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ISSUES IN THE FIGHT AGAINST HUMAN EXPLOITATION

A Look at Labor and Sex Trafficking

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HUMAN TRAFFICKING DEFINED

The Trafficking Victims Protection Act (TVPA) of 2000 represents the first comprehensive federal law to combat human trafficking. Reauthorized through the Trafficking Victims Protection Reauthorization Acts (TVPRAs) of 2003, 2005, 2008, and 2013, it applies a three-pronged approach that includes *prevention*, *protection*, and *prosecution* (i.e., the 3 Ps). At the release of the 2009 *Trafficking in Persons (TIP) Report*, the U.S. Secretary of State, Hillary Rodham Clinton, announced the addition of a “fourth P” (*partnership*) in order to ensure that the government at all levels (federal, state, and local) and other key stakeholders (e.g., nongovernmental organizations, international organizations, academic institutions, survivor networks, health care providers, etc.) were committed to addressing the problem of human trafficking.

According to the TVPA of 2000, as amended (22 U.S.C. § 7102), “severe forms of trafficking in persons” include both sex and labor trafficking:

- *Sex trafficking* is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the 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 (22 USC § 7102).

- *Labor trafficking* is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery (22 USC § 7102).

MAGNITUDE OF THE PROBLEM

The International Labor Organization (ILO) estimates that approximately 24.9 million people are trafficked globally. Victims of labor trafficking make up the largest proportion of trafficking victims (64.3%; 16 million), followed by victims of sex trafficking (19.3%; 4.8 million) and victims of state-imposed forced labor (16.5%; 4.1 million). Relative to males, females are disproportionately impacted, accounting for a significantly larger share of total victims (57.6% versus 42.4% respectively). Among the cases of labor trafficking in the private economy for which the type of work is known, the domestic work sector composes the largest proportion (25%), followed by the construction (18%), manufacturing (15%), and agriculture and fishing (11%) sectors (ILO, 2017).

Unfortunately, despite increased attention paid to exploitative labor in the past decade, there remains a dearth of evidence on the needs of labor trafficking victims, specifically their treatment in the criminal justice system. To date, the overwhelming majority of trafficking research has focused on women and girls in the commercial sex industry, despite the fact that they compose fewer than 20% of all victims globally (ILO, 2017). Hardly any research focuses on how the lack of protections for labor trafficking victims, particularly undocumented migrants, impacts their participation in the criminal justice process and, ultimately, their ability to exercise their basic human rights. This research to evidence gap poses a major barrier to the development of an effective criminal justice response for this large yet overlooked population of 16.1 million victims globally (ILO, 2017).

CASE STUDIES: VICTIM'S STORIES—SEX TRAFFICKING

Syria | Lebanon

Maya was 22 when she fled her home country of Syria due to conflict in the region. She was promised a job working in a factory in Lebanon, but when she arrived, she was forced into commercial sex along with more than 70 other Syrian women. They endured severe physical and psychological violence. Eventually, police raided the apartment units the women lived in and arrested 10 men and eight women who had been part of the sex trafficking scheme.

Venezuela | Trinidad and Tobago

Working with a recruiter in Venezuela, Sarah accepted a job in a nursing home in Trinidad and Tobago. She was thrilled by the chance to earn more money yet nervous that she had to leave her home and did not have enough experience in elder care. When Maria arrived in Trinidad and Tobago, she realized she had been deceived. The recruiter informed her she owed a large debt, and instead of working at a nursing home, she was forced into prostitution.

at a local hotel bar. Her recruiter confiscated most of her earnings each night.

Cambodia

After Lai's family fell into debt to loan sharks, her mother asked her to help the family earn more money. Lai, just 12 years old, was examined by a doctor and issued a certificate of virginity. Her mother then delivered her to a hotel where a man raped her repeatedly. For nearly 2 years, Lai's mother continued to sell her to make money to pay off their debts. After learning her mother was planning to sell her again, this time for a 6-month stretch, Lai fled her home and found sanctuary in a residence for sex trafficking victims.

United States

Amy was 12 when her father, an alcoholic and drug addict, began abusing her physically and sexually. When she was 17, Amy began staying with her friend, Lisa, to escape her father's abuse. Lisa told Amy that she knew an agent who could help her become a model—something Amy had always dreamed of. Instead, the man forced Amy into prostitution and kept all of the money she made, locking her in a hotel room for weeks, giving her very little food. He threatened to kill her if she ever left. Amy was finally able to escape and now hopes to train to become a certified nursing assistant so she can help others.

Source: *Trafficking in Persons Report June 2017, 2017*. U.S. State Department.

PROSECUTION OF TRAFFICKING CRIMES

In examining the human trafficking problem from an equity perspective, one cannot help but notice the discrepancy between the number of prosecutions of sex and labor trafficking offenses. In not only the United States but globally, sex trafficking crimes are prosecuted at a much higher rate, and impunity for labor traffickers persists. Traditionally, efforts to improve the criminal justice response to trafficking have focused on women and girls, specifically those trafficked for sex. It was not until the last decade or so that the focus has begun to shift toward labor trafficking, as well as to boys and men.

According to the most recent *Trafficking in Persons (TIP) Report* published by the U.S. Department of State in 2017, a total of 66,520 trafficking victims were identified globally. This translates to less than 0.3% of the world's estimated 24.9 million victims. Less than one quarter (22.4%) of those identifications led to prosecution (U.S. Department of State, 2017; ILO, 2017). The number of prosecutions for sex trafficking ($N = 13,184$) crimes was 12 times greater than the number of prosecutions for labor trafficking crimes ($N = 1,083$), which constituted less than 7% of the all prosecutions that year. This number pales in comparison to the estimated 16.1 million estimated victims globally (U.S. Department of State, 2017).

Restricting data to the United States only, a similar upward trend can be observed. The notable increase in the number of victims identified and the number of cases prosecuted has largely been attributed to steps taken by the U.S. government to improve coordination of efforts against trafficking in persons, specifically the establishment of the Human Trafficking Prosecution Unit (HTPU) within the U.S. Department of Justice's (U.S. DOJ's) Civil Rights Division (see Figure 12.1).

FIGURE 12.1 ■ Trafficking Victims Protection Act (TVPA) Tier Map



TIER PLACEMENTS

- TIER 1** Countries whose governments fully meet the Trafficking Victims Protection Act’s (TVPA) minimum standards.
- TIER 2** Countries whose governments do not fully meet the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards.
- TIER 2 WATCH LIST** Countries whose governments do not fully meet the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND:
 - a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;
 - b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
 - c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.
- TIER 3** Countries whose governments do not fully meet the minimum standards and are not making significant efforts to do so.

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2010	732 (80)	293 (65)	6,681	6
2011	624 (17)	279 (14)	9,014 (2,490)	3
2012	1,077 (369)	402 (107)	7,639 (3,501)	8
2013	1,182 (207)	446 (50)	7,818 (3,951)	4
2014	944 (67)	470 (63)	8,414 (2,014)	5
2015	1,796 (83)	663 (26)	9,661 (2,118)	6
2016	1,513 (69)	946 (24)	8,821 (109)	2

The above statistics are estimates derived from data provided by foreign governments and other sources and reviewed by the Department of State. Aggregate data fluctuates from one year to the next due to the hidden nature of trafficking crimes, dynamic global events, shifts in government efforts, and a lack of uniformity in national reporting structures. The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

Source: *Trafficking in Persons Report June 2017, 2017*. U.S. State Department.

The goal of the HTPU is to capitalize on the unique expertise of the country's leading prosecutors to improve the investigation and prosecution of the most complex trafficking cases. The unit also serves as the coordinator of critical intra- and inter-agency initiatives involving governmental and nongovernmental partners at all levels (local, state, and federal). By strengthening critical coordination mechanisms, over a 5-year period (fiscal year [FY] 2011 to FY 2015), the number of human trafficking prosecutions increased by more than 60% (62%) (325 vs. 201 from FY 2006 to FY 2010) (U.S. Department of Justice, 2017).

By FY 2015, the number of trafficking prosecutions and convictions handled reached a record high. The U.S. Department of Homeland Security (DHS) reported opening 1,034 investigations into possible human trafficking. The U.S. Department of Justice (DOJ) formally opened 802 cases, and an additional 1,011 investigations were initiated by its Enhanced Collaborative Model Taskforce. The DOJ initiated a total of 257 prosecutions, charging close to 400 defendants ($N = 377$). Although this represents an increase from the year prior (208 prosecutions; 335 defendants), labor trafficking cases still make up 4% ($N = 9$) of the total cases. Similarly, less than 2% of the 297 traffickers convicted were convicted of labor trafficking offenses (U.S. Department of State, 2016).

CASE STUDIES: VICTIMS' STORIES—LABOR TRAFFICKING

India | United Kingdom

Vihaan, a maritime machinist, accepted a job in the oil industry on a boat off the coast of the United Kingdom, thinking the sacrifice of leaving his family would be worth the money he could send home to support them. Once he arrived, the job was not as promised. Vihaan was not paid and had to work long hours under difficult conditions. When the Indian owner of the vessel abandoned the ship due to unpaid debts, he left the crew stranded with their wages unpaid. Vihaan and his crewmates decided they would not desert the ship until they had been paid, and waited 7 months before the Indian bank that owned the ship agreed to settle the unpaid wages.

India | New Zealand

Rajiv arrived in New Zealand on a student visa to enroll in a business management program. Before courses started, he traveled to the Bay of Plenty, where he knew there was agricultural work, to earn extra money for school expenses. He soon found himself in a situation

he could not leave. His employers forced him to use fake identification documents so he could work 80-hour weeks illegally in kiwi fruit orchards. Rajiv and other migrant workers lived in fear of being deported or kidnapped if they complained about the grueling work. Rajiv's employer refused to give him his promised wages. After several months, Rajiv escaped the orchards and sought assistance from the New Zealand authorities.

Kuwait

Nicole left her impoverished family to work as a maid in Kuwait with the intention of sending her earnings back home. For 9 months she worked constantly, suffered physical and verbal abuse, and received no pay. When her work visa expired, her employer took Nicole to the police and falsely accused her of a petty crime. Nicole tried to explain her innocence and reported that she had not been paid and had been abused over the past 9 months. The police did not listen and instead jailed Nicole for 6 months. After her time in jail, Nicole was deported and returned home without any compensation.

Source: *Trafficking in Persons Report June 2017, 2017*. U.S. State Department.

In FY 2016, the number of trafficking investigations remained relatively unchanged ($N = 1,029$); however, the number of prosecutions dropped slightly, to 241, while labor trafficking cases still composed only 5.4% of the total prosecutions. Furthermore, although the number of individuals charged (from 377 to 531) and convicted (from 297 to 439) of a trafficking crime increased, individuals convicted of labor trafficking crimes still composed less than 4% (3.2%) of the total (U.S. Department of State, 2017).

OBSTACLES TO THE PROSECUTION OF TRAFFICKING CRIMES

Although these data demonstrate a continuous effort over the past 5 years to bring traffickers to justice, the number of victims identified and traffickers convicted is minor when compared with the scope of the problem, particularly in terms of labor trafficking crimes. Research has identified a plethora of factors that impede the effective and timely identification and investigation of trafficking crimes, including a lack of coordination among agencies across all levels of government (i.e., federal, state, and local); inadequate distribution of resources, skills and commitment to handle cases; as well as an extreme focus on sex trafficking relative to labor trafficking (Farrell, McDevitt, & Fahy, 2010; Wilson, Williams, & Kleuber, 2006). These obstacles are even more pronounced when it comes to labor trafficking, as evidenced by the fact that the overwhelming majority of human trafficking investigations involve sex trafficking, specifically of U.S. citizens under 18 years of age (Banks, Duren, & Kyckelhahn, 2011).

An analysis of 479 state human trafficking prosecutions (2003–2012) revealed that less than 10% (8.0%) of all suspects arrested for labor trafficking were charged with a state human trafficking offense (Bouche, Farrell, & Wittmer, 2015). This suggests a low level of understanding of the appropriate application of state trafficking statutes among lawmakers, particularly in terms of proving the presence of force, fraud, and coercion, as U.S. law leaves all three of these terms open to interpretation. These analyses also show that the likelihood of being convicted of a trafficking crime or any state crime was higher among labor trafficking suspects, relative to sex trafficking suspects. Bouche, Farrell, and Wittmer (2015) attribute this to lower levels of awareness of labor trafficking, compared with sex trafficking. Even among law enforcement agencies that demonstrate an awareness of human trafficking and possess substantial resources to combat the crime, the number of labor trafficking victims identified remains low (Newton, Mulcahy, & Martin 2008). Many law enforcement officials, in fact, do not truly understand what human trafficking is and, thus, are not able to identify victims. Pointedly, many perceive trafficking as a crime that they are not likely to encounter on a routine basis.

Further evidence of low levels of knowledge of trafficking laws and their application to labor trafficking comes from a recent assessment of human trafficking cases prosecuted at the state level across 12 counties in the U.S. It found that many state prosecutors were unfamiliar with their state trafficking laws while not a single prosecutor sampled had experience charging a labor trafficking case. Bouche et al. (2016) attribute this to the differences in the legal elements that must be present in labor versus sex trafficking cases, once again, pointing to the need for increased efforts to educate state and county prosecutors on trafficking laws and how to apply them to labor trafficking in particular.

Under the TVPA, only those individuals who are considered victims of a “severe form of trafficking” are eligible to receive benefits, including social services and legal immigration status. To be considered as such, an individual must be induced by “force, fraud, or coercion.” While these three components are the cornerstone of the definition of trafficking, identifying and proving such terms remains a major challenge in guaranteeing victims the protections and benefits they rightly deserve (Sheldon-Sherman, 2012). The TVPA specifies that only those individuals who cooperate with law enforcement in the prosecution of their traffickers are eligible to receive services (Wooditch, 2009). Under domestic law, trafficking is the only crime where the reception of government benefits and the guaranteeing of basic human rights (i.e., access to health care, housing, etc.) hinges upon the participation of victims in the criminal justice process (Siskin & Wyler, 2012). More often than not, the benefits guaranteed under the TVPA are the only means of access to these rights immigrants have. Thus, if they fail to participate in the criminal justice proceedings, they are left with no means to exercise their right to basic protection and services (Riegler, 2007).

In addition to improved awareness, greater collaboration is needed between state and federal law enforcement and local nonprofit organizations. Perhaps most critically, the key role that governmental and nongovernmental actors play throughout each step of the criminal justice process, particularly in terms of support for victims, must be recognized and emphasized. While some traffickers operate within large-scale, well-organized crime rings, others function independently (Simkhada, 2008). Regardless, one of the leading reasons why victims do not participate in criminal justice proceedings is fear of retaliation against either themselves or members of their family. Although victims are offered witness protection, the system fails to protect their families in their countries of origin who may be in immediate danger, as traffickers often have strong and volatile connections to the victims’ home communities. Others may be unable to participate in the prosecution of their traffickers, as they are unable to relive the trauma experienced while in the trafficking situation. Many are at risk of being revictimized, which will severely impact their physical and psychological health (MacKinnon, 1989; Sadruddin, Walter, & Hidalgo, 2005). Many victims are so traumatized by

their experiences that they are unable to accurately recall their experiences, thus failing to comply with the TVPA's cooperation requirement. Furthermore, requiring victims to either participate in the criminal justice process or be deported renders "choice" meaningless, augmenting their feelings of disempowerment and subordination. This is another area where NGOs and other local service providers can play a key role in terms of supporting victims in a manner and environment that is much more responsive to their needs.

CONCLUSION

As discussed throughout this chapter, labor trafficking remains a large yet overlooked problem. Although improvements have been made in the past decade, counter-trafficking strategies continue to focus predominantly on sex trafficking, allowing labor traffickers to operate without impunity. Moving forward, efforts must be made to increase proportional emphasis on preventing and responding to trafficking in its various forms.

Discussion Questions

1. Do you think that the current "4P" (prevention, protection, prosecution, and partnership) is sufficient to address trafficking crimes? If yes, provide evidence in support of your response. If no, what changes would you recommend to facilitate a more comprehensive response?
2. In your opinion, in order to ensure continued progress in the fight against trafficking, is it necessary to place equal weight on efforts to address labor and sex trafficking? If yes, provide evidence in support of your claim. If not, what recommendations do you have for maximizing the efficacy of the response?
3. As a global leader in the fight to combat trafficking, the United States must increase accountability for labor traffickers by incentivizing law enforcement and prosecutors to identify and investigate additional labor trafficking cases. What strategies would you recommend to ensure trafficking cases are identified and prosecuted proportionally across the board? In your opinion, what, if any, adverse consequences may result from the use of such incentives?

Additional Resources

U.S. Department of State, Office to Monitor and Combat Trafficking in Persons: www.state.gov/j/tip
 U.S. Department of Justice: www.justice.gov/humantrafficking
 International Labour Organization: www.ilo.org/global/topics/forced-labour

The Polaris Project: www.polarisproject.org
 Alliance to End Slavery & Trafficking (ATEST): www.endslaveryandtrafficking.org
 Free the Slaves: www.freetheslaves.net

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