled in the ILO's 2005 report: 'Menschenhandel und Arbeitsausbeutung in Deutschland' in which recruiters or transporters of human trafficking victims were held accountable for human trafficking. Such persons have been generally tried for lesser crimes in Germany due to the difficulty of proving these persons were responsible for victim exploitation, when they may not have been present during exploitation.

For example, in the aforementioned case of the human trafficking involving Borys, members of the organized crime ring who were not directly involved in forcing the victims of human trafficking to work, received mild sentences and were not tried as human traffickers.

"Borys B. received a prison sentence of four years and nine months, Justyna W.-J. received a fine of 90 day's income at 10 Euro per day for her 'very subordinate role' in the operation... [she] was the girlfriend of Borys B. at the time of the crime. She accompanied the Ukrainian women when they went shopping [and] translated during the sale of Anna B."³⁹⁰

Borys' driver, Rafal M., who helped bring the victims to Germany and also drove them to private clients to perform forced sexual services, was not charged with human trafficking. Rather, he was charged with the lesser crimes of pimping and human smuggling. He was not seen as a part of the human trafficking chain although his role was essential to the final exploitation of the human trafficking victims.

"The sentence given to Rafal M. was as expected: 26 months of imprisonment for pimping and human smuggling of immigrants with immediate probation."³⁹¹

Examples of Non-Governmental Reporting

The German NGO community has reported on and raised awareness about the 2005 change to the human trafficking law, which expanded the definition of human trafficking to include those who recruit, transport and harbor human trafficking victims

³⁹⁰ Unofficial translation: C. Rockenschuh, "'Friedman-Prozess': – das (vorläufige) Ende," *Berlin kriminell*, March 21, 2006, http://www.berlinkriminell.de/2/gericht_akt32.htm (accessed October 24, 2007).

³⁹¹ Rockenschuh, C. "Von 'Fernsehern' und 'Lappen': 'Friedman-Prozess' in der vorletzten Runde," *Berlin kriminell*, March 21, 2006, http://www.berlinkriminell.de/2/gericht_akt121.htm (accessed October 24, 2007) (2006).

(in paragraph 233a). Two such publications are ‘Straftatbestand Menschenhandel Verfahrenszahlen und Determinanten der Strafverfolgung’ by Annette Herz and Eric Minthe and ‘Einführung: Menschenhandel in Deutschland’ by Nivedita Prasad and Babette Rohner. In the former publication, Herz and Minthe describe typical methods of operations used by human traffickers. These include transportation and harboring of victims.³⁹² Ms. Prasad and Ms. Rohner also write about these actions as being part of the human trafficking chain:

“Since the reform of German Penal Code on human trafficking in 2005, enabling human trafficking is also punishable. Accordingly, those who transport human trafficking victims can be brought to trail.”³⁹³

Examples of Media Reports

Reporting on human trafficking in Germany by the surveyed media was generally sparse. However, on one occasion, the German media has reported critically on the lack of prosecuting perpetrators who composed links in the human trafficking chain, yet were not tried as such.

The German magazine ‘Die Zeit’ reported on the outcome of a human trafficking case in which a Ukrainian woman, Natalja, was trafficked to Germany. The mother of two and an engineer, Natalja, lost her job in 1993 when the company she worked for was closed down. She divorced her husband, who was an alcoholic after their second child was born. She and her two children moved in with Natalja’s retired parents. The retired couple’s pension was too small to support the entire family and the States did not make payments regularly. To earn money, Natalja found a job selling fruits and vegetables at a local market, where she made about one Euro per day.

One of Natalja’s regular customers became friends with Natalja and offered to help her find work as a health care or agricultural worker in Europe. The customer’s husband was living in Europe and could find Natalja decent paying work according to the customer. Within two weeks, Natalja’s customer obtained a passport and train ticket to Berlin for Natalja.

The customer told Natalja that she would be able to pay the 750 German Marks that the passport and train ticket allegedly cost within a month of working abroad and

³⁹² Annette Herz and Eric Minthe, “Straftatbestand Menschenhandel. Verfahrenszahlen und Determinanten der Strafverfolgung. München, Luchterhand,” *Bundeskriminalamt Kriminalistisches Institut* (Munich: Luchterhand 2006), 101.

³⁹³ Unofficial translation: Nivedita Prasad and Babette Rohner, “Einführung-Menschenhandel in Deutschland,” <http://www.ban-ying.de/downloads/Einf%FChrung-Menschenhandel%20in%20Deutschland.pdf> (accessed October 22, 2007): 1.

within three months, Natalja would be able to come back to her children and family with substantial earnings. The customer made Natalja sign a certificate of debt with ten percent interest. Natalja did not become suspicious and gave the woman the address of her parents where her children would be staying in her absence.

Natalja was told to take a specific train in which the train worker would make sure that Natalja would be able to cross the border undetected. She had a passport, but no visa. In Berlin, a Turkish man picked her up from the train station. After two days Natalja was coerced into prostitution under threat of harm to her family in the Ukraine.

Shortly after her sexual exploitation began, the brothel in which she was working was raided. She was arrested. German police suspected that she a victim of human trafficking. At first she denied it, but then told her story, agreed to testify and was taken up in the witness protection program in Germany.

‘Die Zeit’ published an extensive report about Natalja’s case and also on whom the German authorities failed to prosecute.

“In the end the Ukrainian was sentenced to ten years in jail, the Turk to seven years. The nice client [the woman who had posed as a customer and friend to Natalja to recruit her] in the Ukraine is not in jail. Nobody is even investigating her. Also nobody is investigating the men who temporarily abducted Natalja’s son from school, or against the person who transported her over the border.”³⁹⁴

The Commercial Nature of the Crime

Prior to the 2005 reform of German human trafficking law, human trafficking had to be commercial, that is have resulted in the profit of the trafficker (Vermögensvorteil), in order to qualify as human trafficking under law. Paragraph 232 and 233 in subparagraph one do not contain reference to traffickers acting to make a profit. Instead, the commercial nature of the crime has been included in the definition of the ‘exploitation’ of the victim. This change in the German human trafficking law was made based on the difficulty of proving that human traffickers were out to make an individual profit through their exploitative activities. Law makers and NGOs alike suggested that human trafficking would be easier to prove in a court of law if prosecutors did not have to deal with the issue of the suspected trafficker’s profit making:

“The proof of profit making was often hard to prove in court regarding the objective and subjective aspects of the suspected traffickers knowledge and intent. If the profit of the trafficker could not be proven, then human trafficking could not have occurred [according to the old

³⁹⁴ Unofficial translation: Michael Schwelien, “Menschenhandel – Das Paradies im roten Licht,” *die Zeit*, October 2, 2003, <http://www.zeit.de/2003/41/Ukraine?page=6> (accessed October 24, 2007).

legislation]. Through eliminating the burden of this aspect of proving human trafficking, the chances of prosecuting human trafficking suspects increases. In place of profit making, a different, victim-oriented element of the crime has been introduced. For human trafficking to have occurred, the victims had to be exploited. Exploitation has been defined in the case of this law as economic exploitation of labor... Exploitation in this sense includes a situation in which services and compensations for those services are generously rewarded.”³⁹⁵

The commercial nature of human trafficking is what distinguishes human trafficking particularly from the non-commercially motivated sexual exploitation of children through pedophiles. Therefore, the commercial nature of human trafficking is an important component of defining this crime. However, this aspect should not become a hurdle for law enforcement. The solution found in the 2005 reform of human trafficking law is a satisfactory way of including the commercial aspect within the definition of exploitation.

Examples of Reporting on Actual Human Trafficking Cases

Cases of human trafficking reported in the ILO’s 2005 report: ‘Menschenhandel und Arbeitsausbeutung in Deutschland’ have made a point of the commercial nature of labor exploitation and the large profit human traffickers make in Germany. In one case, it was the extreme distortion of wages versus labor that brought a Bosnian construction company under charges of human trafficking. Bosnian construction workers were employed in Germany by the construction company though counterfeit documentation concerning their residence status and work permits. The income they received was extremely low and the workers had to work up to 280 hours per week. The company was able to make a profit of 60 percent by exploiting their workers.

“A construction company from Bosnia steadily employed a staff of approximately 100 workers in Germany over a time period of ten years. Approximately twenty of them were officially contract workers at the construction sites of two long-term clients. The workers were grateful for an opportunity to receive a higher than average income according to standards in Bosnia. They accepted 4.85–5.00 Euro per hour wage for 260–280 hours of labor per month. By circumventing the country’s wage laws the construction company was able to make a profit of 60 percent... The recruitment and illegal employment of immigrants was investigated and finally the construction company was charged with human trafficking by the state.”³⁹⁶

³⁹⁵ Unofficial translation: Regina Kalthegener, “Änderung und Erweiterung der Strafrechtparagraphen,” In *Menschenhandel: Materialien* (Berlin: Senatsverwaltung für Wirtschaft, Arbeit und Frauen, 2005): 22.

³⁹⁶ English summary of: Norbert Cyrus, *Menschenhandel und Arbeitsausbeutung in Deutschland*, Internationale Arbeitsorganisation, Internationale Arbeitsorganisation (2005), 31.

Examples of Non-Governmental Reporting

The NGO FRANKA refers to the commercial and highly profitable nature of human trafficking as a challenge in terms of combating it. Human trafficking in the EU and Germany is thought to generate more revenue on the black market than drug trafficking:

“The large scope of the international crime, human trafficking, which is estimated to produce more profit than drug trafficking, has caused the Member States of the European Union and the federal states of Germany to work together in combating human trafficking.”³⁹⁷

The federal umbrella NGO on anti human trafficking, the KOK, and the NGO BAN YING³⁹⁸ also recognize the commercial nature of the crime as a necessary and central component of human trafficking. They see this element as having the potential to help combat human trafficking. German anti human trafficking law allows the Government to confiscate the revenue generated by convicted human traffickers. The KOK would like to see this revenue put into a fund which would be directly tied to financing human trafficking victims rehabilitation and personal security, especially following the victim’s testimony in court against the trafficker. This recommendation is especially relevant in light of the personal dangers human trafficking victims face once the trial of the perpetrator is over:

“The main interest of [the German] justice system is to prosecute the perpetrators and to secure a conviction that cannot be overturned. The female victims, who has agreed to testify as a witness, is more or less viewed as an instrument for giving the necessary testimony of the criminal act... The danger that the victim is subjugated to through her testimony is not denied by [German] authorities, but witness protection programs end when the trial is concluded. Following the trial, the victims are supposed to return to their country of origin, where often the traffickers await them. It is extremely necessary that post-trial protection be created for the victim witnesses... The necessary funds for this could stem from the confiscated revenue of convicted human traffickers.”³⁹⁹

On the one hand, the commercial nature of human trafficking leads to large revenues. These revenues can be confiscated by national authorities in Germany upon the conviction of the human trafficker. On the other hand, human trafficking victims have difficulty gaining access to more than a minimum of health care and psychological support. This contradiction represents a lack on commitment to a victim-approach to combatting human trafficking.

³⁹⁷ Unofficial translation: FRANKA e. V. *Tätigkeitsbericht für das Jahr 2004* (Kassel: Diakonisches Werk, 2005): 13.

³⁹⁸ Ban Ying, <http://www.ban-ying.de/pageger/start.htm> (accessed October 28, 2007).

³⁹⁹ Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e. V., *Schattenbericht unter Art. 6 CEDAW (Frauenhandel) zum Staatenbericht der deutschen Bundesregierung, Januar 2000* (Potsdam: KOK, 2000): 10.

Indeed the recommendation of creating a fund from confiscated profits of human traffickers has been made by the Federal Working Group on Human Trafficking and echoed in the 2002 annual report of the Federal Police on combating human trafficking.

“The recommendation of the Federal Working Group on Human Trafficking calling for the set-up of a fund to finance the victims of human trafficking is still relevant. This special fund could cover all the costs resulting from human trafficking victims needs both during the four-week reflection period... and also during the entire stay of the victims in Germany. Such a fund would simplify access to the services available to human trafficking victims because there would no longer be a need to apply for funding for these services with the various responsible Government offices.”⁴⁰⁰

Examples of Media Reports

The surveyed media has identified and reported on the commercial nature of human trafficking. For example, in September 2006, the German newspaper the *Tageszeitung (taz)* published a report on Migration and the Poverty-Business.⁴⁰¹ The article covered human smuggling, various forms of labor exploitation and human trafficking. It examined these issues as profit driven industries, focusing on the commercial nature of these crimes. The article highlights the large scope of profit middlemen and employers are making in developed countries through exploiting the labor and the disparity of poor workers from developing countries.

“Poverty and the lack of opportunity are the most important causes, if not the only ones, for migration from southern countries to the north. More or less legal networks of facilitators and smuggler rings make large profits from the poor. This is because the business with low-wage workers, especially with prostitutes is prospering globally.”⁴⁰²

Additionally, in the context of trafficking in human tissue, the German media has reported on the commercial nature of the crime. One such example is an article published in the German newspaper *Die Zeit*.

“Heart valves, bones, tendons – the trade in human tissue is flourishing. The criminal trade is a sure way to make large profits. A new law is supposed to create transparency and ethical practice in the business of recycling human tissue.”⁴⁰³

Table 27 (see p. 230) represents an overview of the problematic aspects of combating human trafficking as defined in Chapter One of this analysis. In Germany, human

⁴⁰⁰ Unofficial translation: Bundeskriminalamt, *Lagebild Menschenhandel 2002*, (July 2003), 20.

⁴⁰¹ Unofficial translation: *Die Tageszeitung*, “Migration und das Geschäft mit der Armut,” September 19, 2006, <http://www.taz.de/index.php?id=archivseite&dig=2006/09/19/a0151> (accessed October 24, 2007).

⁴⁰² *Ibid.*

⁴⁰³ Unofficial translation: Martina Keller, “Frische Leichenteile weltweit,” *Die Zeit*, <http://www.zeit.de/2007/08/Leichenteile> (accessed October 23, 2007), February 15, 2007.

Table 27: Summary of Human Trafficking Parameters

Key Areas	Policy frameworks	1992 Human Trafficking Law	2005 Reform of Human Trafficking Law	2007 Reform of Residence Stipulations
Demographic Parameter				
Gender-Specificity		No	No	No
Geographic Parameter				
Exclusion of Internal Human Trafficking		No	No	No
Exploitation Parameters				
Inclusion of Forced Non-Sexual Labor		Yes	Yes	Yes
Inclusion of Traffic in Human Organs		No	No	No
Victim Protection Parameter				
Inclusion of Victim Access to Legal Residence		Yes ⁴⁰⁴	Yes ⁴⁰⁵	Yes
Criminalization and Punishment Parameters				
Criminalization of Links in Trafficking Chain Including the Consumer		No	Yes ⁴⁰⁶	No
Inclusion of the Commercial Nature of the Crime		Yes	Yes	No

Source: Original representation

trafficking laws governing its punishment and the access of victims to residence are regulated in different laws. Therefore, some of the measures listed below are only applicable to either the penal code or the residence law and do not apply to both.

The ‘problematic’ components of international anti human trafficking policies, identified in Chapter One, have mostly been resolved in the German policy context. The only exceptions are the issues of combating the final link in the human trafficking chain and trafficking in human organs. However, an exploration of the historical roots of anti human trafficking policy, existing anti human trafficking frameworks in Germany, Government organizational structures and the actual and estimated scope of human trafficking revealed that there is room for improvement in German policy frameworks. Policy gaps still exist. These policy gaps can be summarized to be in the following categories:

⁴⁰⁴ This access was not provided for in the human trafficking law, but as part of the immigration laws.

⁴⁰⁵ This access was not provided for in the human trafficking law, but as part of the immigration laws.

⁴⁰⁶ However, the final link in the human trafficking chain, the consumer, has still not been addressed.

- **Definition of human trafficking:** The German Government's definition of human trafficking omits trafficking in organs; the definition does not address the responsibility of the consumer as the final link in the trafficking chain.
- **A gender-neutral approach to human trafficking:** NGOs in Germany have limited capacity for providing services to male human trafficking victims. The Government has neglected the trafficking of male victims of human trafficking in its reporting.
- **Non-sexual labor exploitation:** NGOs in Germany have limited capacity for providing services to human trafficking victims of non-sexual labor exploitation. The German Government did not adjust its funding scheme to account for this expanded victim pool, when it reformed its human trafficking definition to include non-sexual labor victims in 2005. The media has drawn little attention trafficking in non-sexual labor in Germany.
- **Government reporting:** The German Government's has been inconsistent in recording, exchanging and evaluating data on detected human trafficking are inconsistent. It maintained standard statistical data categories and reported on these from 1994–2004. Since then, reporting has taken varied forms. Additionally, the German Government's reporting does not include profiles of prosecuted human trafficking cases. Such case profiles could raise awareness about the issue.
- **Victim protection:** International human trafficking victims in Germany remain dependent on their 'usefulness' to the Government to secure legal stay. This equates to a prosecution-approach to human trafficking and not a victim-approach.
- **Internal human trafficking:** The surveyed media has neglected internal human trafficking in Germany.

The exact means to improve anti human trafficking efforts in the Germany were addressed in the form of policy recommendations throughout this chapter.

The next chapter will analyze methods for estimating the scope of human trafficking.

5 Improving Methods for Estimating Human Trafficking Scope

Governments, NGOs and intergovernmental organizations have yet to produce uncontested, reliable estimates on the scope of human trafficking. As discussed in the two previous chapters, the US Government has abandoned its past methods of estimating human trafficking scope and is in the process of improving these. The German Government produces no such estimates. The nature of human trafficking is clandestine and it is, therefore, hard to detect. Both the American and German Government posit that there is a high 'dark,' or unknown number of human trafficking victims and perpetrators. This is also true for the volume of profit made by human traffickers. The first step toward improving human trafficking estimates is to determine which available empirical data correlates closely with changes in human trafficking scope. A second step would then be to conceive a plausible mathematical relationship between known empirical data relating to human trafficking scope and the estimated scope of human trafficking. This chapter will contribute to taking the first step to improve human trafficking estimates.

This chapter puts forward a set of indicators, which could be used by national governments, NGOs and intergovernmental organizations to standardize the data categories on which human trafficking estimates are based. Currently, very few institutions have attempted to estimate the scope of human trafficking. Existing estimates are not comparable with one another because they rely on various methodologies. Even estimates made by the same source have not been comparable from year to year, due to changing methods for producing estimates. The indicators developed in Chapter Five have been derived from the components found in international anti human trafficking frameworks explored in Chapter One.

The indicators that will be proposed in this chapter were presented to a group of human trafficking experts and rated by these persons via an Internet platform. The indicators were rated for their impact on the scope of human trafficking. The experts cannot be named here. They were given the option of remaining anonymous in return for their participation in the Internet survey. All asked not to be identified publicly as a condition for their participation in the survey. However, the overwhelming majority made their identity known to the author. All participants of the survey work in the

field of anti human trafficking, either as policy advisors, service providers, researchers or with the media.

The human trafficking indicators which are proposed in this chapter (i.e. categories of empirical data that can feed into a mathematical relationship to estimate the scope of human trafficking) are intended to initiate a process. This process should work toward developing consensus among governments, NGOs and intergovernmental organizations as to what indicators should be used to universally estimate the scope of human trafficking.

Much deliberation surrounds the cleft between the detected scope of human trafficking and its estimated magnitude. In order to compensate for the lack of concrete information on the volume and 'quality' of human trafficking, governments, researchers, United Nations institutions and NGOs have attempted to estimate the scope of human trafficking. However, methods of estimating its scope are unsatisfactory and need to be improved in order to aid policy makers to better combat human trafficking. For example, existing estimates are questioned by leading anti human trafficking institutions like the Council of Europe:

"Do they number 120,000, 180,000, even 500,000? It is very difficult to know exactly how many people have been subjected to trafficking in Europe. Police forces, NGOs and international organizations all agree that the statistics are not accurate. On the other hand, two facts are quite clear to all: the first is that women and children are the main victims of this dreadful trade, and the second is that trafficking is constantly increasing."⁴⁰⁷

Estimates concerning the scope of human trafficking have the potential to give policy makers insights into the actual scope of a crime, which is extremely difficult to detect. Since the actual and detected scope of human trafficking is thought to differ greatly, reliable and comparable estimates on the actual scope could significantly increase the public will and with it the political will to invest in combating it. Antonio Maria Costa, executive director of the Vienna-based United Nations Office on Drugs and Crime, underlined this point:

"Better data is needed to determine the magnitude of human trafficking and some countries are not taking the problem as seriously as they should be, the U.N.'s top anti-crime official said Tuesday. 'We only see the tip of the iceberg, but we have not succeeded in pushing this iceberg out of the water,' Antonio Maria Costa, executive director of the Vienna-based United Nations Office on Drugs and Crime, said in an interview."⁴⁰⁸

⁴⁰⁷ Council of Europe, "Slaves at the heart of Europe," (April 17, 2005), <http://www.coe.int/T/E/Com/Files/Themes/trafficking/> (accessed October 30, 2007).

⁴⁰⁸ *MSNBC News*, "U.N.: Better stats on human trafficking needed," (January 22, 2008) <http://www.msnbc.msn.com/id/22786387/> (assessed February 5, 2008).

As explored in Chapters Three and Four, the two most common units of human trafficking estimates are the number of human trafficking victims and the scope of human trafficking profits. This chapter only explores estimates regarding the number of human trafficking victims. The size of the victim population is the most important indicator of human trafficking scope because counting victims is a fixed point of reference; profit is not. Profit can increase or decrease per capita. One human trafficking victim is a unit that never changes over time. Also, governments' first priority should be to reduce the number of people, who are being exploited.

5.1 Current Systems of Estimating the Scope of the Human Trafficking Victim Population

According to the US Government, four organizations have databases on global trafficking in persons:

“The four organizations with databases on global trafficking in persons are the U.S. Government, International Labor Organization (ILO), IOM, and UNODC.”⁴⁰⁹

However, only two of these organizations produce estimates on the number of human trafficking victims worldwide: The United States Government and the ILO.

The depiction below is the result of a comparative analysis carried out by the GOA published in 2006. It provides an overview of the agencies that record data on human trafficking and those that produce an estimate on the size of human trafficking populations.

United States Government Estimates

As explored in Chapter Three, in 2006, the US Government estimated that 800,000 people were trafficked across international borders.⁴¹⁰ However, the accuracy of this estimate and the reliability of its methodology have since been questioned. In 2006, the US GAO deemed its own Government's estimates to be unreliable. The US estimate on the number of international human trafficking victims worldwide has additional disadvantages. The US Government's exact methodology and data have not

⁴⁰⁹ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 10–11.

⁴¹⁰ US Department of State, *Trafficking in Persons Report* (June 2007), 8.

Table 28: Victim Profiles in US Government, ILO, UNODC, and IOM Databases

	US Government		ILO ^a	UNODC ^b	IOM ^c
Main focus	Global estimate of victims	Global estimate of victims	Global estimate of victims	Country and regional patterns of international trafficking	Actual victims assisted by IOM in 26 countries
Number of victims	600,000 to 800,000 people trafficked across borders in 2003 ^e (est.)	At least 2.45 million people trafficked internationally and internally during 1995 to 2004 (est.)	Not available	7,711 victims assisted during 1999 to 2005	
Type of exploitation					
Commercial sex	66%	43%	87% ^d	81%	
Economic or forced labor	34%	32%	28%	14%	
Mixed and other		25%		5%	
Gender and age of victims	80% female ^f 50% minors	80% female ^g 40% minors	77% female ^h 9% male 33% children	83% female 15% male 2% not identified 13% minors	
Definition of trafficking used	TVPA 2000	UN Protocol	UN Protocol	UN Protocol	UN Protocol
Criteria for data collection	Transnational trafficking	Internal and transnational trafficking	Transnational trafficking	Internal and transnational trafficking	Internal and transnational trafficking

Source: GAO analysis US Government, ILO, UNODC, and IOM data.

^a For a detailed discussion, see Belser, Patrick, de Cock, Michaele and Ferhad Mehran, *ILO Minimum Estimate of Forced Labour in the World*, ILO, (Geneva: April 2006).
^b For a detailed discussion, see UNODC, *Trafficking in Persons Global Patterns* (Vienna: April 2006).
^c For a detailed discussion, see IOM, *DATA and Research on Human Trafficking: A Global Survey* (Geneva: 2005).
^d The estimate was repeated in the 2005 and 2006 *Trafficking in Persons Reports*.
^e The numbers refer to the percentage of different sources (i.e. source institutions) that have reported in any of their publications a trafficking route, in which women, men and children have been trafficked for sexual exploitation or forced labor. The sum of the percentages is greater than 100 because one source can indicate more than one victim profile or form of exploitation.
^f Women and girls.
^g Women and girls, where the gender/age information is available.
^h Women only.

Source: United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance US Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 12.

been made public, so this methodology cannot be scrutinized or improved by external experts. Additionally, the GAO reported faulty data collection as a weakness of the US Government's data analysis:

“Based upon our analysis of agency data sets, we found that federal agencies do not have data collection programs that could share information or include common data fields.”⁴¹¹

Furthermore, the US Government estimates addressed the international human trafficking victim population and do not account for the number of domestic victims in any given country, region or worldwide. Hence these estimates only attempt to account for a segment of the total human trafficking population worldwide. Lastly, the US Government's estimates are not suitable for analysis over time, as the methodology has been changed from year to year.⁴¹²

There is an acute need for reliable, comparable and standardized data on human trafficking from which reliable, comparable and standardized estimates can be derived on a regular basis (annually or bi-annually). The US Department of Justice echoed this opinion in 2005:

“The U.S. government should conduct more research to determine an accurate figure for the scope of the trafficking problem in the United States, including both domestic and foreign victims.”⁴¹³

The International Labor Organization

The ILO has developed a transparent methodology for estimating the scope of victims of global forced labor. Yet not for deriving an estimate for the number of human trafficking victims, which it believes to be a fraction of the forced labor population. As examined earlier in this chapter, the ILO's distinction between forced labor and human trafficking is problematic. However, for the purposes of this subchapter, the ILO's methodology for deriving global forced labor estimates will be analyzed, as this methodology could be applied to estimating the scope of human trafficking victims (provided that human trafficking is properly defined). Specifically, this subchapter will investigate what empirical data, in other words which indicators of forced labor, the ILO uses to arrive at its global estimate for forced labor. This sub-

⁴¹¹ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 19.

⁴¹² *Ibid.*, 12–13.

⁴¹³ US Department of Justice, et al., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (September 2005), 26.

chapter will also provide a brief overview of the ILO's methodology for estimating the scope of forced labor victims.

The ILO has developed a methodology for estimating forced labor scope despite the non-standard nature of available data on detected forced labor and a significant undetected victim population. Available data on the detected scope for forced labor stems from a mix of primary and secondary information. The ILO has collected and recorded secondary-source information from a variety of resources such as newspaper articles and NGO reports. Secondary sources are difficult to distill into a reliable basis for estimating scope. Secondary sources do not systematically contain the information needed to standardize collected data. For example, various newspapers may report on a single occurrence of exploitation in a non-uniform way or may not include information on the number of victims exploited. For secondary sources, the ILO analyses the deficits of available data and proposes a method of 'cleaning' this data to make it a viable building block on which forced labor and human trafficking estimates can be based. The ILO uses four determinates to distinguish the validity of the reported forced labor cases that it documents from secondary sources. It stores this information in a databank. These determinates are:

- "a = an activity recognized as a form of forced labor;
- x = a numerical figure indicating the number of persons engaged in that activity;
- h = a geographical area where the activity is reported to have taken place; and
- t = a date or a time period in which the persons were recorded as having been engaged in that activity."⁴¹⁴

This method of recording data on forced labor ensures that one case, which is reported in more than one secondary source, will only be accounted for one time. Should the number of victims in one case be reported differently by two or more secondary sources, the number of victims is rounded (387 vs. 400 victims would be rounded to 400).⁴¹⁵ The ILO does not utilize data that is based on another institutions' estimates. Rather, it only uses sources, which refer to actual detected cases of forced labor.

The ILO pursues two goals with its forced labor estimates: First, it estimates the number of reported cases and reported victims of forced labor based on its databank of primary and secondary sources (using data from 1995–2004). With this process it is able to fill in data gaps caused by non-standard reporting from secondary sources. Second, it estimates the total reported and unreported stock of forced labor. This

⁴¹⁴ Patrick Belser, Michaëlle de Cock and Farhad Mehran, "Minimum Estimate of Forced Labor in the World," ILO, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5073 (accessed October 28, 2007): 14.

⁴¹⁵ Ibid.

methodology places a figure on the number of undetected victims of forced labor. The ILO describes its own goals as follows:

“First, we estimate the global number of reported cases of forced labor in the world and the total number of reported victims. This first part of the estimate is based on a so-called ‘capture-recapture’ sampling method and leads to an estimate of total reported victims over the period 1995–2004. Secondly, we use the total reported victims over 1995–2004 to develop estimates of the actual number of persons in forced labor in each of the three forms of forced labor mentioned above.”⁴¹⁶

For the first step, the capture and recapture method is used. This method is based on random sampling of detected forced labor cases.⁴¹⁷ The estimated number is checked with the ‘weighted number of reported cases’ methodology.⁴¹⁸ The ILO has developed a formula to turn victim flow estimates (the annual number of new victims) into victim stock estimates. It also has a formula to estimate the non-detected scope of forced labor. This subchapter will not attempt to analyze the viability of the mathematical formulas used by the ILO.

Empirical data used by the ILO for the first goal described above is the reported case-stock (not an annual flow-data set) and the reported number forced labor victims per case, when this data is available. For the second goal the ILO uses the duration of exploitation per reported case and annual ‘flow’, or number of new reported cases in a year. No further empirical data is used to determine the scope of global forced labor.

The International Organization for Migration and the United Nations Office on Drugs and Crime

Although both the IOM and the UNODC maintain databanks on human trafficking, both organizations do not utilize this data to derive human trafficking estimates. The IOM and UNODC use their databases to analyze human trafficking in ways other than to estimate its scope. They do so primarily to describe human trafficking in ways, which are close to their organization’s mandates.

“IOM collects data on victims it assists in the countries where it has a presence, and UNODC traces the major international trafficking routes of the victims.”⁴¹⁹

⁴¹⁶ Ibid.

⁴¹⁷ Ibid., 17.

⁴¹⁸ Ibid., 20.

⁴¹⁹ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 10–11.

The IOM collects data on the detected and assisted number of human trafficking victims it serviced. Statistics on IOM assisted populations are not estimates, but describe the detected scope of human trafficking victim populations. These populations are not representative of global scope. They are rather snapshots of detected scope. The United Nations Office for Drugs and Crime (UNODC's) collects data on the movement of human trafficking victims. It also does not estimate the size of human trafficking victim populations.

Other Organization that Have Reported on the Estimated Scope of Human Trafficking

Two organizations, which have produced estimates on the number of human trafficking victims worldwide, will be explored in this subchapter:

- The UN affiliated organization The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI)⁴²⁰ and
- The US based organization Free the Slaves.

HEUNI reported on the estimated annual total of victims of trafficking for sexual exploitation in 2003.⁴²¹ It did so for Europe and the Caucus region. It did not produce global estimates. The methodology of Heuni applies draws predominately from estimates made by other sources. Heuni describes its methodology as follows:

“The following ... rests on the latest data and estimates available on the volume of prostitution and trafficking for prostitution in different European countries, and on the related national legislation. The primary sources include the reports of IOM and the STOP-project..., and some national summaries... The data mainly describe the situation of the years 1999 and 2000.”⁴²²

In 2004, Free the Slaves produced a stock-estimate of the human trafficking victims thought to be held in forced labor for the purposes of sexual exploitation in the United States.⁴²³ This estimate was based on US Government estimates refined though a

⁴²⁰ Martti Lehti, “Trafficking in women and children in Europe,” *Paper No. 18*, Helsinki: The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), 2003.

⁴²¹ *Ibid.*, 10.

⁴²² Martti Lehti, “Trafficking in women and children in Europe,” *Paper No. 18*, Helsinki: The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), 2003, 9.

⁴²³ Peter Landesman, “The Girls Next Door,” *New York Times*, (January 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html?pagewanted=print&position=> (accessed October 30, 2007).

Table 29: Estimated Scope of Prostitution and Sex Trafficking

Country	Type of country d = destination s = source t = transit	Estimated number of full-time prostitutes	Estimated number/ proportion of foreign prostitutes (resident and mobile)	Estimated annual total of victims of trafficking for sexual exploitation (d, s, t)	The proportion of European victims	Trafficking in women criminalised as a separate crime
Albania	s, t	?	?	>10,000	majority	yes
Armenia	d, t	?	?	500–700	majority	no
Austria	d, t	6,000–20,000	5,000–17,000	?	80–90%	yes
Azerbaijan	s, t	?	?	?	majority	yes
Belarus	s, t	?	?	?	majority	no
Belgium	d	30,000	>15,000	1,000–3,000	>50%	yes
Bosnia	d, s, t	15,000	10,000	>10,000	majority	no
Bulgaria	s, t	?	?	3,000–4,000	majority	no
Croatia	t	?	?	100–200	90–100%	no
Cyprus	d	>2,000	>2,000	<2,000	majority	yes/no
Czech Republic	d, s, t	?	?	>100	majority	yes
Denmark	d	6,000	2,000	10–50	>50%	yes
Eire	d, t	?	>10%	?	majority	no
Estonia	s	2,000–3,000	>1,000	?	100%	no
Finland	d	3,000–7,000	3,000–6,000	10–100	100%	bill is being drafted
France	d	20,000–40,000	12,000–25,000	?	majority	yes
Georgia	s, t	?	?	thousands	majority	no
Germany	d	60,000–300,000	30,000–150,000	2,000–20,000	80%	yes
Greece	d, t	>20,000	16,000–20,000	<40,000	90%	yes
Hungary	d, s, t	10,000	3,000–4,000	?	majority	yes
Iceland	d	<500	<500	a few	a signifi- cant part	no
Italy	d, t	50,000–70,000	30,000–40,000	2,500–5,500	majority	yes
Kosovo	d, s, t	thousands	thousands	<30,000	majority	bill is being drafted
Latvia	s	2,500–9,000	?	<1,500	100%	yes
Lithuania	s	3,000–10,000	500–3,000	>1,000	100%	yes
Luxemburg	d	300–700	>300	<300	majority	yes
Macedonia	d, s, t	>2,500	1,500–2,500	8,000–18,000	90–100%	no
Malta	d, t	?	?	>10,000	majority	bill is being drafted
Nether- lands	d	20,000–30,000	13,000–20,000	1,000–3,000	>50%	yes

Continued page 242

Table 29: Continued

Country	Type of contry d = destin ation s = source t = transit	Estimated number of full-time prostitutes	Estimated number/ proportion of foreign prostitutes (resident and mobile)	Estimated annual total of victims of trafficking for sexual exploitation (d, s, t)	The proportion of European victims	Trafficking in women criminalised as a separate crime
Norway	d	3,000	600–1,000	10–50	90–100%	no
Poland	d, s, t	30,000–35,000	>15,000	>15,000	majority	yes
Portugal	d, t	Lisbon 6,500	half	thousands	a signifi- part	yes
Romania	s, t	?	?	>1,000	90–100%	no
Russia	d, s, t	?	thousands	10,000–100,000	majority	no
Serbia and Mon- tenegro	d, s, t	?	?	thousands	majority	no
Slovakia	s, t	?	?	thousands	majority	no
Slovenia	t	?	?	>25	majority	yes
Spain	d, t	35,000–300,000	30,000–150,000	4,000–8,500	20%	yes
Sweden	d, t	1,200–2,500	200–700	10–100	90–100%	yes
Switzer- land	d	7,000–8,000	2,000–4,000	?	<50%	yes
Turkey	d, t	?	<60,000	>1,000	majority	yes
Ukraine	s, t	?	?	10,000–100,000	majority	yes
United Kingdom	d, t	80,000	20,000	1,500	>50%	yes

Source: Martti Lehti, "Trafficking in women and children in Europe," *Paper No. 18*, Helsinki: The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), 2003, 10.

survey conducted by Free the Slaves. It estimated that 30,000 to 50,000 victims of forced labor for sexual exploitation were enslaved in the US:

"To put the record straight, the estimate of 30,000 to 50,000 people being held in forced labor in the United States for purposes of sexual exploitation was arrived at in this way: firstly, we used the State Department's estimate of 18,000 to 20,000 people being trafficked into the U.S. each year... Secondly, we adjusted this estimate according to two surveys we have recently conducted. The first survey was of all media reports of trafficking cases. These reports covered 136 separate cases of forced labor, 109 of which noted the number trafficked totaling 5,455 individuals. As with most crimes, the number of known and reported cases is a fraction of the actual number of cases occurring. To the best of our understanding the proportion of known to actual cases for human trafficking is low. In this survey 44.2% of cases involved forced labor in prostitution and 5.4% involved the sexual abuse of children, totaling 49.6%. As this is a rough estimate I rounded this up to 50%. In a second survey of forty-nine service provider agencies in the United States that had worked with trafficked persons, we asked how long each trafficked person they had worked with had been held in forced labor. The minimum reported time was one month, the maximum was 30 years. The majority of cases clustered between three years and five years. So, if 9,000 to 10,000 of the people trafficked into the U.S. each year will be enslaved for sexual exploitation (50% of 18–20,000), and they will remain in that

situation for three to five years, then the number of people enslaved for sexual exploitation at any one time in the U.S. could be between 27,000 and 50,000 people. Since a number of people working in the area of human trafficking have stated that they believe the State Department's estimate is low, I chose to make our estimate based on the upper end of the State Department figure, thus giving an estimate of 30,000 to 50,000. Needless to say, when I discussed this number with the New York Times I emphasized that this was a rough estimate.⁴²⁴

This refined stock-estimate is interesting in its methodology, yet it is confined to the US and is not a global estimate. It is also based on an estimate made by the US Government. It is an estimate based on an estimate. Therefore, it would carry over any methodological errors made by the US Government.

Summary of Current Methodology from Estimating Human Trafficking Scope

The ILO's methodology, as it applies to forced labor, is the most transparent and well developed to date. If the ILO were to apply the 2000 UN Anti Trafficking Protocol definition to human trafficking and refine its human trafficking estimate accordingly, this methodology could become a common starting point for national governments, intergovernmental institutions and NGOs. Yet the ILO's methodology could be improved. For instance, it is currently based only on a very small set of empirical data. This data pool could be expanded to include additional indicators of human trafficking.

If the international community and a group of national governments could agree on a set of indicators that serve as a basis for estimating the scope of human trafficking, then they could jointly improve data collection regarding human trafficking and their ability to estimate human trafficking scope nationally, regionally and globally.

The first step toward developing such a methodology is to form a consensus among national governments and the international community as to which human trafficking indicators need to be included in estimating the scope of human trafficking.

5.2 Developing a Universal System of Estimating the Scope of Human Trafficking

There is a clear need to improve existing methods of estimating human trafficking scope. The most developed and transparent methods thereof (be it as a sub-category of forced labor) rely on only three main categories of empirical data as indicators of the scope of human trafficking. These are the:

⁴²⁴ Kevin Bales, e-mail to Stop-traffic mailing list, March 29, 2004, Subject: Trafficking into Sexual Exploitation.

- number of reported cases,
- number of reported victims and
- duration of exploitation.

The most frequently data category reported is the number of human trafficking victims. Therefore, this subchapter focuses on the number of human trafficking victims as the unit for estimating scope.

In establishing a solid methodology for deriving human trafficking estimates, making these estimates comparable among leading institutions should be a goal. The first step is to build consensus on which further indicators are relevant to estimating the scope of human trafficking.

With this aim the author developed an Internet survey, which put forward 47 possible indicators (data categories) relevant to the scope of human trafficking. The survey was designed to collect expert opinion as to which of the proposed human trafficking indicators are thought to correlate to the scope of human trafficking and what correlation (positive or negative) the indicators are thought to have. This ranking system allows for two determinations.

- First, it allows for a determination of which indicators the experts surveyed believe to be the most significant.
- Second, it allows one to establish which of the indicators yielded the most agreement among experts as having a positive or negative correlation with human trafficking.

5.2.1 Putting Forth Indicators for Human Trafficking Scope

As for the methodology of the survey, it asked participants to assess if the suggested human trafficking indicators had a:

- significant positive correlation,
- positive correlation,
- no correlation,
- negative correlation,
- significant negative correlation, or
- unknown correlation

with human trafficking. In other words if the suggested indicator increased would human trafficking increase (positive correlation). Or if the indicator increased in scope would human trafficking decline (negative correlation).

The survey was then evaluated according to the following system. The six possible answers listed above were ascribed a value from -2 to $+2$. A significant positive correlation was ascribed the value $+2$, positive correlation was ascribed the value $+1$. No correlation and unknown correlation were ascribed the value 0 . Negative correlation was ascribed the value -1 and significant negative correlation was ascribed the value -2 . The one to two relationship between ‘regular’ and significant correlations is an arbitrary distinction; the relationship between regular and significant correlations could have been described as one to 1.5, or one to three, for example. It is only important that the significant (positive or negative) correlation be a larger (positive or negative) number when compared to a ‘regular’ correlation. This evaluation of the Internet survey does not attempt to distinguish a mathematical relationship between the significant and regular correlations contained in the Internet survey.

Twenty-three persons participated in the Internet survey. The overwhelming majority were human trafficking experts from government organizations, IGOs, NGOs, independent researchers and UN organizations. The persons surveyed had the option of participating anonymously or by confidentially submitting their name and/or institutional affiliation. The majority identified themselves confidentially and asked for their identity to remain unknown to the public. Only three surveyed persons submitted their answers completely anonymously. All persons surveyed, for which the identity is known, were either working on anti human trafficking in the US or Germany either as policy advisors, service providers, researchers, or with the media. Based on the profile of the overwhelming majority of survey participants, these will be referred to as human trafficking experts in this subchapter.

The following table contains a list of the 47 human trafficking indicators proposed by the author and it also summarizes the results survey. According to the values as-

Table 30: Indicators of Human Trafficking Scope

Indicator of Human Trafficking Scope	Level of Importance
1. Documented cases of confinement or servitude (which were not classified as human trafficking)	22
2. Documented cases of smuggling, where human life was put at risk (or death resulted)	19
3. Documented cases of immigrant fraud or deception	19
4. Documented cases of legal prostitution	12
5. Documented cases of illegal prostitution	29
6. Documented cases of labor exploitation	32
7. Documented cases of pedophilia or sex tourism	25
8. Documented cases of arranged or mail-order marriages	21

Continued page 246

Table 30: Continued

Indicator of Human Trafficking Scope	Level of Importance
9. Documented cases of violence against immigrants	15
10. Documented cases of violence by immigrants	8
11. Documented cases of discrimination cases (gender, ethnic, social, economic)	13
12. Documented cases of illegal trading in human organs	15
13. Documented profit traffickers made from victims of TIP in the given year	27
14. Level of GDP per capita	4
15. Number of jobs in the low skilled sector and entertainment sector	14
16. Documented cases of corruption	15
17. Number of recognized refugees	5
18. Documented cases of peace keepers who commit sexual offenses	13
19. Documented cases of ID or travel document fraud	24
20. Number of anti-trafficking programs	5
21. Level of anti-trafficking funding	1
22. Level of anti-trafficking PR	7
23. Number of anti-trafficking NGOs	6
24. Degree of compliance of anti-trafficking laws with international human trafficking definitions	6
25. Number of bilateral multi-lateral, regional, international anti-trafficking initiatives	7
26. Number of enforcement agents in the area of anti-trafficking	4
27. Number of prosecutions	8
28. Severity of punishment for traffickers	2
29. Number of human trafficking witnesses	12
30. Number of trained civilians that can identify victims of trafficking	9
31. Number of repatriated persons	18
32. Number of legal residence permit issued to victims of organized crime	8
33. Documented number of communications that planned illegal immigration, smuggling or trafficking	12
34. Number of anti-trafficking networks, in which two or more institutions	8
35. Number of hotlines and crisis centers for victims of trafficking in persons	9
36. Documented number of awareness campaigns regarding trafficking in persons	2
37. Level of media reporting on the issue	0
38. Number of trafficking victims who accessed counseling and rehabilitation	17
39. Level of access to labor market	2
40. Level of protection of victim identity	9
41. Level of repatriation and reintegration in source country	8
42. Number and length of visas issued to victims	11
43. Level of funding for NGOs, shelters, health facilities	1
44. Number of victims that have been trafficking victims more than once	21
45. Documented cases of organized crime rings and their size	14
46. Documented number of safe houses for smuggling any type of illegal goods	16
47. Documented cases of marketing or recruiting attempts for sex work, domestic work, child adoption or marriage	19

Source: Original representation

signed to the 47 indicators, those indicators with the highest positive value are the indicators determined by surveyed persons to have the most significant correlation with human trafficking. The highest values are highlighted in the table.

Figure 17 illustrates a selection of 25 from the 47 surveyed indicators. These are the 25 human trafficking indicators to which experts gave an importance greater than ten. The names of the indicators in Figure 17 have been substituted by their question-number, and can be cross-referenced with Table 30.

The surveyed persons in aggregate did not rate any of the proposed indicators of human trafficking as having a significant negative correlation with human trafficking. Therefore, the graph above only depicts positive values.

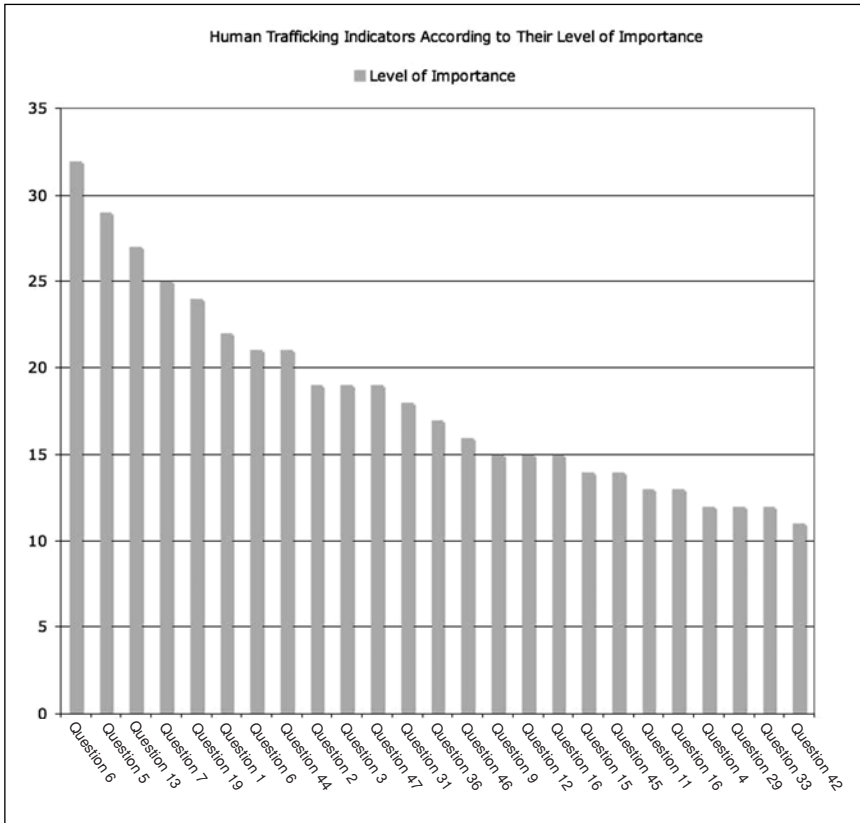


Figure 17: Human Trafficking Indicators According to Their Level of Importance

Source: Original representation

Of the 47 indicators of human trafficking proposed by the survey, experts rated the following 7 as having the strongest correlation to human trafficking (a value of over 20)⁴²⁵:

1. Documented cases of labor exploitation (32 total points)
2. Documented cases of illegal prostitution (29 total points)
3. Documented profit traffickers made from victims of TIP in the given year (27 total points)
4. Documented cases of pedophilia or sex tourism (25 total points)
5. Documented cases of ID or travel document fraud (24 total points)
6. Documented cases of confinement or servitude (22 total points)
7. Documented cases of arranged or mail-order marriages (21 total points).

Each of the top seven indicators will be evaluated in detail.

5.2.2 *Documented Cases of Labor Exploitation*

The empirical data category ‘documented cases of labor exploitation, which were not considered human trafficking cases’⁴²⁶ was the category that experts surveyed thought to have the closest correlation to the actual level of human trafficking. Out of a maximum +46 total positive and –46 negative points, the survey results placed documented cases of labor exploitation at +32 points. Hence the surveyed experts thought that with an increase in the detected number of documented cases of labor exploitation (which were not recorded as human trafficking), there would likely be a correlating increase in the actual scope of human trafficking. On average, on a scale of +2 to –2, surveyed experts rated documented cases of labor exploitation at +1.39.

Taking the standard deviation for the indicators surveyed will indicate how much agreement or disagreement there was for a specific indicator. The standard deviation measures the spread of data about the average. With a maximum standard deviation of 2.04 and a minimum of 0 for this survey, this indicator had a standard deviation of 0.84. The actual range of standard deviation for the survey was 0.66 to 1.44. Thus in comparison to the other indicators, there was general agreement on this indicator.

⁴²⁵ The indicator ‘number of victims that have been trafficking victims more than once’ received 21 points, but will not be considered in the in depth analysis.

⁴²⁶ As was explored in the previous subchapter on theoretical frameworks of human trafficking, forced labor and human trafficking cases often overlap and can be classified as both.

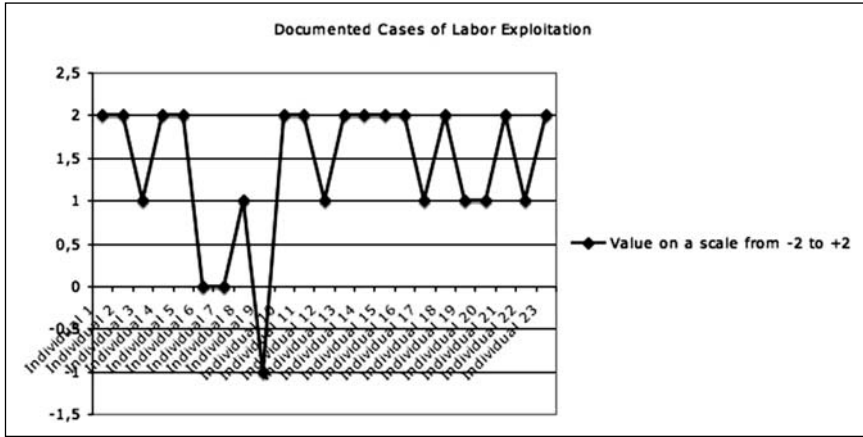


Figure 18: Documented Cases of Labor Exploitation

Source: Original representation

5.2.3 Documented Cases of Illegal Prostitution

The empirical data category ‘documented cases of illegal prostitution’ was the category that experts surveyed deemed to have the second closest correlation to the actual level of human trafficking. The survey’s results placed documented cases of illegal prostitution at +29 points. Hence the surveyed experts thought that with an increase

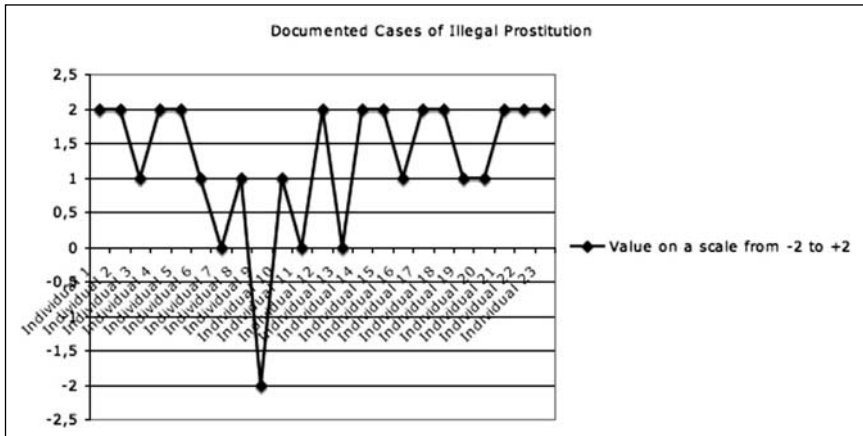


Figure 19: Documented Cases of Illegal Prostitution

Source: Original representation

in the detected number of documented cases of illegal prostitution, there would likely be an increase in the actual scope of human trafficking. On average on a scale of +2 to -2, surveyed experts rated documented cases of labor exploitation at +1.26.

This indicator had a standard deviation of 1.01. Thus in comparison to the other indicators, there was some disagreement on this indicator. The differences of opinion were mainly on whether the correlation was significantly positive or just positive.

5.2.4 Documented Profit Traffickers Made from Victims of Human Trafficking

The empirical data category ‘documented profit traffickers made from victims of human trafficking in a given year’ was the category, which experts surveyed deemed to have the third closest correlation to the actual level of human trafficking. The survey’s results placed documented profit traffickers made from victims of human trafficking in a given year at +27 points. Hence the surveyed experts thought that with an increase in the documented profit traffickers made from victims of human trafficking in a given year, there would likely be an increase in the actual scope of human trafficking. On average on a scale of +2 to -2, surveyed experts rated documented cases of labor exploitation at +1.17.

This indicator had a standard deviation of 1.07. Thus in comparison to the other indicators, there was some disagreement on this indicator. The differences of opinion were mainly on whether the correlation was significantly positive or just positive.

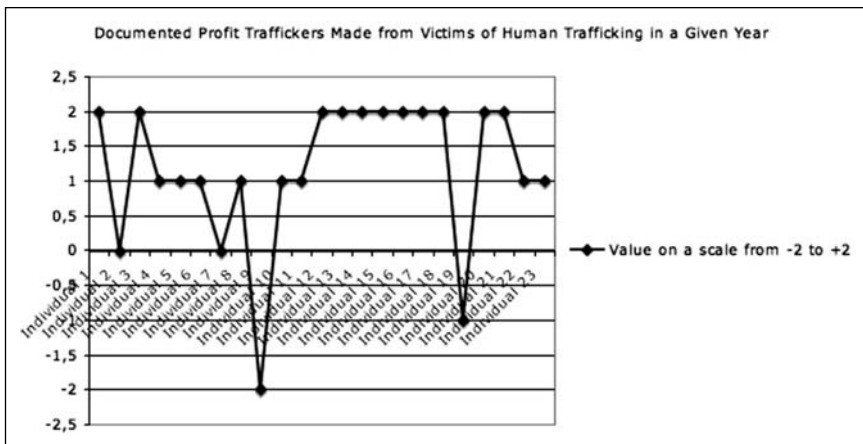


Figure 20: Documented Profit Traffickers Made from Victims of Human Trafficking in a Given Year

Source: Original representation

5.2.5 Documented Cases of Pedophilia or Sex Tourism

The empirical data category ‘documented cases of pedophilia or sex tourism’ was the one, which experts surveyed deemed to have the fourth closest correlation to the actual level of human trafficking. The survey’s results placed documented cases of pedophilia or sex tourism at +25 points. Hence the surveyed experts thought that with an increase in the number of documented cases of pedophilia or sex tourism, there would likely be an increase in the actual scope of human trafficking. On average on a scale of +2 to -2, surveyed experts rated documented cases of labor exploitation at +1.09.

This indicator had a standard deviation of 0.79. Thus in comparison to the other indicators, there was general agreement on this indicator.

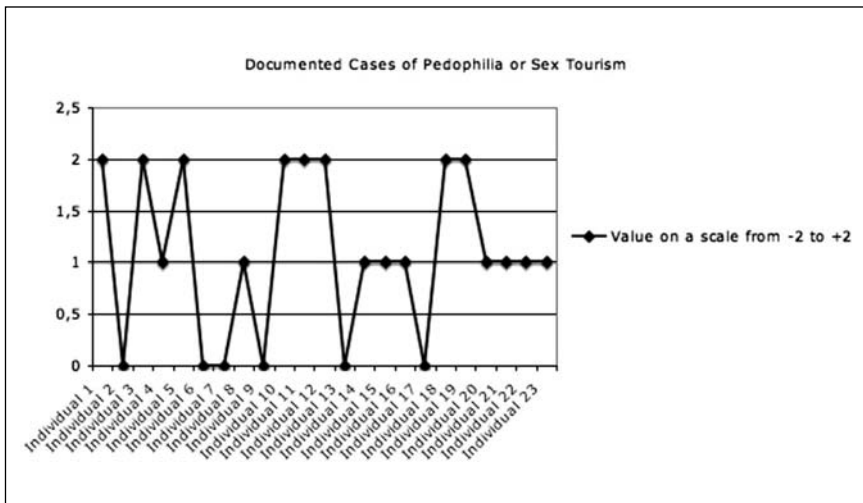


Figure 21: Documented Cases of Pedophilia or Sex Tourism

Source: Original representation

5.2.6 Documented Cases of ID or Travel Document Fraud

The empirical data category ‘documented cases of ID or travel document fraud’ was the category, which experts surveyed deemed to have the fifth closest correlation to the actual level of human trafficking. The survey’s results placed documented cases of ID or travel document fraud at +24 points. Hence the surveyed experts thought that with an increase in the number of documented cases of ID or travel document

fraud, there would likely be an increase in the actual scope of human trafficking. On average on a scale of +2 to -2, surveyed experts rated documented cases of labor exploitation at +1.04.

This indicator had a standard deviation of 0.93. Thus in comparison to the other indicators, there was general agreement on this indicator.

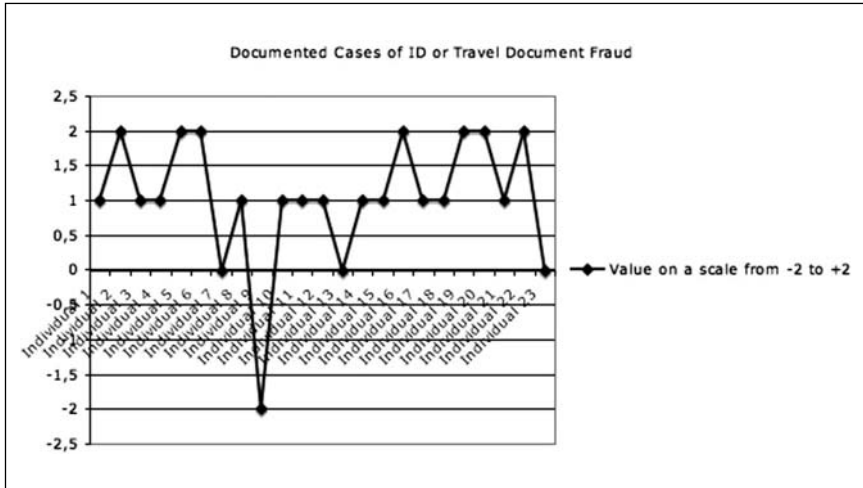


Figure 22: Documented Cases of ID or Travel Document Fraud

Source: Original representation

5.2.7 Documented Cases of Confinement or Servitude not Classified as Human Trafficking

The empirical data category ‘documented cases of confinement or servitude not classified as human trafficking’ was the one, which experts surveyed deemed to have the sixth closest correlation to the actual level of human trafficking. The survey’s results placed documented cases of confinement or servitude not classified as human trafficking at +22 points. Hence the surveyed experts thought that with an increase in the number of documented cases of confinement or servitude not classified as human trafficking, there would likely be an increase in the actual scope of human trafficking. On average on a scale of +2 to -2, surveyed experts rated documented cases of labor exploitation at +0.96.

This indicator had a standard deviation of 0.82. Thus in comparison to the other indicators, there was general agreement on this indicator.

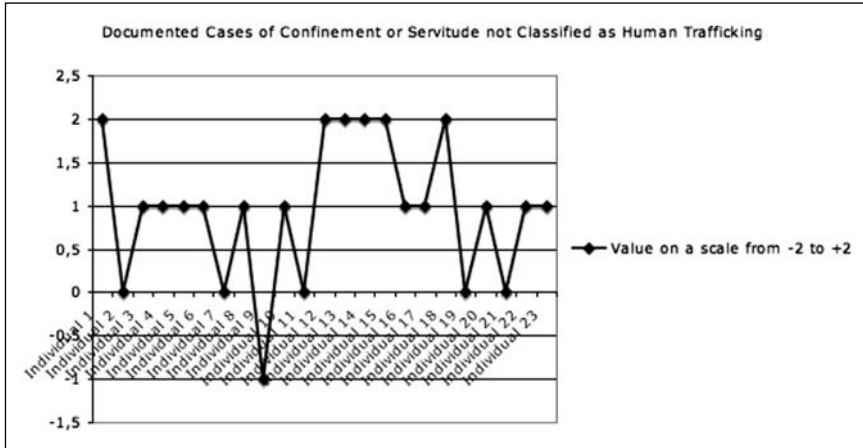


Figure 23: Documented Cases of Confinement or Servitude not Classified as Human Trafficking

Source: Original representation

5.2.8 Documented Cases of Arranged or Mail-Order Marriages

The empirical data category ‘documented cases of arranged or mail-order marriages’ was the category, which experts surveyed deemed to have the seventh closest correlation to the actual level of human trafficking. The survey’s results placed docu-

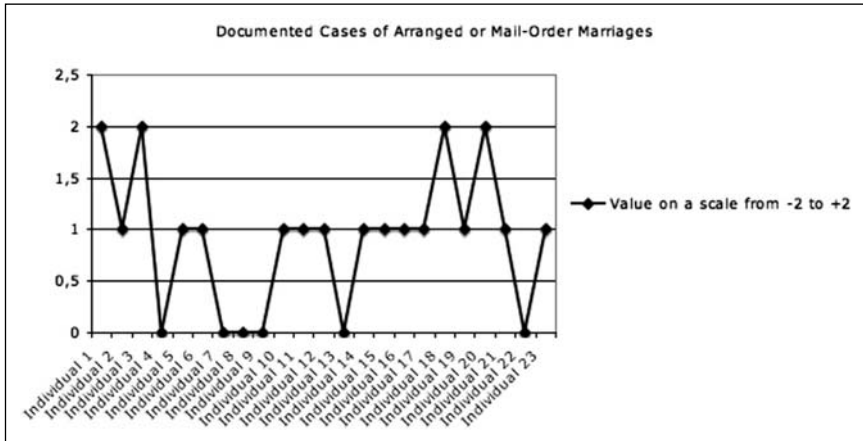


Figure 24: Documented Cases of Arranged or Mail-Order Marriages

Source: Original representation

mented cases of arranged or mail-order marriages at +22 points. Hence the surveyed experts thought that with an increase in the number of documented cases of arranged or mail-order marriages, there would likely be an increase in the actual scope of human trafficking. On average on a scale of +2 to -2, surveyed experts rated documented cases of labor exploitation at +0.96.

This indicator had a standard deviation of 0.66. Thus in comparison to the other indicators, there was general agreement on this indicator. In fact this indicator enjoyed the most agreement among experts.

5.3 Next Steps in Establishing Human Trafficking Indicators

This Internet survey only represents the opinions of a small group of experts, yet it does offer insights as to which empirical data categories experts considered to significantly correlate with the actual scope of human trafficking. The results of this survey could be integrated into the US and ILO's deliberation on how to improve human trafficking estimates.

The Internet survey could also be improved and conducted on a larger pool of human trafficking experts, as well as with the backing of the international community or individual governments, such as the US Government.

Recommendation:

Human trafficking estimates should be standardized and based on a wider range of empirical data. The seven human trafficking indicators that experts surveyed for this analysis considered to be most important could be incorporated into an expanded, standard database on human trafficking. Governments and international organizations could record data in the same standard categories independently and exchange this data for estimating the number of human trafficking victims.

6 Conclusions

Human trafficking is a highly complex phenomenon, an international, national and local problem. It is not an isolated or temporary form of crime that will resolve itself over time; on the contrary there is an urgent need for action to combat it. In order to reduce the scope of trafficking and the massive human rights abuses it generates, gaps in current policies must be closed and the hidden agendas that render policies impotent need to be addressed. In a globalized world, in which wealth and resources are still concentrated and at the disposal of the few, segments of the underprivileged population are at constant risk of becoming the objects of others' individual gain. Human trafficking is one of the most atrocious symptoms of humanity's failure to forgo potential, personal gain in order to avert the destitution of another person. It has been an extremely difficult issue to define; the constant mutations and the sheer complexity of this crime have, to date, left policy makers and law enforcement unsuccessful at systematically preventing, or even significantly reducing, human trafficking.

This analysis began with an evaluation of international policy frameworks that have influenced national developments in the United States of America and the Federal Republic of Germany. Diplomacy at the international level was in a state of flux at the time that the majority of international anti human trafficking treaties were negotiated. For example, in 1904, there was no systematic governance of multilateral diplomacy. Initial international efforts to combat human trafficking were quite narrowly defined; they aimed essentially at protecting European women from prostituting themselves to European men. Furthermore, the international community repeatedly attempted to hit a 'moving target' in trying to define human trafficking, which took on new contours of labor exploitation over the decades. During the 20th century, our understanding of this crime matured significantly. By 2000, the international community had reached a high level of sophistication in defining and creating policy tools to combat human trafficking. This groundwork at the international level has been a cornerstone of national efforts worldwide, including those in the US and Germany.

Chapter Two examined existing theoretical human trafficking policy concepts. Available concepts on human trafficking fall short of describing its complexity or of providing for a comprehensive theoretical framework. Existing concepts attempt to

confine human trafficking to the context of forced labor, irregular migration or anti prostitution. ‘The open circle of human trafficking’ is a new theoretical concept derived in this chapter. It distills the core and periphery issues of human trafficking and depicts the interplay between these. For example, the related core issues of human trafficking: non-sexual labor, prostitution or sexual-labor, migration and transnational organized crime, have considerable overlap with the crime of human trafficking. Yet they also take on forms that do not equate to human trafficking. The new concept represents an improvement in understanding this issue. Chapter Two concluded with a call for more deliberation among researchers and policy makers to create a comprehensive theoretical framework on human trafficking.

Chapters Three and Four looked at anti human trafficking policy frameworks at the national level in the United States of America and the Federal Republic of Germany. Seven of the 22 key elements of anti human trafficking frameworks identified in Chapter One were determined to have evolved with a late or disrupted consensus between 1904 and 2000. These seven ‘problematic’ components were analyzed in-depth in Chapters Three and Four:

- The demographic parameter: gender-specificity
- The geographic parameter: internal human trafficking
- The exploitation parameters: forced non-sexual labor and trafficking in human organs
- The victim protection parameter: victim access to legal residence
- The prosecution and punishment parameters: prosecution of links in the trafficking chain including the consumer and the commercial nature of the crime.

Chapter Three determined that those components had been resolved in the US policy context, except for the issue of trafficking in human organs. Chapter Four determined the seven ‘problematic’ components had been resolved in the German policy context, except for the issues of combating the final link in the human trafficking chain: the consumer and trafficking in human organs. However, the analysis in Chapters Three and Four identified policy gaps and hidden agendas in the United States of America and the Federal Republic of Germany.

Chapter Five put forward a set of indicators which could be used by national governments and international organizations to standardize the data categories on which human trafficking estimates are based. Currently, very few institutions have attempted to estimate the scope of human trafficking. Existing estimates are not comparable with one another because they rely on various methodologies. Even estimates made by the same source have not been comparable from year to year, due to constantly

changing methods for producing those estimates. Forty-seven indicators were proposed to a group of human trafficking experts and rated by these persons for their impact on the scope of human trafficking. Of these, seven were determined by the experts to have a significant correlation with human trafficking. These seven indicators represent the first step in a process of developing consensus among governments and NGOs as to what indicators and what formula should be used universally to estimate the scope of human trafficking.

Based on the hypothesis put forward at the beginning of this analysis, this study has taken a two-fold look at anti human trafficking policies internationally, in the US and Germany. It has provided a scientific, comparative empirical analysis and a policy evaluation. The policy recommendations have not only addressed governments, but also key civil society actors in the US and Germany (i.e. NGOs and the media).

Five main issues in urgent need of policy consideration and further scientific research can be distilled from the analysis and policy recommendations made in this paper. These are: conceptual framework and definition, hidden political agendas (migration and prostitution), data and reporting, service provision, and governance structures. Each of these five areas requires further academic deliberation.

Table 32: Number of Policy Recommendations According to Issue and Actor

Actor Addressed by Recommendations	Total	Governance: International Level	Government: United States of America	Government: Federal Republic of Germany	German Civil Society ⁴²⁷
Issue					
Definition and Conceptual Framework	8	3	3	2	0
Hidden Political Agendas	5	1	3	1	0
Data and Reporting	6	1	2	1	2
Service Provision	3	0	1	0	2
Governance Structures	1	1	0	0	0
Total	23	6	9	4	4

Source: Original representation

This analysis will conclude by investigating these five issues and their relevance to future scientific research on human trafficking.

⁴²⁷ None of the 23 recommendations made in this analysis addressed American civil society actors.

6.1 Gaps in Conceptual Framework and Definition

Conceptual Framework

Available theoretical concepts on human trafficking fall short of describing it in its complexity. The analysis in Chapter Two expanded existing concepts by identifying related core issues: non-sexual labor, sexual-labor, migration and transnational organized crime. It also proposed a multitude of periphery policy areas that interact with human trafficking. The new theoretical concept introduced in Chapter Two accounted for the intersection of human trafficking with a large number of issues that deeply impact modern societies. For example, immigrant admission and border control, anti-discrimination, anti-corruption, health services, and pornography and prostitution.

However, more research and scientific deliberation is needed to expand current concepts on human trafficking into a comprehensive theoretical framework. ‘The open circle of human trafficking,’ proposed in this analysis, could act as a catalyst and basis for conversation to develop such a comprehensive theory.

Definition

At all levels of governance explored in this analysis, the definition of human trafficking was determined to be incomplete. At the international level, the 2000 Anti Human Trafficking Protocol did not differentiate between those who knowingly (consume) ‘give payment’ for forced services and those who unknowingly purchase these. Additionally, it did not address the commercial nature of the crime, and did not clearly differentiate between the crimes of human trafficking and pedophilia. Both the US and German national definitions have addressed the commercial nature of the crime.

In both the United States of America and the Federal Republic of Germany, trafficking in human organs was excluded from the definition. Further definitional problems were also identified at the national level. In Germany, combating the final link in the human trafficking chain was omitted from the national human trafficking definition. In the US a new mutation in human smuggling has raised questions about drop house situations and their relationship to human trafficking.

Human trafficking is a fast moving issue. Its definition must be continually questioned and refined by experts. The unresolved definitional issues related to human trafficking challenge US to respond. For example, more research is needed to distinguish non-commercial forms of human exploitation and human trafficking.

This is also true for forced confinement in drop houses. The role and the responsibility of the consumer, an important link in the human trafficking chain, must be better understood. Finally, more research is needed on human organ trafficking in order to determine its extent and to improve information on this aspect of human trafficking that has largely been ignored by policy makers.

6.2 Hidden Political Agendas: Migration and Prostitution

In the context of this analysis ‘hidden policy agendas’ describe a situation in which governments use human trafficking policy to achieve related policy goals that impact the main policy objective negatively. Hidden policy agendas dull anti human trafficking policy frameworks and inhibit the ability of national governments to reduce the scope of human trafficking.

Migration

At all three levels of governance, international human trafficking victims are not granted the right to reside in the country where they have been exploited, should they wish to live there. The option of residence is always connected to the victims’ cooperation in prosecuting their traffickers. Especially in cases where victims were recruited in their country of origin, their repatriation and concomitant proximity to their former exploiters exposes them to great danger. Residence policies regarding the victims of human trafficking place the prosecution objectives of governments above their aim to protect the human rights and safety of the victims. Prosecution measures that regard victims as disposable resources (to be activated for court cases and then deactivated through repatriation) do not follow a human rights approach to combating human trafficking.

More research is required to determine how residence policies impact the safety and human rights of the victims of human trafficking. This research could be placed in a wider human rights context. After all, human trafficking presents a challenge to the democratic principles and founding principles of countries like the US and Germany.

Prostitution

In the US, anti human trafficking policy has been seriously limited by anti prostitution objectives of the US Government. The TVPRA 2003 cut funding to NGOs that

promote, support, or advocate the legalization or practice of prostitution.⁴²⁸ Additionally, the

“National Security Presidential Directive 22, signed on December 16, 2002, states that U.S. policy opposes prostitution and prostitution-related activities, such as pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons. The U.S. Government’s position is that these activities should not be regulated as a legitimate form of work for any human being.”⁴²⁹

Since the US StatesDepartment propagates an anti prostitution stance in combating human trafficking both in the US and abroad, more research should be done to ascertain a causal relationship, if one exists, between legal prostitution and human trafficking.

6.3 Gaps in Data and Reporting

Data

This analysis has uncovered two gaps in recording data. First, there are gaps in tracking the detected scope of human trafficking. Second, there are gaps in calculating the estimated scope thereof. The German Government does track detected victim-scope. Internationally and in the US there is no authority that accounts for the detected number of human trafficking victims. At all three levels of governance, estimated scope is not measured in a satisfactory way. Both the methodology and the data categories used to determine the estimated scope are considered seriously flawed, even by the institutions that have produced these.

Too often, policy is made based on rough correlations that stem from a very small body of empirical data. This is true for combating human trafficking in the US and Germany. Human trafficking is clandestine by nature and is the result of a multitude of factors. It is, therefore, extremely difficult to determine which policies cause a decrease or increase in the scope of human trafficking. The scientific community is

⁴²⁸ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 23.

⁴²⁹ United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006), 23.

challenged to develop methods of investigation and analysis that allow policies to be increasingly evidence-based. This area of investigation requires further research.

Reporting

The US and German Government's annual reports on human trafficking focus on different data categories and fulfill dissimilar goals. US reporting provides a comprehensive overview on Government spending to combat human trafficking and a profile of human trafficking cases that have gone to court. It has neglected to report on domestic human trafficking and on the scope of detected human trafficking. The German Government details the basic demographic data on detected human trafficking scope, including information on the victims and perpetrators. It has omitted information on spending and profiles of human trafficking court cases. Both these reporting methods have merits and disadvantages. Both reports could benefit from being more comprehensive.

For the purposes of comparative, scientific research on human trafficking, it would be beneficial to have a minimum standard for government reporting on human trafficking. The international research community could pursue research to develop such a minimum standard.

The media surveyed for this analysis and NGO reports evaluated for it indicate that in the Federal Republic of Germany, there is a gap in these actors' reporting on internal and non-sexual human trafficking. Especially the international research community, which focuses on human trafficking in Germany, could further investigate this gap in reporting in order to determine how to close it.

6.4 Gaps in Service Provision

The analysis revealed gaps in services provided by the US and German Governments to victims of human trafficking. These gaps were traced back to the 'problematic' components of human trafficking. Difficulties with definition, the theoretical framework of human trafficking and hidden political agendas have all had negative consequences for service systems. Such is the case in the US that domestic victims have not had access to the same programs as international victims. In Germany, meanwhile, the anti human trafficking NGO community has struggled to expand services to adult male victims and victims of non-sexual trafficking.

Service providers play an important role as researchers. They produce studies and provide empirical data on human trafficking to governments and fellow researchers.

Researchers in the field especially should work to provide evidence of the impact that gaps in service provision pose in order to close these gaps.

6.5 Gaps in Governance Structures

The analysis exposed the complexity of governance for combating human trafficking, especially at the international level and in the US. Human trafficking is a policy area that crosscuts a multitude of related areas, with the result that complex governance structures can be expected to accompany this issue. However, when governance structures inhibit or distort efforts to combat human trafficking, these must be questioned critically. At the international level, institutional arrangements for addressing human trafficking are seriously flawed. Human trafficking is primarily seen in the context of combating forced labor and organized crime. The ILO's approach to analyzing and addressing human trafficking is particularly at odds with the international definition.

More research needs to be conducted as to the form of international governance that would be conducive to combating human trafficking. As the international community struggles to keep its institutions up to date with global realities, institutional mandates need to be scrutinized and reforms carefully considered.

6.6 Moving the Anti Human Trafficking Agenda Forward

It took nearly 100 years for the international community to develop a comprehensive, human rights approach to combating human trafficking. Although the international anti human trafficking framework can still be improved, with the UN 2000 Anti Human Trafficking Protocol it has resolved many of the problems and gaps in policy. This was the result of a long consultative process that took place over generations and in various institutional constellations, which paralleled the institutionalization of international diplomacy.

Since 1904, the international community has formalized its work to understand what human trafficking encompasses. Starting from a partial approach by addressing one victim-group (i.e. white women) and one type of labor exploitation (e.g. sex trafficking), the international community expanded its understanding of this issue and with this the ability to take action to reduce its scope. Over the past one hundred years, the international community has slowly put together the pieces of the human

trafficking puzzle. It has led anti human trafficking efforts since the abolition of institutional slavery and influenced national legislation in the United States of America and the Federal Republic of Germany. After decades of slow evolution the international policy framework has progressed from a rough block of metal and emerged as a sharpened needle. The impetus of national efforts to define and stem human trafficking has drawn from the international community's long-term efforts to build a comprehensive anti trafficking policy framework. Yet this instrument is not perfect. This highly developed policy tool should continue to be improved.

At the national level, government and societal responses to human trafficking are a litmus test of the strength and quality of our democracies. This analysis has shown that both the German and American Governments have made earnest efforts to address the problem of human trafficking by creating robust anti human trafficking policy frameworks. Both have learned from their engagement with this issue at the international level. Yet in the national context, the sharpened anti human trafficking policy-needle has been dulled by policy gaps and hidden agendas. Hence national human trafficking policies are subordinated to competing and incompatible policy objectives that jeopardize the primary goal. These policy gaps and hidden agendas cast doubt on the commitment of both governments to stopping human trafficking and to doing so by means of a human rights approach.

The recommendations made in this analysis not only shed light on these hidden political agendas and gaps in policy in the United States of America and the Federal Republic of Germany, they also propose how to improve policy in both countries. The suggested changes could increase the protection of human trafficking victims, improve information on the scope and nature of human trafficking, as well as enhance the ability of governments to prosecute perpetrators. Both the German and the US Governments could profit from a closer comparison and exchange of their anti human trafficking policies and initiatives. This analysis could in turn act as a springboard for increased exchange and learning. Combating human trafficking is not an isolated policy niche that concerns only a few select experts. Although the immediate consequences of human trafficking are felt most intensely by the victims of the crime, it is nonetheless an issue that concerns the whole of society.

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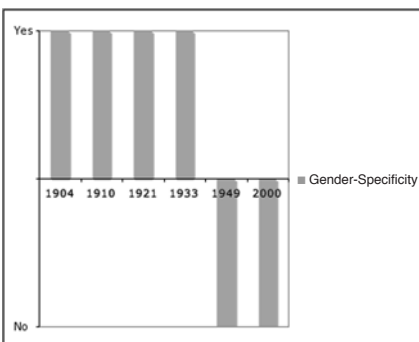
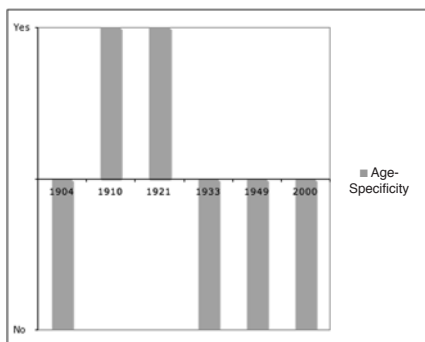
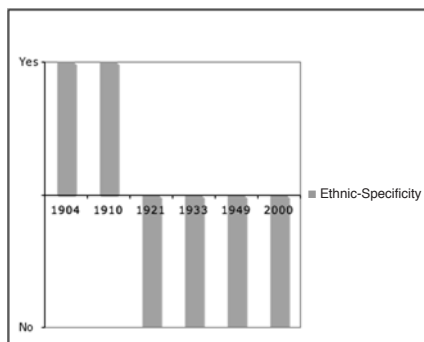
Annex

Annex 1: Components of Human Trafficking 1904–2000	274
Annex 2: Results of Internet Survey on Human Trafficking Indicators	280
Annex 3: Policy Recommendations	282

Annex 1: Components of Human Trafficking 1904–2000

1. Demographic parameters

- Ethnic-Specificity
- Age-Specificity
- Gender-Specificity



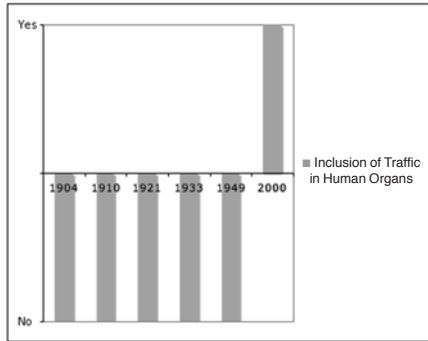
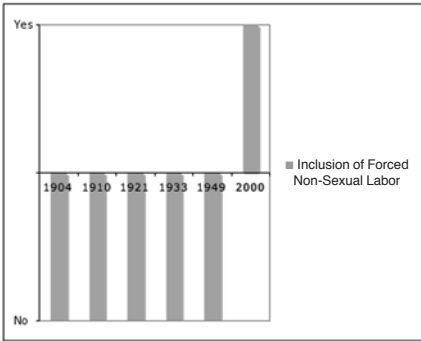
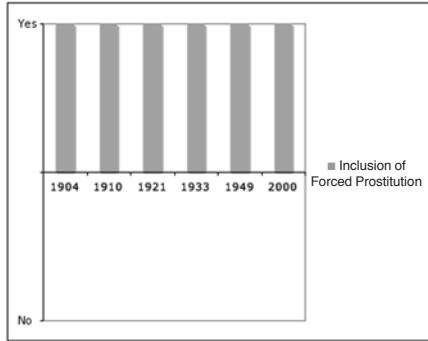
2. Geographic parameters

- European Focus of Anti Human Trafficking Measures
- Germany (or a predecessor nation thereof) was a Signatory
- The United States of America was a Signatory
- Exclusion of Internal Human Trafficking



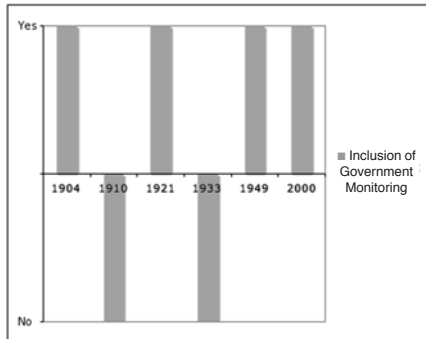
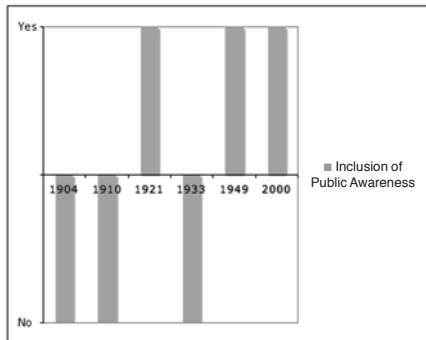
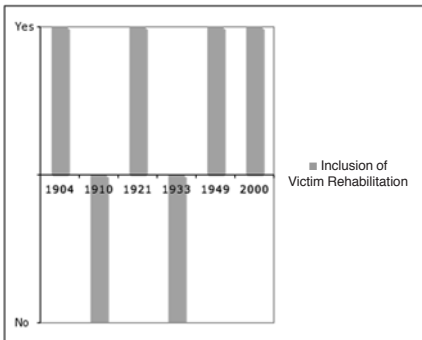
3. Exploitation parameters

- Inclusion of Forced Prostitution
- Inclusion of Forced Non-Sexual Labor
- Inclusion of Traffic in Human Organs



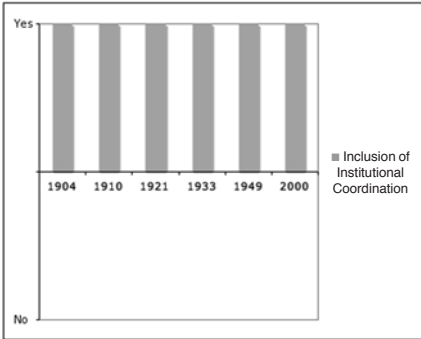
4. Victims protection parameters,

- Inclusion of Victim Identification
- Inclusion of Victim Rehabilitation
- Inclusion of Public Awareness
- Inclusion of Victim Access to Legal Residence
- Inclusion of Government Monitoring



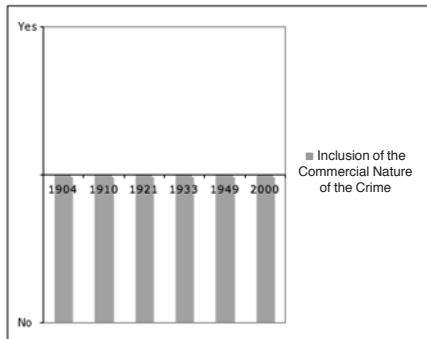
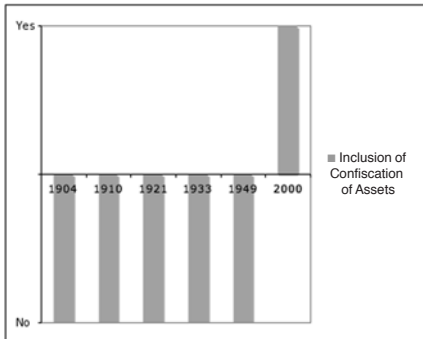
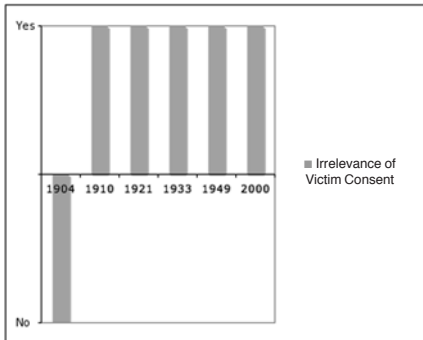
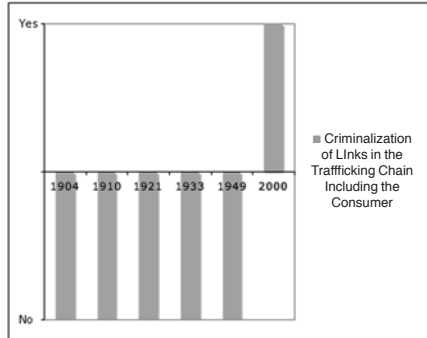
5. International cooperation parameters

- Inclusion of Institutional Coordination
- Inclusion of Extradition



6. Prosecution and punishment parameters.

- Prosecution of Links in Trafficking Chain Including the Consumer
- Irrelevance of Victim Consent
- Prosecution of Attempted Trafficking
- Inclusion of Confiscation of Assets
- Inclusion of the Commercial Nature of the Crime



Annex 3: Policy Recommendations

Recommendation:

The 2000 UN Anti Human Trafficking Protocol should be amended and should require states to grant international victims of human trafficking a right to residence independent of the victim's judicial cooperation.

Recommendation:

The international definition of human trafficking should make clearer that those persons who purchase the services of human trafficking victims, while in full knowledge of the victims' circumstances, are an integral part of the human trafficking chain.

Recommendation:

The international definition of human trafficking should include the commercial nature of the crime in order to better differentiate between human trafficking and other crimes such as pedophilia.

Recommendation:

Due to the significant overlap between forced labor and human trafficking, the UN should consider mandating the ILO to be an International Anti Human Trafficking and Forced Labor Organization.

Recommendation:

The new theoretical concept proposed in this analysis, 'The open circle of human trafficking', could be used to develop more comprehensive and coherent policies on human trafficking.

Recommendation:

In order to improve information on the number of human trafficking victims in the US, all Government agencies and grantees should be required to provide basic standardized data on the number of human trafficking victims identified. The recorded

data should protect the identity of the victim and include characteristics such as age, nationality, length of exploitation, type of exploitation and method of entry into the US (for non-national victims). The method of recoding this data should also allow the government to prevent double-counting victims. The characteristics recorded by the US Government should be harmonized with other countries' data.

Recommendation:

The US Government should not require adult human trafficking victims to help prosecute their perpetrators in order to become certified by the ORR. As a result, the ORR would be able to issue 'certification letters' to a greater number of human trafficking victims, increasing the level of protection provided to these persons in the United States of America.

Recommendation:

The US Government should entitle the LSC to provide services to human trafficking victims regardless of their nationality. The LSC should also record a standard data set concerning the victims of human trafficking whom it identifies and to whom it provides services.

Recommendation:

The Department of Labor should provide an annual publication regarding its domestic anti human trafficking activities. These statistics should also be included in the DoJ's annual report to Congress and in its annual publication assessing US activities against human trafficking.

Recommendation:

The US definition of human trafficking should be amended to include forced confinement in drop houses as a form of human trafficking and to prosecute perpetrators of this crime under human trafficking policy frameworks.

Recommendation:

The US Government should separate its anti human trafficking efforts from its doctrine against legal, voluntary prostitution, since these are two fundamentally different issues.

Recommendation:

United States federal law should include trafficking in human organs in its definition of human trafficking.

Recommendation:

US anti human trafficking policy frameworks should make the issue of T-Visas to human trafficking victims independent of the victims' decision to cooperate (or not) with authorities who are prosecuting human trafficking perpetrators. This should apply to both child and adult victims.

Recommendation:

The US definition of human trafficking should make clearer that only those persons in full knowledge of the victims' circumstances who purchase the services of human trafficking victims directly, are an integral part of the human trafficking chain.

Recommendation:

Members of German anti human trafficking NGOs should expand their mandates to include victims of both genders. Government funding of victim protection and rehabilitation projects should be expanded so that NGOs can aid a larger segment of the trafficked population in Germany.

Recommendation:

The Government, NGOs and media in the Federal Republic of Germany should draw more attention to internal human trafficking.

Recommendation:

The German NGO community should work to expand the focus of anti human trafficking services to victims who are forced into non-sexual labor. The German Government should provide adequate funds and capacity-building resources to support NGOs in their efforts. Information exchange with US NGOs could be beneficial to building additional capacity in the German NGO community.

Recommendation:

The media should convey a broader picture of human trafficking, including human trafficking for non-sexual labor exploitation in its reports on Germany.

Recommendation:

German federal law should include human trafficking in organs in its definition as stated in the 2000 UN Anti Human Trafficking Protocol.

Recommendation:

German anti human trafficking policy frameworks should make the issue of visas to human trafficking victims independent of the victims' decision to cooperate (or not) with authorities who are prosecuting human trafficking perpetrators. This should apply to both child and adult victims.

Recommendation:

While protecting the identity of the victim, the German Federal Police should profile select cases in which human trafficking victims have received residency. They should also reintroduce the statistics published from 1994-2004 on the residence status of detected human trafficking victims.

Recommendation:

German human trafficking law should include punishing the final link in the human trafficking chain: the consumer of a victim's services, when the consumer knowingly exploited a human trafficking victim.

Recommendation:

Human trafficking estimates should be standardized and based on a wider range of empirical data. The seven human trafficking indicators that experts surveyed for this analysis considered to be most important could be incorporated into an expanded, standard database on human trafficking. Governments and international organizations could record data in the same standard categories independently and exchange this data for estimating the number of human trafficking victims.