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## An Ounce of Prevention: Improving the Preventative Measures of the Trafficking Victims Protection Act

Takiyah R. McClain

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# An Ounce of Prevention: Improving the Preventative Measures of the Trafficking Victims Protection Act

## ABSTRACT

*Trafficking is a multi-billion dollar industry that affects the lives of millions of people, especially young girls and women. In an effort to combat this issue, the United States enacted the Trafficking Victims Protection Act in 2000. The Act has had some positive effects on the trafficking industry, but its preventative measures overlook or fail to deal sufficiently with some key factors: human rights issues, gender and economic inequalities, and sensationalism of the sex industry.*

*This Note discusses these three issues and their importance in establishing more effective preventative measures. Additionally, this Note looks to two approaches to trafficking, the human rights approach and the U.N. Protocol approach, and discusses how incorporation of these two approaches into the Trafficking Victims Protection Act would provide a better framework within which to combat the trafficking industry.*

## TABLE OF CONTENTS

I.	INTRODUCTION.....	580
II.	BACKGROUND ON TRAFFICKING .....	583
	A. <i>An Overview of the Trafficking Industry</i> .....	583
	B. <i>Putting a Face on the Tragedy: Personal Stories of Trafficking Victims</i> .....	585
	C. <i>Concerns about Current Trafficking Legislation</i> .....	586
III.	PREVENTATIVE MEASURES AND BENEFITS OF THE TVPA AND THE TVPRA.....	588
	A. <i>An Overview of Preventative Measures of the TVPA</i> .....	588
	B. <i>The Trafficking Victims Protection Reauthorization Act</i> .....	589
	C. <i>The TVPA's Effects on Trafficking and Recent Federal Programs</i> .....	591

	D.	<i>The Minimum Standards of the TVPA and Trafficking Data (Or Lack Thereof)</i> .....	592
IV.		PROBLEMS IGNORED BY THE TVPA AND THE TVPRA...	593
	A.	<i>Problem One: Human Rights Issues</i> .....	593
	B.	<i>Problem Two: Economic and Gender Inequalities</i> .....	595
	C.	<i>Problem Three: Sensationalism of the Sex Industry</i> .....	597
V.		ALTERNATIVE APPROACHES TO TRAFFICKING.....	597
	A.	<i>An Overview of the Human Rights Approach ...</i>	597
	B.	<i>An Overview of the U.N. Protocol</i> .....	599
		1. The U.N. Protocol's Approach to Economic and Gender Inequalities .....	600
		2. The U.N. Protocol's Approach to Sensationalism of the Sex Industry.....	603
VI.		CHANGING THE TVPA .....	604
	A.	<i>Putting Meaning Behind "Human Rights"</i> .....	604
	B.	<i>Effective Legislation for Economic and Gender Inequalities</i> .....	605
	C.	<i>Dealing with Sensationalism of the Sex Industry</i> .....	607
VII.		CONCLUSION.....	608

## I. INTRODUCTION

Does slavery still exist? Historical images of blacks and whites, slave ships, chains and shackles, plantations, and cotton fields may come to mind when one poses this question. These are the pictures that many people, particularly those in the United States, envision when they think of the institution of slavery that continues to be a blight on the nation's image. Under this conception, one can affirmatively answer no, slavery no longer exists. However, consider the following:

Trafficking of persons has recently become a growing phenomenon within and across international borders, including the United States. Many trafficked persons are forced into the sex industry [and] [t]rafficking of persons also involves forced labor, involuntary servitude, or slavery. Many trafficked persons are induced to perform labor or other services by force or the threat of force.<sup>1</sup>

Every year, millions of people fall prey to human trafficking, and a great majority of these millions are women and children, primarily

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1. H.R. REP. NO. 106-487, pt. 2, at 17 (2000).

young girls.<sup>2</sup> For this reason, this Note focuses primarily on female victims of sex trafficking, although many of the issues discussed may be equally applicable to other victims or other forms of trafficking. The victims have changed and the purposes have been expanded, but human trafficking is nothing more than a “contemporary manifestation of slavery.”<sup>3</sup> So why is slavery still around, and why is it so difficult to abolish?

The Trafficking Victims Protection Act of 2000 (TVPA), was enacted “to combat trafficking in persons . . . to ensure just and effective punishment of traffickers, and to protect their victims.”<sup>4</sup> The legislation was in response to Congress’s findings that U.S. and foreign legislation had been ineffective in combating trafficking and punishing traffickers, “principally because such legislation and [its] enforcement [did] not reflect the gravity of the offenses involved.”<sup>5</sup> Such offenses include prostitution,<sup>6</sup> “sexual abuse, torture, starvation, and imprisonment,”<sup>7</sup> as well as “frequent and serious violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.”<sup>8</sup>

Nations have attacked trafficking with many different legislative schemes. In the United States traffickers receive rather light penalties.<sup>9</sup> In countries under Islamic law, such as Saudi Arabia, Malaysia, and Pakistan, prostitution is viewed in the same vein as adultery, and both the male and female are punished.<sup>10</sup> In Sweden,

2. *Id.* at 2.

3. *Id.* Enforced prostitution is often referred to as white slavery, which is defined as such by Webster’s Third New International Dictionary. See WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2609 (3d ed. 1993). The term white slavery will not be used in this Note because of its historical use as a description for enslavement of whites. See generally CLIFFORD GRIFFITH ROE, THE GREAT WAR ON WHITE SLAVERY, OR FIGHTING FOR THE PROTECTION OF OUR GIRLS (1911). However, the general definition for white slave may shed light on the legal aspects of this institution:

a woman or girl who is transported knowingly in interstate or foreign commerce or in territory subject to federal jurisdiction for purposes of prostitution or debauchery or for other immoral purpose or practice with the intention of inducing, enticing, or compelling her to such purpose or practice and without regard to whether her consent is given.

WEBSTER’S, *supra*, at 2609.

4. *Id.*

5. *Id.* at 3.

6. *Id.* at 2.

7. *Id.*

8. *Id.* at 3.

9. *Id.*

10. Linda Smith & Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges*, 28 FLETCHER F. OF WORLD AFF. 155, 170 (2004).

the On Prohibiting Purchase of Sexual Services Act makes it a crime to buy sex, but not a crime to sell sex.<sup>11</sup> In many countries, such as Liberia, Sri Lanka, Ethiopia, and Zimbabwe, trafficking victims who are foreign to the destinations are found to be in violation of immigration laws, and the victims are not given the residency status necessary to allow them to testify against and protect themselves from their traffickers.<sup>12</sup> Besides illustrating the many ways legislatures can and have approached trafficking, these examples also show that much more is involved than just the act of forced prostitution. Issues such as women's rights and status, immigration, and societal views on sex all affect the manner in which sex trafficking is handled in the United States and beyond.

The methods of trafficking prevention proposed in the TVPA appear to get at the root of the problem. This Note analyzes whether, as written, these methods are effective at preventing human trafficking. The Note also compares the TVPA's methods to the human rights approach and the preventative measures set forth in the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons (U.N. Protocol).<sup>13</sup> Part II of this Note provides background information on trafficking, including stories of actual trafficking victims, and briefly addresses concerns that have been expressed about current legislation. Part III discusses the benefits and shortcomings of the TVPA, the Trafficking Victims Reauthorization Act of 2003 (TVPRA), and the Trafficking Victims Protection Reauthorization Act of 2005 (2005 Act). This section also briefly discusses recent federal anti-trafficking programs, as well as gaps in current trafficking data and research. Part IV focuses on problems ignored by the TVPA, mainly human rights issues, economic and gender inequalities, and sensationalism of the sex industry. Part V discusses two different approaches to trafficking: the human rights approach and the U.N. Protocol. Finally, Part VI discusses how the TVPA can incorporate the human rights approach to better deal with human rights issues and the preventative measures of the U.N. Protocol to target economic and gender inequalities and sensationalism of the sex industry.

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11. *Id.*

12. *Id.* at 160–61.

13. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, UN Doc. A/55/383 at 25 (Nov. 15, 2000) [hereinafter U.N. Protocol].

## II. BACKGROUND ON TRAFFICKING

A. *An Overview of the Trafficking Industry*

The people who endure the grossest forms of commercial sexual abuse throughout the world are those who are at the bottom of lots of different, and very complicated, hierarchies. They are female, they are from poor families in poor communities, and they belong to despised racial and ethnic minorities. They are abused and exploited, and a proportion are locked into sexual slavery precisely, and simply, because they *can* be: they are society's most vulnerable people.<sup>14</sup>

"Sex trafficking" is defined as "the purchase, sale, recruitment, harboring, transportation, transfer or receipt of a person for the purpose of a commercial sex act."<sup>15</sup> Approximately twenty-seven million people currently live in slavery, and between 800,000 and 900,000 people are trafficked internationally every year; of this, between 18,000 and 20,000 people are brought to the United States.<sup>16</sup> Human trafficking is a lucrative business, grossing seven to ten billion dollars annually, making it the third largest international crime industry behind only drug and arms smuggling.<sup>17</sup>

Women and children are trafficked into the United States from such places as Honduras, Latvia, Mexico, Korea, Japan, Cameroon, Taiwan, India, and Vietnam.<sup>18</sup> In addition, in many Latin American and Caribbean countries, women and children are trafficked within borders.<sup>19</sup> As the opening passage states, female victims tend to be from low-economic backgrounds, and so traffickers lure them away from their homes with promises of high paying jobs as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models.<sup>20</sup> However, there are also trafficking victims who are not from economically deprived families and communities, but rather have been abandoned by their families or are widowed or divorced.<sup>21</sup> For example, in Asia, where women are generally at an economic disadvantage to men, such abandonment coupled with the responsibility of raising children makes women prime targets for

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14. LOUISE BROWN, *SEX SLAVES: THE TRAFFICKING OF WOMEN IN ASIA* 3 (2000).

15. H.R. REP. NO. 106-487, pt. 2, at 4 (2000).

16. Smith & Mattar, *supra* note 10, at 158. The TVPA approximates the number of women and children trafficked annually into the United States at 50,000. The figure cited in this Note is from a 2004 article, so it is possible that this decline has resulted from a decrease in trafficking into the United States, rather than from a mere discrepancy in the numbers. *Id.*

17. *Developments in the Law—Jobs and Borders*, 118 HARV. L. REV. 2171, 2186 (2005).

18. *Id.*

19. *Id.*

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

21. BROWN, *supra* note 14, at 34.

traffickers.<sup>22</sup> In some instances, the parents of young Asian girls prime their own daughters for prostitution, “[displaying] their winnings, in the form of TVs, concrete houses, and motorcycles, as a symbol of their daughters’ loyalty and beauty.”<sup>23</sup> Although families sometimes send their daughters into prostitution as a means of survival, prostitution also often is treated as any other normal economic endeavor.<sup>24</sup>

Like any other economic endeavor where there is a supply, there is also a demand. Changes in attitudes, ideas, and views about sex over the years have resulted in an increase in the sex industry. Sex trafficking is a primary example. One author suggests that this is due to the demise of class, race, and gender restrictions that once only allowed certain people, namely rich people, the “privilege” of exploiting females from poor countries.<sup>25</sup> Another argues that a country’s views on sex, whether they are more open or more restrictive, influence demand for sexual services.<sup>26</sup> Particularly in restrictive countries, men are more likely to engage in secretive acts such as prostitution, because they are not free to engage in normal sexual relationships openly without moral or legal repercussions.<sup>27</sup>

Customer demand is also a factor. A number of men are willing to travel to other places for sexual services, a practice often referred to as “sex tourism.”<sup>28</sup> The four S’s of tourism (“Sun, Sand, Surf, and Sex”)<sup>29</sup> illustrate why men travel to other countries for the purpose of engaging in prostitution. All parties involved—the institution itself, traffickers, and the tourist—share the responsibility of engaging in sexual exploitation.<sup>30</sup> This demand for sex tourism impacts trafficking by expanding the market beyond men already residing in trafficking destinations to men who are willing to travel to such destinations for the same services. Trafficking embodies much more than what has been discussed thus far, and this Note is not meant to be an exhaustive source of information regarding this industry. Rather, this information provides an overview of the people involved in this industry, and provides a starting point for further discussion

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22. *Id.*

23. Abigail Schwartz, *Sex Trafficking in Cambodia*, 17 COLUM. J. ASIAN L. 371, 388 (2004).

24. *Id.*

25. Susanne Thorbek, *Prostitution in a Global Context: Changing Patterns*, in TRANSNATIONAL PROSTITUTION: CHANGING GLOBAL PATTERNS 1, 2 (Susanne Thorbek & Bandana Pattanaik eds., 2002).

26. BROWN, *supra* note 14, at 129.

27. *Id.* at 129–30.

28. CHRIS RYAN & C. MICHAEL HALL, SEX TOURISM: MARGINAL PEOPLE AND LIMINALITIES ix (2001).

29. *Id.*

30. *Id.* at 118, 133.

on preventative methods that better address the problem than those currently proposed by the TVPA.

Unfortunately, the injustice does not end with trafficking but continues even after victims are rescued from their traffickers.<sup>31</sup> Women and young girls who have been trafficked out of their home countries may be viewed as illegal aliens and deported, making it practically impossible for them to testify as witnesses against their captors.<sup>32</sup> Some are even treated as criminals and are fined and imprisoned for engaging in prostitution and other illegal activities.<sup>33</sup> As a result, the real criminals, the traffickers, receive rather light punishments despite the gravity of their offenses.<sup>34</sup> This is a direct result of inadequate legislation.<sup>35</sup>

### *B. Putting a Face on the Tragedy: Personal Stories of Trafficking*

In Cambodia, a seventeen-year-old named Neary was sold by her husband to a brothel for \$300. After five years of suffering physical abuse, including being raped by several men on a daily basis, Neary contracted HIV. She was thrown out of the brothel and later died in a shelter at the age of twenty-three.<sup>36</sup>

In Uzbekistan, seventeen-year-old Lusa's aunt aided in her kidnapping and transport to Dubai by using a relative's passport simply because the aunt wanted her niece's apartment. Lusa was forced into a prostitution ring until being dismissed when she was no longer "useable." However, because Lusa entered Dubai using another person's passport, the United Arab Emirates immigration service sentenced her to a two-year prison term. The case is still unfolding.<sup>37</sup>

In Albania, thirteen-year-old Viola married a twenty-one-year-old man who moved them to Italy, where he later locked her in a hotel room and disappeared. Soon after, a group of men entered and repeatedly raped and beat Viola for several days, claiming that she had been sold to them. Viola was later sold to another man who forced her into prostitution after a severe beating and threats that her mother and sister would be raped and killed if she refused. Police eventually raided the brothel, and Viola was deported back to Albania.<sup>38</sup>

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31. See Kara C. Ryf, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT'L L. 45, 51 (2002).

32. *Id.* at 51-52.

33. *Id.*

34. *Id.* at 52.

35. *Id.*

36. U.S. Dep't of State, Victim Stories, <http://www.state.gov/g/tip/c16482.htm> (last visited Jan. 23, 2007).

37. *Id.*

38. *Id.*



In Minsk, Svetlana was approached by men from Turkey, who promised her work in Istanbul. However, upon arrival Svetlana's passport and money were taken, and she was locked up and later transported to an apartment where she was forced into prostitution. In an effort to escape, she jumped out of a six-story window. Instead of taking Svetlana to a hospital, the customers from whom she tried to escape returned her to her traffickers, where she died two days later.<sup>39</sup>

In Sri Lanka, Karin, a young woman with two children, met a man who told her that she could work as a waitress in Singapore. The man arranged and paid for her travel to Singapore, but upon arrival, Karin was met by a woman who took her to a hotel and informed her that she would have to work as a prostitute to repay her travel expenses. Karin was sold at a public sex market, along with other women, to men who took them to nearby hotels and raped them. On average, Karin was forced to have sex with fifteen men daily. She became seriously ill, but was deported back to Sri Lanka after she was arrested during a police raid.<sup>40</sup>

### C. Concerns About Current Trafficking Legislation

The TVPA reflects the majority views of Congress, but there are also concerns with the TVPA. These concerns include unfair criteria for visa eligibility,<sup>41</sup> victims inability to reunite with their families,<sup>42</sup> and the issuance of visas in general.<sup>43</sup> These concerns are outside the scope of this Note, but they do shed light on some of the shortcomings of the TVPA.

Another issue of concern more significant for the purposes of this Note is the enforcement of trafficking legislation as a whole, not just within the United States and not just based on the TVPA. The concerns include the law and its functional equivalent—"the customs, the traditions, and acceptable behavior."<sup>44</sup> Some societies are built around traditions and customs that actually contribute to the crime of trafficking, making it more likely to occur and possibly more

39. *Id.*

40. *Id.*

41. H.R. REP. NO. 106-487, pt. 2, at 41-43 (2000) (focusing on requirements of § 7(f)(1) that victims prove they did not voluntarily agree to trafficking and that they have a fear of retribution or would suffer "extreme hardship" if they were removed from the United States, and the requirement of § 7(f)(3) that the Attorney General may not waive grounds of inadmissibility unless reasons for inadmissibility are connected to the actual act of trafficking).

42. *Id.* at 43-44 (referring to § 7(f)(1), which allows for the reuniting of spouses and parents with their children while in the United States if "extreme hardship" upon removal from the United States is shown).

43. *Id.* at 44 (referring to § 7(f)(4) that only allows for 5,000 visas to be issued yearly for trafficking victims).

44. Smith & Mattar, *supra* note 10, at 171-72.

acceptable. For example, in South Asia and Africa people repay loans and debts through personal services, an act known as debt bondage.<sup>45</sup> This repayment of services often continues throughout the person's lifetime, and children are sometimes born into debt bondage, giving rise to child slavery.<sup>46</sup> Religious traditions also contribute to the increase in human trafficking. In some African nations, it is believed that young girls can atone for the sins of their male relatives.<sup>47</sup> These girls are given to priests and forced into domestic, field, and market work, as well as sexual labor.<sup>48</sup>

In Asia, the sex industry is primarily built on the idea of "women as commodity."<sup>49</sup> In fact, Asia was the home of the first instance of "large-scale" commercial trafficking in the nineteenth century.<sup>50</sup> Chinese women were sold to brothels in Malaysia, Singapore, and Thailand, and Japanese women were sent to Southeast Asia for the same reason.<sup>51</sup> That Asia was the home of such widespread trafficking is ironic considering the view of Asia as "the home of wholesale family values and conservative sexual morality."<sup>52</sup> However, "family values" in Asia actually means "family stability."<sup>53</sup> Having a stable family environment does not necessarily mean that values are upheld within the family. Rather, it may mean that any immorality is overlooked, accepted, or kept secret so that the family remains a strong unit. Add to that the contradiction of conservative sexual morality and the commoditization of women, and Asia becomes like any other Western society, except with a less visible sex industry.<sup>54</sup>

Also contributing to law and the functional equivalent of the law is the idea of acceptable behavior. In many countries prostitution has simply become acceptable behavior. In Holland, for example, it is not illegal to own and operate brothels,<sup>55</sup> while in Sweden it is legal to sell sex but illegal to buy sex.<sup>56</sup> Under Sweden's law, prostitution would seem to be an impossible enterprise considering that all consumers would be in violation of the law. It has been suggested that the reasons behind the law were equality between males and females and the activism of feminists;<sup>57</sup> criminalizing prostitution

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45. *Id.* at 172.

46. *Id.*

47. *Id.*

48. *Id.*

49. BROWN, *supra* note 14, at 7.

50. *Id.*

51. *Id.*

52. *Id.* at 5.

53. *Id.* at 6.

54. *Id.* at 3.

55. Thorbek, *supra* note 25, at 7.

56. *Id.*

57. *Id.*

would not keep people from participating in it, but rather would increase the extent to which people would engage in it in secret.<sup>58</sup> However, this law seems counterintuitive since it may tend to actually increase the possibility of prostitution becoming a covert operation, which is what the law was trying to combat in the first place.

A clearer view of prostitution being considered acceptable behavior is evident in the fact that many government officials and police officers themselves engage in trafficking. Police provide aid in the exploitation of children in Bolivia,<sup>59</sup> border officials accept bribes to allow the trafficking of Haitian children into the Dominican Republic,<sup>60</sup> and trafficking victims provide sexual services for politicians and civil servants in Montenegro.<sup>61</sup> The laws preventing trafficking and prostitution are meaningless if they are not actually enforced. Getting to the root of the problem would provide better protection for the victims of trafficking, particularly in countries where victims are being overlooked by those who swore to protect them in the first place.

### III. PREVENTATIVE MEASURES AND BENEFITS OF THE TVPA AND THE TVPRA

#### A. *An Overview of Preventative Measures of the TVPA*

The TVPA offers three methods for trafficking prevention: economic alternatives, public awareness, and consultation.<sup>62</sup> Section 6(a) states, "The President . . . shall establish and carry out initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking."<sup>63</sup> Suggested initiatives include:

- (1) microedit lending programs, training in business development, skills training, and job counseling;
- (2) programs to promote women's participation in economic decision-making;
- (3) programs to keep children, especially girls, in elementary and secondary schools;
- (4) development of educational curricula regarding the dangers of trafficking; and

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58. Arthur Gould, *Sweden's Law on Prostitution: Feminism, Drugs and the Foreign Threat*, in TRANSNATIONAL PROSTITUTION: CHANGING GLOBAL PATTERNS, *supra* note 25, at 203.

59. Smith & Mattar, *supra* note 10, at 173.

60. *Id.*

61. *Id.*

62. H.R. REP. NO. 106-487, pt. 2, at 7 (2000).

63. *Id.*

(5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.<sup>64</sup>

In a section-by-section analysis, the TVPA specifically mentions economic deprivation as the primary problem of trafficking.<sup>65</sup> Section 6(b) provides that the President shall create and carry out programs to increase public awareness about the dangers of trafficking and the available protections for trafficking victims.<sup>66</sup> Section 6(c) states that the President shall consult with non-governmental organizations regarding the initiatives mentioned in Section 6(a).<sup>67</sup>

These preventative measures are not without their benefits. The Findings section of the TVPA lists various factors that make women and girls targets of traffickers. These factors are impoverishment, lack of access to education, unemployment, discrimination, and few economic opportunities.<sup>68</sup> Business training, job counseling, and economic decision-making would help improve women's status in society, and keeping children in school would allow young girls to continue this cycle of societal significance. Increasing public awareness of trafficking would educate people about the activities taking place in their own communities. Awareness also precludes any excuse based on ignorance—once one knows trafficking is going on, he cannot deny its existence. Denial in that context would be recognizing trafficking as acceptable behavior. However, while these preventative measures are good starting points for change, there are other factors at play that are not addressed and may hinder any chance of progress, such as gender inequalities and the sensationalism of the sex industry.

### B. *The Trafficking Victims Protection Reauthorization Act*

As a testament to the shortcomings of the TVPA, the act was reauthorized with some additions in 2003 in the form of the TVPRA. The TVPRA adds "border interdiction" as a method of prevention. It provides for the use of shelters at particular borders; the training of trafficking survivors to educate border guards, officials, and other law enforcement officers on how to identify traffickers and their victims; and training on the proper way to handle trafficking victims.<sup>69</sup> The TVPRA also introduces the use of international media to educate potential victims and the general public in source countries about

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64. *Id.*

65. H.R. REP. NO. 106-487, pt. 1, at 31 (1999).

66. H.R. REP. NO. 106-487, pt. 2, at 7 (2000).

67. *Id.*

68. *Id.* at 2.

69. H.R. REP. NO. 108-264, pt. 1, at 2 (2003).

trafficking.<sup>70</sup> A particularly important change from the TVPA deals with sex tourism. The TVPRA states that materials shall be distributed to people traveling to foreign countries to warn them about the dangers and legal issues involved in engaging in sex tourism.<sup>71</sup> The TVPRA adds that any grant, contract, or cooperative agreement between the federal government and a private party will be terminated if that private party engages in trafficking.<sup>72</sup>

Recently the federal government passed the Trafficking Victims Protection Reauthorization Act of 2005 (2005 Act). This Act added the following provision to the TVPA's section on prevention:

(h) Prevention of Trafficking in Conjunction with Post-Conflict and Humanitarian Emergency Assistance – The United States Agency for International Development, the Department of State, and the Department of Defense shall incorporate anti-trafficking and protection measures for vulnerable populations, particularly women and children, into their post-conflict and humanitarian emergency assistance and program activities.<sup>73</sup>

The 2005 Act's prevention measures seem to aim at *protecting* potential victims post-conflict, when they are most vulnerable. However, this is not the same as *preventing* trafficking by targeting fully the underlying issues present both pre-conflict and post-conflict.

While the TVPRA and 2005 Act expand upon the TVPA, Congress still misses the mark of preventing trafficking. The TVPRA considers the important role border officials and law enforcement officers play in preventing trafficking, recognizes the need to educate potential victims and the general public about the dangers of trafficking, and extends punishment for patronizing the trafficking industry to private parties working under government contracts. However, similar to the TVPA, the TVPRA ignores the cultures, traditions, and acceptable behaviors that help foster environments in which trafficking can take place. One of Congress's findings mentioned in the TVPRA is that "additional research is needed to fully understand the phenomenon of trafficking in persons and to determine the most effective strategies for combating trafficking in persons."<sup>74</sup> To be effective, this additional research should include the various traditions and cultures of the main source countries. One of the biggest problems with both the TVPA and the TVPRA is that neither seems to consider that different approaches may be effective when dealing with different countries. Many source countries may be similar in terms of economic, gender, and political inequalities but very different in terms of the foundations on which these inequalities

70. *Id.*

71. *Id.*

72. *Id.* at 3.

73. H.R. REP. NO. 109-317, pt. 1, at 3 (2005).

74. H.R. REP. NO. 108-264, pt. 1, at 2 (2003).

exist. Any legislation targeting trafficking needs to consider these varying foundations in order to be as effective as possible.

### C. *The TVPA's Effects on Trafficking and Recent Federal Programs*

In September 2005, the U.S. Department of Justice issued a report on the TVPA's effects on trafficking.<sup>75</sup> From 1998 to 2004, the number of cases concerning trafficking jumped from two to twenty-nine, the number of defendants charged almost tripled from nineteen to fifty-nine, and the number of convictions increased from twenty-five to forty-three.<sup>76</sup> This indicates the TVPA has had positive effects, but in light of the fact that approximately twenty-seven million people currently live in slavery<sup>77</sup> and only 611 out of the tens of thousands of victims trafficked into the United States have been found since 2001,<sup>78</sup> these results seem minimal at best.

The U.S. government recognized this overwhelming discrepancy and in 2004 developed two new ways to fight trafficking.<sup>79</sup> First, the Trafficking Task Force Initiative formed twenty-one teams of law enforcement officials, prosecutors, and victim services providers in cities across the United States and trained them to investigate trafficking cases and provide appropriate services for victims.<sup>80</sup> Second, the Model State Anti-Trafficking Statute provided a model for state governments in drafting their own trafficking laws.<sup>81</sup> In addition, the United States has issued a number of grants to organizations across the world that combat trafficking, giving approximately eighty-two million dollars to 251 international programs in eighty-six countries.<sup>82</sup> It is more than evident that the United States has recognized trafficking as a serious crime that needs to be dealt with on a global scale. In fact, there is a great deal of cooperation among various states and countries all over the world.<sup>83</sup> For example, the Southeast European Cooperative Initiative is an operation joining forces from Romania, Albania, Bosnia, Bulgaria, Croatia, Macedonia, Yugoslavia, Greece, Hungary, Moldova, Turkey,

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75. U.S. DEPT OF JUSTICE, ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS (2005), available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf> [hereinafter TRAFFICKING ASSESSMENT].

76. *Id.* at 15.

77. Smith & Mattar, *supra* note 10, at 158.

78. TRAFFICKING ASSESSMENT, *supra* note 75, at 4.

79. *Id.* at 18–19.

80. *Id.*

81. *Id.* at 19.

82. *Id.* at 4, 19.

83. Joan Fitzpatrick, *Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking*, 24 MICH. J. INT'L L. 1143, 1164–65 (2003).

the Ukraine, and the United States.<sup>84</sup> However, the fact that there are still millions of trafficking victims living in slavery shows that there is still much work to be done; “Foreign assistance must involve more than exchanges among police agencies, and must entail development strategies that emphasize educational opportunities for girls and economic security for women”<sup>85</sup>—a point developed further in this Note.

D. *The Minimum Standards of the TVPA and Trafficking Data (Or Lack Thereof)*

In spite of the positive effects the TVPA has had on trafficking, the lack of greater success may be explained by the minimum standards set by the TVPA for the elimination of trafficking in source, transit, and destination countries. The TVPA has four minimum standards these countries should meet:

- (1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.
- (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion . . . or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.
- (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.
- (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.<sup>86</sup>

These minimum standards focus on both prevention and punishment but seem to place more emphasis on punishment. The punishment provisions at least give countries a standard to apply when determining appropriate punishments, while the prevention provisions simply call for a prohibition and elimination of trafficking. However, given the small number of traffickers prosecuted and convicted in trafficking cases, it is not likely that even the most stringent of punishments will have a substantial deterrent effect. Also, having minimum standards that only focus on punishment after the fact does not get to the root of the problem.

The TVPA has also resulted in little accumulation of data on trafficking. In 2005, the United States held a Seminar on Trafficking in Persons Research. This seminar’s findings included: little research has been done on anti-trafficking programs funded by the government

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84. *Id.* at 1165.

85. *Id.*

86. H.R. REP. NO. 106–487, pt. 2, at 10 (2000).

and whether these programs actually work; little research has been done on trafficking in Africa, the Middle East, and the Americas; little is known about actual traffickers, demand in destination countries, and law enforcement efforts to combat trafficking; and few countries are equipped to conduct research or collect data on trafficking.<sup>87</sup> Research on trafficking is lacking in other areas as well, which adds support to the notion that the TVPA and other efforts to combat trafficking continue to miss their mark.

#### IV. PROBLEMS IGNORED BY THE TVPA AND THE TVPRA

##### A. *Problem One: Human Rights Issues*

That human trafficking impedes on one's human rights is not a debatable issue (although some may question whether it is a human rights issue if one willingly agrees to be trafficked). There are too many underlying factors at play to ignore the serious violations of human rights taking place within the trafficking industry. In her article about equal rights for women on a global scale, Edieth Y. Wu proposes five rights that are essential for women to obtain equal rights: (1) the right to life; (2) the right to equality; (3) the right to equal protection under the law; (4) the right to be free from all forms of discrimination; and (5) the right to be free from torture or other cruel, inhuman, or degrading treatment or punishment.<sup>88</sup> Each of these rights is implicated in the context of trafficking.

The right to life is threatened in countries such as Nigeria and those in the Middle East where women are often killed or sentenced to death for engaging in adultery.<sup>89</sup> Ironically, women are sometimes killed for fighting for human rights, and in places such as Mexico, women are subjected to the same crimes as women in United States—rapes, killings, and kidnappings—but without the proper government response.<sup>90</sup>

The right to equality is threatened by the view of women as second-class citizens in countries where families and family law are male-dominated.<sup>91</sup> This position in society has made women the targets of various crimes, including the killing of female babies.<sup>92</sup> The United States is not without its own equality issues. For example, women do not receive equal treatment under the law

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87. U.S. DEPT OF STATE, SEMINAR ON TRAFFICKING IN PERSONS RESEARCH (2005), available at <http://www.state.gov/g/tip/rls/fs/2005/59133.htm>.

88. Edieth Y. Wu, *Global Burqas*, 14 TEX. J. WOMEN & L. 179, 180 (2004–05).

89. *Id.* at 181–82.

90. *Id.*

91. *Id.* at 182.

92. *Id.* at 183.



regarding domestic violence disputes.<sup>93</sup> Women are often found guilty of killing their husbands after having endured years of abuse and sometimes receive harsh punishments, whereas men who kill their wives “in the heat of passion” tend to receive lighter sentences.<sup>94</sup> Women in the United States also experience employment discrimination, sexual harassment on the job, discrimination in the military, and sexual abuse in prisons.<sup>95</sup> Women in the United States face problems comparable to those in any other male-dominated society.

The right to equal protection under the law is threatened by history and traditions. Wu gives the example of women in Afghanistan who were flogged if they refused to wear veils, denied an education, forbidden from having jobs outside of the home, and prohibited from being in public without a veil and a male escort.<sup>96</sup> The women were subjected to these rules not because of Islamic law but because of culture and traditions.<sup>97</sup> This is a perfect example of the need to address traditions and historical practices that otherwise will continue the cycle of gender discrimination.

The right to be free from all forms of discrimination is threatened by the denial of equal protection under the law.<sup>98</sup> A legal system that does not provide the same protections for women as it does for men encourages discrimination against women, even if there is no intent to do so. Wu argues that discriminatory practices prevent women from “choos[ing] their own destinies.”<sup>99</sup> In countries stricken with poverty, such discrimination not only limits what women can do with their own lives but is likely to push them toward trafficking when the opportunity presents itself. For a woman living in a country where she receives unequal protection under the law and where discriminatory practices are a constant factor, her options are slim to none—trafficking may appear to present her with an opportunity to get out of her oppressive society, only to trap her in an even more oppressive regime. Of course, this is not the case for every victim of trafficking—many are kidnapped and actually forced into the world of trafficking, and this Note does not argue that countries with discriminatory practices and unequal protection under the law are supportive actors of the trafficking industry. However, this Note does attempt to identify the primary societal factors that play a rôle in making trafficking the multi-billion dollar industry that it is today.

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93. *Id.* at 184.

94. *Id.*

95. *Id.* at 185–87.

96. *Id.* at 189.

97. *Id.*

98. *Id.* at 190.

99. *Id.*

The right to be free from torture or other cruel, inhuman, or degrading treatment or punishment is threatened by the denial of the aforementioned rights—the right to be free from discrimination and the right to equal protection under the law. Such torturous and cruel acts include honor killings, stoning, flogging, and genital mutilation.<sup>100</sup> Unlike men, women are subjected to such inhumane treatment simply for making personal choices, such as choosing who to marry, losing their virginity, and even for being a victim of a crime, particularly rape.<sup>101</sup> If women can be subjected to such cruel punishments and treatments, then trafficking does not seem so out of the ordinary. As Wu states, “Violence against women is rooted in a global culture of discrimination, which denies women equal rights with men and which legitimizes the appropriation of women’s bodies for individual gratification or political ends.”<sup>102</sup> In the majority of countries, denial of human rights places women on a lower plane than men, leaving women subject to male-dominated cultures that do little or nothing to protect women’s rights.

#### B. *Problem Two: Economic and Gender Inequalities*

The factors listed in the previous section usually do not exist exclusive of one another but rather are commingled and interconnected in a way that creates a situation prime for trafficking. Where there are poverty and an imbalance in educational and economic opportunities, there are often discriminatory practices taking place behind the scenes. Such discrimination may lead to more acceptance of violence against women—“[t]he correlation between violence and sex-discrimination is universal [and] in many ways is a manifestation of views, perceptions, priorities, and social importance.”<sup>103</sup> With respect to trafficking, this discrimination does not necessarily take the form of laws or policies institutionalizing gender discrimination. Instead, discrimination takes place in the way women are treated and viewed in their respective societies. Even with the provision of improved economic and educational systems, these systems will undoubtedly be hindered by gender inequalities in much the same way that systemic improvements were hindered by racial inequalities in the United States.<sup>104</sup> Calling for other countries

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100. *Id.* at 191.

101. *Id.*

102. *Id.* at 193 (quoting AMNESTY INT’L, *BROKEN BODIES, SHATTERED MINDS: TORTURE AND ILL TREATMENT OF WOMEN* (2001)).

103. Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 414–15 (2003).

104. See generally Christo Lassiter, *The New Race Cases and the Politics of Public Policy*, 12 J.L. & POL. 411 (1996); Bayard Rustin, Comment, *Integration and Education: 25 Years After Brown*, 23 HOWARD L.J. 89 (1980).

to act pursuant to the preventative measures set forth in the TVPA is a first step, and these countries may even act accordingly. However, it would be quite presumptive to rely heavily on these measures as the answers to the trafficking problem.

Chris Ryan and C. Michael Hall, authors of *Sex Tourism: Marginal People and Liminalities*, write on the idea of prostitutes and trafficking victims as "liminal people."<sup>105</sup> Liminal people are "threshold people existing betwixt and between. They exist in an ambiguous position between 'positions assigned and arrayed by law, custom, convention, and ceremonial.'"<sup>106</sup> This notion of liminality can be extended even further. In countries that are sources for trafficking (compared to countries such as the United States that are typically trafficking destinations), this liminality or marginalization can be applied to women in general. For example, in Asian societies females are not valued as highly as males.<sup>107</sup> South Asia is described as having the "worst gender development indicators in the world . . . [discriminating] against [girls] from the moment of their birth."<sup>108</sup> In Morocco, despite a constitution which declares that males and females are equals, women are always viewed as "minors," always depending on some male figure in their lives.<sup>109</sup> In Muslim societies, women are viewed as the inferior sex imbued with sexual powers that must be controlled in order to protect society from ultimate destruction.<sup>110</sup>

This inequality between males and females not only prevents women from attaining a higher, more respectable status in their own societies, but also makes it easier for women to be stigmatized based on their sexuality. Once gender discrimination and inequality have become so ingrained in a society's customs and traditions, implementing programs to improve educational and economic opportunities is comparable to putting the cart before the horse. The TVPA's preventative measures are a step in the right direction to improve the status of women in society, but gender inequality is a formidable obstacle that may be difficult to overcome. These inequalities should be addressed in anti-trafficking legislation.

In addition, the TVPA's preventative measures are too general, and it is doubtful that these measures can be applied to each country or region of the world where trafficking occurs, since issues concerning gender and economic inequalities may vary by country.

105. Ryan & Hall, *supra* note 28, at 1. The authors also argue that sex tourists are liminal people. *Id.*

106. *Id.* at 3.

107. BROWN, *supra* note 14, at 32.

108. *Id.* at 32-33.

109. ANA LOPEZ LINDSTROM, *Il y a 50.000 prostituees marocaines de luxe dans la cote espagnole: A Necessary Myth*, in TRANSNATIONAL PROSTITUTION: CHANGING GLOBAL PATTERNS, *supra* note 25, at 160.

110. BROWN, *supra* note 14, at 42.

Instead, they are “scattered rather than targeted,”<sup>111</sup> all aiming at prevention of trafficking overall but missing their mark.

### C. *Problem Three: Sensationalism of the Sex Industry*

The sex industry has been glamorized by both the media and the participants themselves. Sex workers are romanticized as “successful [courtesans] who [provide] genteel and intellectually stimulating entertainment . . . and discreet and presumably artistically refined sex to powerful and charming men.”<sup>112</sup> Foreign women are viewed as “exotic,” a quality often attractive to men of other cultures. These exotic sexual images fuel the sex tourism industry by drawing the tourist in, first through visual images in advertisements,<sup>113</sup> then through the actual interaction between the tourist and the sex worker upon arriving at the tourist’s destination of choice. These exotic images span all areas of the media—television shows, movies, commercials, product advertisements, music videos, and magazines.

Even women-run media engage in the sensationalism of sex. The women’s magazine *Cosmopolitan*, for example, has been described as promoting the idea that “sex equals not only fun, but independence and success.”<sup>114</sup> This idea does not necessarily refer to the sex industry, but the image it promotes—equating sex with independence and success—may influence some to view the sex industry as being an admirable path to attaining the same goals. Some feminists glamorize the sex industry by characterizing prostitution as a form of subordination for males that allows women to finally have some power over men.<sup>115</sup> This sensationalism of sex and the sex industry by the media, the participants, and others gives new meaning to the well-known saying “sex sells.”

## V. ALTERNATIVE APPROACHES TO TRAFFICKING

### A. *An Overview of the Human Rights Approach*

The U.N. Protocol, the TVPA, and the TVPRA all recognize women working as sex slaves within the trafficking industry as victims, but the human rights approach calls for an overhaul of this

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111. *Developments in the Law—Jobs and Borders: II. The Trafficking Victims Protection Act*, *supra* note 17, at 2194.

112. BROWN, *supra* note 14, at 18.

113. RYAN & HALL, *supra* note 28, at 28.

114. *Id.* at 31.

115. *Id.* at 17.

recognition.<sup>116</sup> The human rights approach advocates the recognition of these women as “rights-holders.”<sup>117</sup> According to the human rights approach, “one is entitled to protection of those rights simply by virtue of being human, regardless of the complex standards of worthiness for protection that come into play in other contexts.”<sup>118</sup> However, it would do a greater service to these women and young girls to think of them as “rights-holders who are victims of trafficking,” rather than sex slaves to focus on the serious crime to which they have fallen prey without ignoring that their rights are being denied. Having laws that incorporate human rights language ensures that lawmakers are responsible for treating their own citizens and foreign citizens the same.<sup>119</sup>

Despite the beneficial aspects of the human rights approach, it is not without its limitations. The first critique of this approach is that it focuses on the violence of trafficking but overlooks other important factors.<sup>120</sup> Trafficking legislation not only needs to address human rights violations but also other key problem areas, such as economic factors and sensationalism of the sex industry. Another critique of the human rights approach is that it does not consider all of the other rights violations that trafficking victims experience in their lives beyond the trafficking world.<sup>121</sup> Victims of trafficking have also experienced violations of their rights to work, education, freedom of movement, personal security, freedom from discrimination, good health, protection from cruel treatment and punishment, and equal protection under the law.<sup>122</sup> While the human rights approach covers some of these violations, an approach that also targets the underlying economic and gender inequalities would help address those violations that are not covered.<sup>123</sup>

Another limitation of the human rights approach is that it is often framed as an issue of *women’s* rights, which “perpetuates a sexualized view of women that emphasizes their victimization as opposed to their agency as human beings”<sup>124</sup>—a problem of women being denied their *women’s* rights. Simply re-framing the issue as “women being denied their *human* rights” will help to ameliorate this

116. See, e.g., U.N. Protocol, *supra* note 13, at § II, art 6(3)(d) (including section entitled “Protection of *victims* of trafficking in persons”); H.R. REP. NO. 106-487, pt. 2, at 17 (ensuring punishment of traffickers and protection for their *victims*); H.R. REP. NO. 108-264, pt. 1, at 2 (using the word “*victims*” in the title and throughout the statute).

117. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT’L L. 1, 32 (2004).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at 32–33.

123. See generally Wu, *supra* note 88.

124. Bruch, *supra* note 117, at 34.

problem. After all, women are not the only victims of trafficking (although this Note has focused on female victims). Trafficking violates human rights of people in general, and limiting the issue to women's rights not only trivializes the problem but makes it easier to continue discrimination against women and violate their rights in the process.

### B. *An Overview of the U.N. Protocol*

The U.N. Protocol provides five methods for preventing trafficking in persons.<sup>125</sup> The Protocol was established in 2000 for the purposes of preventing and combating human trafficking, particularly of women and children, and protecting and aiding victims in light of their human rights.<sup>126</sup> The Protocol defines "trafficking in persons" as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power . . . or of the giving or receiving of payments or benefits to achieve the consent [of another person] . . . for the purpose of exploitation.<sup>127</sup>

This was the first international definition of trafficking.<sup>128</sup> The methods of prevention under the U.N. Protocol are broader in scope and more extensive in reach than those of the TVPA. The U.N. Protocol's methods can be interpreted as addressing not only the educational and economic problems that the TVPA covers, but also the additional problems of gender inequality and the sensationalism of the sex industry. Whether the U.N. Protocol was intended to be read in this way is unknown. However, since a law can be interpreted and understood based strictly on its text—the textualist approach—the Protocol's measures are much more effective for preventing trafficking than those of the TVPA.

The U.N. Protocol calls for policies and programs to prevent and combat trafficking as well as the chance that trafficking victims will be revictimized.<sup>129</sup> The Protocol also calls for mass media campaigns;<sup>130</sup> measures to improve conditions that make women and children targets for traffickers, including a lack of equal opportunity;<sup>131</sup> and legislative measures that help to decrease the

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125. U.N. Protocol, *supra* note 13, § III, art. 9.

126. *Id.* § I, art. 2.

127. *Id.* § I, art. 3.

128. Smith & Mattar, *supra* note 10, at 158.

129. U.N. Protocol, *supra* note 13, § III, art. 9(1).

130. *Id.* § III, art. 9(2).

131. *Id.* § III, art. 9(4).

demand for trafficking victims.<sup>132</sup> A significant difference between the U.N. Protocol and the TVPA is that the U.N. Protocol includes “employment, educational and training opportunities” under the section entitled “Protection of victims of trafficking in persons.”<sup>133</sup> The equivalent section of the TVPA distinguishes between victims within the United States and victims without. Victims outside of the United States shall be provided programs “to assist in [their] safe integration, reintegration, or resettlement, *as appropriate* . . . [that] meet [their] mental and physical health, housing, legal, and other assistance needs.”<sup>134</sup> These programs seem to be designed to return victims to the environments that made them prime trafficking victims in the first place, making such protective measures less than appropriate. Victims in the United States shall be afforded the same health, labor, and legal services as U.S. citizens, without regard to immigration status.<sup>135</sup>

Although this Note primarily focuses on the TVPA’s methods of prevention, the Protocol’s protective measures provide another example of how the TVPA falls short of actually doing what it has set out to do—protecting victims and preventing trafficking. Taken together, the protective measures and the preventative measures of the TVPA oversimplify what needs to be done to effectively combat trafficking. Prevention of trafficking and protection of trafficking victims call for measures that deal with many of the same factors, mainly fostering preventative environments and improving economic status. The U.N. Protocol takes these into consideration and, as a result, is a more effective approach to dealing with trafficking.

### 1. The U.N. Protocol’s Approach to Economic and Gender Inequalities

The U.N. Protocol directs states to “take or strengthen measures . . . to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity,”<sup>136</sup> and to “adopt or strengthen legislative or other measures, such as education, social or cultural measures . . . to discourage the demand that fosters all forms of exploitation of persons.”<sup>137</sup> These provisions address the poor

132. *Id.* § III, art. 9(5).

133. *Id.* § II, art 6(3)(d). The TVPA calls for assisting and monitoring foreign countries “that receive economic or security assistance [from the United States] and are countries of origin, transit or destination for trafficking victims.” Kara C. Ryf, *The First Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE. W. RES. J. INT’L L. 45, 54 (2002) (giving an in-depth analysis of the TVPA).

134. H.R. REP. NO. 106-487, § 7(a)(2) (emphasis added).

135. *Id.* § 7(b).

136. U.N. Protocol, *supra* note 13, § III, art. 9(4).

137. *Id.* § III, art. 9(5).

economic status of female victims in many countries, as well as the inequalities they suffer compared to their male counterparts. Economic status is one of the primary reasons females, particularly in the developing world, are easy prey for traffickers. The "social and economic effects of globalization on developing countries, have interacted with increased need/desire for [sex slaves] in richer destination countries"<sup>138</sup> and poverty. Trafficking may even appeal to poverty-stricken women and young girls or their families, because it appears as a way out, albeit one with severe consequences. Economic policies and realities in some nations serve to illustrate this point.

In India, a woman is traditionally dependent upon a man, whether that man is her father, her husband, or her son.<sup>139</sup> This subservience to men is viewed as a "divine order," and consequently, the legal system has failed to treat women as equals or provide women with any influential power to overcome their situation.<sup>140</sup> This domination of men over women in India permeates differences in location, religion, or class.<sup>141</sup> In fact, in 2001 India ranked 127 out of 175 countries for gender disparities in "economic and political participation," and in 2003, India ranked the same in gender inequalities in "life expectancy, literacy, and income."<sup>142</sup> Regarding illiteracy, females are often removed from schools at an early age to work inside the home and, as a result, approximately 54.16% of females in India are literate, compared to about 75.85% of men, according to a 2001 census.<sup>143</sup> Regarding low political participation, very few females are represented in Parliament or elected into the House of People. It was not until 1990 that a female was finally appointed to the supreme court.<sup>144</sup> For India to meet its obligations under the Protocol, it must target the problems of illiteracy and political participation to put females on more equal economic footing with males.

In China, traffickers use a variety of tactics to lure women into the world of trafficking. An investigation conducted in Lioacheng City between 1987 and 1989 found that 31% of trafficking victims were told they would meet potential husbands, 47.8% were offered jobs in business or as domestic workers, 15.2% were lured by promises of traveling around the country, and 5.8% were promised

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138. Shelley Case Inglis, *Expanding International and National Protections Against Trafficking For Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 94 (2001).

139. Louise Harmon & Eileen Kaufman, *Dazzling the World: A Study of India's Constitutional Amendment Mandating Reservation for Women on Rural Panchayats*, 19 BERKELEY WOMEN'S L.J. 32, 36 (2004).

140. *Id.* at 42.

141. *Id.* at 50-51.

142. *Id.* at 51-52.

143. *Id.* at 53-54.

144. *Id.* at 54-55.



they would receive training in technology and crafting.<sup>145</sup> As in many other countries, such as Russia, where women comprise 80-90% of the unemployed, many women have families to support, and any economic opportunity that presents itself looks promising.<sup>146</sup> For similar reasons, traffickers also target females who live in countries that have been ravaged by war.<sup>147</sup> In addition, traffickers lure women by disguising themselves as modeling or matchmaking agencies,<sup>148</sup> which shows the lengths to which traffickers will go to increase supply whenever there is an increased demand.

Poverty is the primary reason females become victims of trafficking in Cambodia, where approximately 36% of the population lives in poverty.<sup>149</sup> Among Cambodian adults, about 31% are illiterate, and approximately half of the children old enough to attend school do not.<sup>150</sup> To add to Cambodia's current problems, the population continues to increase 2.5% each year,<sup>151</sup> while government spending on education has decreased, as has the amount of land available for cultivation.<sup>152</sup> According to a U.N. estimate, "of 1000 Cambodians born in 1998, 290 will never go to school, and only twenty-seven will graduate from high school."<sup>153</sup> Finally, in spite of the high number of diseases and health problems that plague the country—including HIV/AIDS, malaria, and tuberculosis—Cambodians typically do not use medical services and have an annual contact rate with health organizations of 0.35.<sup>154</sup> Women suffer the most from these problems, facing "increasing responsibilities and diminishing possibilities."<sup>155</sup> Under such conditions of poor health care, overwhelming poverty, and a failing educational system, traffickers are practically handed young girls and women who may see no other opportunities to move out of their current situations—that is, until the promising world of trafficking comes along. Cambodia is a perfect example of a country that needs preventative measures that target the real underlying economic problems of trafficking.

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145. Crystal Y. Twitty, *Pretty Pennies for Pretty Faces: Trafficking of Women for the International Sex Trade*, 2 REGENT J. INT'L L. 115, 123 (2003-04).

146. *Id.* at 123-24.

147. *Id.* at 124.

148. *Id.* at 125.

149. Schwartz, *supra* note 23, at 411.

150. *Id.* at 412.

151. *Id.* at 411.

152. *Id.* at 412.

153. *Id.*

154. *Id.*

155. *Id.* at 413.

## 2. The U.N. Protocol's Approach to Sensationalism of the Sex Industry

Although the U.N. Protocol does not specifically address the sex industry as a factor that encourages trafficking, the language of the Protocol may be interpreted to support addressing this factor. The U.N. Protocol directs states to "undertake measures such as research, information and mass media campaigns[,] and social and economic initiatives to prevent and combat trafficking in persons."<sup>156</sup> This provision may simply be calling for mass media campaigns that help to educate potential victims and the general public about the dangers of trafficking, comparable to that included in the TVPRA.<sup>157</sup> However, the U.N. Protocol is left open to a broader interpretation.

The commercialization of sex must be considered when constructing trafficking legislation. For years sex has been used in all forms of media, including movies, television shows, songs, advertising, and magazines, to sell products and attract consumer interest, so much so that it has become widely accepted and even expected. What may have been harmless at one point in time, and even a positive step for women in their sexual revolution, is now taking a toll on how the world views women. In fact, "women's social conditions around the world, including in the United States, are shaped by prevailing social and political images of women as sexual objects."<sup>158</sup> After years of using sexual images of women as a tool for commercialization, essentially turning the sexuality of women into a product to be sold, it makes sense to expand the industry and increase the supply in response to the increased demand.

Studies have shown that increased use of pornography is linked to more incidents of rape and molestation,<sup>159</sup> so it is not unreasonable to presume that an increase in the sale of the idea of sex may lead to an increase in the sale of real sex. As Michelle R. Adelman notes, "it is sexually explicit speech and imagery that validates and legitimizes the objectification of women as mere sexual beings."<sup>160</sup> Therefore, since the U.N. Protocol does not explicitly state that its mass media campaign provision is limited to the education of potential victims and the general public about the dangers of trafficking, it could be interpreted as suggesting an overhaul in the current mass media that helps to foster and aid the trafficking industry. Adelman argues that while the United States engages wholeheartedly in the commercialization of sex, it tends to criticize such use of sex only in

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156. U.N. Protocol, *supra* note 13, § III, art. 9(2).

157. H.R. REP. NO. 108-2620, at 3.

158. Michelle R. Adelman, Note, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN'S STUD. 387, 404 (2004).

159. *Id.* at 407.

160. *Id.* at 408.

third world countries, exemplifying “the hypocritical blindness that enables the illegal sex trade to operate in the shadows of U.S. cultural and legislative consciousness.”<sup>161</sup> The TVPRA, as the latest promulgation of the TVPA, needs to leave its mass media campaign provision as open-ended as the U.N. Protocol.

## VI. CHANGING THE TVPA

To be more effective, trafficking legislation needs to have a framework that addresses human rights issues, gender and economic inequalities, and sex industry sensationalism. This means that legislation needs to incorporate the human rights approach and relevant parts of the U.N. Protocol to have a more complete method of prevention. Since trafficking is a transnational crime, it would be presumptuous to assume that the United States would be able to assist in monitor under an amended TVPA and TVPRA equally (or easily) in all source and destination countries. However, it would be a starting point and a better overall model for trafficking prevention.

### A. Putting Meaning Behind “Human Rights”

The TVPA does not completely ignore that trafficking is a human rights issue. It explicitly states, “The worldwide trafficking of persons is a growing transnational crime, migration, economics, labor, public health, and human rights problem that is significant on nearly every continent.”<sup>162</sup> It also refers to the Universal Declaration of Human Rights and how the Declaration “recognizes the right to be free from slavery and involuntary servitude, arbitrary detention, degrading or inhuman treatment, and arbitrary interference with privacy or the family, as well as the right to protection by law against these abuses.”<sup>163</sup> The TVPRA also mentions the “slave-like practices and other human rights abuses involved in trafficking.”<sup>164</sup> However, both the TVPA and the TVPRA need to address human rights issues as they specifically pertain to female victims.<sup>165</sup>

This Note has already discussed the five rights proposed by Wu that are essential for women: the right to life; the right to equality; the right to equal protection under the law; the right to be free from

161. *Id.* at 413.

162. H.R. REP. NO. 106-487, at § 2(3).

163. *Id.* at § 2(21).

164. H.R. REP. NO. 108-2620, at § 3(d).

165. Victims of trafficking are not solely females and this Note does not suggest as much. However, trafficking victims are predominately female, and the TVPA needs to address human rights issues as they pertain specifically to females, in addition to recognizing the gender discrimination that is at the core of this crime.

all forms of discrimination; and the right to be free from torture of other cruel, inhuman, or degrading treatment or punishment.<sup>166</sup> The U.N. has recognized that violence against women violates these rights; the Declaration on the Elimination of Violence Against Women (Elimination Declaration) “affirm[s] that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms.”<sup>167</sup> A first step to amending the preventative measures set out in the TVPA and the TVPRA is to include these five essential rights in the Acts themselves. Merely mentioning that trafficking is a human rights issue is not enough. Rather, these human rights need to be spelled out and made perfectly clear, leaving little room for ambiguous interpretation and application. Including the five essential rights for women in the TVPA and the TVPRA would better place trafficking in its proper context—trafficking is not only a crime of violence against women, but it is a crime against society in general because it violates basic human rights. Describing these five rights as being essential for women does not detract from them being human rights; it simply focuses on these rights as being of particular importance for women.

Additionally, including these five essential rights in the TVPA and the TVPRA will promote awareness. Growth in “human rights consciousness” has been described as the “central strand” that “pulls [human] rights forward.”<sup>168</sup> As a result, the idea arises that “some rights are so fundamental that they are inherent birthrights of all human beings, regardless of nationality or culture.”<sup>169</sup> The Elimination Declaration also supports a more defined concept of violence against women, “a clear and comprehensive definition [and] . . . a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms.”<sup>170</sup>

### B. *Effective Legislation for Economic and Gender Inequalities*

The U.N. Protocol’s provisions on alleviating the factors that make persons vulnerable to trafficking<sup>171</sup> and establishing social and educational measures to discourage the demand of such persons<sup>172</sup> should be incorporated into the TVPA and the TVPRA. The U.N.

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166. Wu, *supra* note 88, at 180.

167. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, at 2, U.N. Doc. A/RES/48/104 (Dec. 20, 1993) [hereinafter Elimination Declaration].

168. Douglass Cassel, *International Human Rights Law in Practice: Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT’L L. 121, 124 (2001).

169. *Id.* at 124–25.

170. Elimination Declaration, *supra* note 167, at 3.

171. U.N. Protocol, *supra* note 13, at § III, art. 9(4).

172. *Id.* § III, art. 9(5).

Protocol's provisions are much broader in scope, and they attempt to address the underlying factors that contribute to both supply and demand in the trafficking industry. The TVPA and the TVPRA, on the other hand, ignore these factors.

A likely concern about legislation that targets gender and economic inequalities is that trafficking is not just a domestic issue but rather one that affects countries all over the world. What works in one part of the world may go completely against the customs and traditions in another part of the world. However, according to the Elimination Declaration, "states should condemn violence against women and *should not invoke any custom, tradition, or religious consideration* to avoid their obligations with respect to its elimination."<sup>173</sup> Even in the U.S. Department of Justice's 2005 assessment on trafficking, there is no mention of targeting gender and economic inequalities in the section entitled "Recommendations for Action."<sup>174</sup> This assessment only mentions four recommended courses of action: (1) improving the finding and rescuing of victims; (2) conducting more research to get a better picture of the number of domestic and foreign victims in the United States; (3) measuring the impact on domestic and international trafficking of the U.S. government's anti-trafficking activities; and (4) ensuring that the U.S. government's task forces are functioning properly and encouraging the individual states to adopt their own legislation combating trafficking.<sup>175</sup>

Although people from various backgrounds can become victims of trafficking, victims are often displaced persons trying to escape areas afflicted by war, gender discrimination, and poverty.<sup>176</sup> Many are lured away by promises of employment, while others are kidnapped or sold by family members.<sup>177</sup> The tactics used to feed the trafficking industry and the backgrounds from which the majority of the victims come are similar, so it makes sense for anti-trafficking legislation targeting economic and gender inequalities to be applied similarly across countries. Taking various customs and traditions into consideration would do nothing more than benefit some women at the expense of others. These others should not have to involuntarily relinquish assistance from the United States simply because of where they reside. Pure luck is not an element of effective legislation.

173. Elimination Declaration, *supra* note 167, at art. 4 (emphasis added).

174. TRAFFICKING ASSESSMENT, *supra* note 75, at 26–27.

175. *Id.*

176. Kathleen Kim & Kusia Hreshchysyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 5–6 (2004).

177. *Developments in the Law*, *supra* note 17, at 2184–85.

### C. *Dealing with Sensationalism of the Sex Industry*

While the U.N. Protocol does not specifically address the issue of sensationalism and over-commercialization of the sex industry, it does call for “measures such as research, information and mass media campaigns[,] and social and economic initiatives to prevent and combat trafficking in persons.”<sup>178</sup> It is not a stretch to apply this provision to the explosion of sex in the commercialized market—it is a small jump from using sex to sell products to actually selling sex as the product. The acceptance of sex as a commodity to be sold for profit has no doubt affected the trafficking industry. The legalized sex industry, from pornography to strip clubs, has made sex more accessible than ever. Naturally, with increased demand comes increased supply, and it is “critical to realize that the illegal sex market will not only respond, but also exploit the legislation pertaining to the legal sex industry and the disparities it creates.”<sup>179</sup> Thus, when demand increases due to legalization of some aspects of the legal sex industry, demand for the illegal sex industry may increase as a result. However, if both industries were subject to harsher legislation, sensationalism of the sex industry may decline along with the number of trafficking victims.

Inherent problems of the legal sex industry can be found in the views of the feminist anti-pornography movement dating back to the late 1970s.<sup>180</sup> Feminists focused on what was considered to be “new” pornography—pornography that focused not only on sexual images, but also on violent sexual images.<sup>181</sup> Some examples from the late 1970s are the character of “Chester the Molester” in *Hustler*, who molested using techniques such as lying, kidnapping, assaulting, and raping<sup>182</sup>—a description perfectly describing how many women and young girls are lured or forced into trafficking—and a depiction of three women being kidnapped, beaten until they passed out, and then raped in an issue of *Brutal Trio*.<sup>183</sup> Like the trafficking industry, “pornography robs women of their humanity and dignity; it dehumanizes and degrades women; it suggests that they exist solely for the fulfillment of men’s most violent needs and strangest fantasies.”<sup>184</sup> This Note is not placing blame on the pornography industry or the legal sex industry for the growth in trafficking, but it

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178. U.N. Protocol, *supra* note 13, § III, art. 9(2).

179. Hanh Diep, Note, *We Pay—The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. INT’L L. REV. 309, 314 (2005).

180. DANY LACOMBE, BLUE POLITICS: PORNOGRAPHY AND THE LAW IN THE AGE OF FEMINISM 26 (1994).

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* at 27.

is suggesting that it is part of the problem. If harsher restrictions in one area ease the suffering in another area, this is for the greater public good:

Equality cannot flourish without limiting the privileges some already have in both the private and the public spheres, because the inequalities of the present system were a product of the unequal attribution of rights in the first instance; thus greater equality and liberty for those least advantaged under the present system necessitates placing restrictions on the privilege rights of those who are presently most advantaged. And this must be done by creating obligations either to do or to forbear actions previously permitted, [and] it can be accomplished only at the expense of negative liberty.<sup>185</sup>

There is an obvious difference between the legal sex industry and the illegal sex industry (other than the fact that one is legal and one is not). That difference is in the willingness of the participants. The legal sex industry consists of workers who voluntarily work in that industry. Of course, there are those workers who may have felt forced into working in the sex industry in order to pay bills or take care of children. However, they still had a choice. Victims of trafficking do not have a choice. Women and young girls who are forced into sexual slavery should be given the utmost protection, even if that means passing legislation that targets the sex industry in general. Laws that work to counteract the sensationalism of the sex industry and its pervasiveness in U.S. culture and cultures abroad may greatly protect other women and young girls from becoming future victims of trafficking.

Trafficking is a complex industry, and this Note does not suggest that dealing with human rights issues, gender and economic inequalities, and sensationalism of the sex industry will completely solve the problem. However, these issues should not be ignored. The current legislation has had some positive effects on trafficking, but these positive effects have merely struck the surface of this criminal enterprise. More needs to be done to reach the core. Improving current legislation, or even enacting new legislation, to target the issues discussed here will help achieve that goal. At the very least, it will enhance the positive effects the current legislation already has had.

## VII. CONCLUSION

The TVPA and the TVPRA have had positive impacts on trafficking. From 1998, the number of cases filed, the number of defendants charged, and the number of defendants convicted have all

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<sup>185.</sup> *Id.* at 30 (quoting LORENNE M.G. CLARK, *Liberalism and Pornography*, in PORNOGRAPHY AND CENSORSHIP 50–51 (D. Coop & S. Wendell eds., 1983)).

increased.<sup>186</sup> However, there are millions of people, the majority being women and young girls, still living in slavery.<sup>187</sup> Current legislation, particularly the TVPA, seems to deal mostly with curing the after-effects of trafficking, such as finding ways to provide better aid and treatment for the trafficking victims and adequate punishment for the traffickers. These are noble goals to pursue, and they are crucial aspects to include in any anti-trafficking legislation. However, focusing primarily on providing curative treatment will not get at the root of the problem or at the issues that help foster environments where a crime such as trafficking can take place, such as human rights issues, gender and economic inequalities, and sensationalism of the sex industry. Anti-trafficking legislation also needs to consider preventative treatment. Prevention keeps trafficking from taking place again; curative treatment aids those who have already been victims. To be effective, legislation needs to consider all sides of the trafficking industry and deal with those sides accordingly. The human rights approach and the U.N. Protocol provide examples of how to incorporate better preventative treatments into the TVPA—and any other anti-trafficking legislation—to ensure a more all-around approach and all-inclusive framework within which to deal with the crime of trafficking.

As the Elimination Declaration states, it is important to “recognize the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.”<sup>188</sup> This involves more than just curing the after-effects of trafficking, but also includes looking to the rights being denied in the first place. Anti-trafficking legislation that can take all of this into account will be more effective in the long run, not only in protecting the victims and punishing the traffickers, but also in ensuring that other women and young girls do not fall prey to the same enterprise.

*Takiyah Rayshawn McClain\**

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186. TRAFFICKING ASSESSMENT, *supra* note 75, at 15.

187. Smith & Mattar, *supra* note 10, at 158.

188. Elimination Declaration, *supra* note 167, at 1.

\* J.D. Candidate, Vanderbilt University Law School, May 2007; B.A., Emory University, 2004. I would like to thank my mom, Sylvia McClain, and my dad, Ray McClain, for their support throughout law school; my nieces, Autumn Lipsey and Rayne Lipsey, for always giving me something to look forward to; and the rest of my family and friends for their support and encouragement throughout the years.



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