

DID INDIANA DELIVER IN ITS FIGHT AGAINST HUMAN TRAFFICKING?: A COMPARATIVE ANALYSIS BETWEEN INDIANA'S HUMAN TRAFFICKING LAWS AND THE INTERNATIONAL LEGAL FRAMEWORK

May Li*

INTRODUCTION

The victims of modern slavery have many faces. They are men and women, adults and children. Yet, all are denied basic human dignity and freedom We must join together as a Nation and global community to provide that safe haven by protecting victims and prosecuting traffickers. With improved victim identification, medical and social services, training for first responders, and increased public awareness, the men, women, and children who have suffered this scourge can overcome the bonds of modern slavery, receive protection and justice, and successfully reclaim their rightful independence. Fighting modern slavery and human trafficking is a shared responsibility.¹

A. Human Trafficking: The Numbers

“Human trafficking, or ‘trafficking in persons,’ is an affront to human dignity that links communities across the world in a web of money, exploitation and victimization.”² It is a multi-dimensional issue that “violates human rights, endangers economic growth, thrives on corruption, and poses a real threat to the well-being and human development of men, women, and children, be it committed across or within national borders.”³

* J.D. Candidate, 2014, Indiana University Robert H. McKinney School of Law; B.A., 2007, Boston College, Chestnut Hill, Massachusetts. I would like to thank Professor Catherine A. Lemmer, Head of Information Services, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Ummi Jalilova, and Jennifer Heider, and members of the *Indiana International & Comparative Law Review* for their assistance with this Note. Additionally, I would like to thank my family and friends for all of their love and support throughout the writing process of this Note.

1. Press Release, President of the United States of America, Barack Obama, Presidential Proclamation – National Slavery and Human Trafficking Prevention Month (Jan. 4, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month>.

2. *Out of the Shadows: The Global Fight Against Human Trafficking Before the H.R. Comm. on Foreign Affairs*, 111th Cong. 1 (2010) (statement of Rep. Howard L. Berman, Chairman, H.R. Comm. on Foreign Affairs), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg61518/html/CHRG-111hhrg61518.htm>.

3. MARIA GRAZIA GIAMMARINARO, ORG. FOR SECURITY AND CO-OPERATION IN EUROPE

The International Labor Organization (ILO) reports that there are approximately 21 million people worldwide who are trapped in forced labor, debt bondage, and forced prostitution.⁴ The United States government estimates that approximately 600,000 to 800,000 people are trafficked across international borders each year.⁵ Human trafficking is considered to be one of the most profitable and fastest growing criminal enterprises in the world.⁶ “Current estimates by the United Nations Office of Drug and Crime place human trafficking as the second most profitable form of transnational crime after the sale of drugs and rank it more profitable than the sale of arms.”⁷ The United Nations Global Initiative to Fight Human Trafficking (UNGIFT) reported an estimate of \$31.6 billion global annual profits made from the exploitation of all trafficked forced labor.⁸

The US Department of State’s 2011 Trafficking in Persons Report documented that the United States is a source, transit, and destination country for human trafficking.⁹ Human trafficking occurs in every state in the United States, and persons trafficked include US citizens and noncitizens.¹⁰ In 2005, the US Department of Justice reported that between 14,500 and 17,500 victims are trafficked into the United States each year.¹¹

(OSCE), COMBATING TRAFFICKING AS MODERN-DAY SLAVERY: A MATTER OF RIGHT, FREEDOM, AND SECURITY, 2010 ANNUAL REPORT OF THE SPECIAL REPRESENTATIVE AND COORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, 20 (Dec. 9, 2010), available at <http://www.osce.org/cthb/74730> [hereinafter OSCE, 2010 Annual Report].

4. *Forced Labor*, INT’L LABOUR ORG., <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited Mar. 18, 2013).

5. ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., RL 34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 3 (2010), available at <http://www.fas.org/sgp/crs/misc/RL34317.pdf>. Due to the hidden nature of human trafficking, gaps in data, and methodological weaknesses, it is difficult to estimate the exact number of trafficked persons across international borders. This estimate is from 2003 and references to this estimate have since been used in subsequent US Department of State’s *Trafficking in Persons* reports. *Id.*; SILVA SCARPA, TRAFFICKING IN HUMAN BEINGS: MODERN SLAVERY 8-10 (2008).

6. Helga Konrad, *The OSCE and the Struggle against Human Trafficking: The Argument for a Comprehensive, Multi-Pronged Approach*, 1 INTERCULTURAL HUM. RTS. L. REV. 79 (2006); *See also* SCARPA, *supra* note 5, at 16.

7. LOUISE SHELLEY, HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE 7 (2010).

8. HUMAN TRAFFICKING: THE FACTS, U.N. GIFT GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, available at http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf (last visited Mar. 18, 2013).

9. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 372 (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm> [hereinafter 2011 TIP REPORT].

10. SISKIN & WYLER, *supra* note 5, at 20.

11. *Id.* at 22. As of January 2011, this remains the most recent estimate of trafficked victims into the United States by the US government. *Id.* Initial estimates cited in the Trafficking Victims Protection Act of 2000 indicated that approximately 50,000 women and children were trafficked into the United States each year. Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000). However, this estimate was reduced to 18,000 – 20,000 in the US Department of State’s 2003 Trafficking in Persons Report. HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERV., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED

Although no current estimate is available, US citizens also fall victim to human trafficking.¹² In recognition of the growing problem of human trafficking both domestically and internationally, Congress passed the Trafficking Victims Protection Act (TVPA) in 2000.¹³ The TVPA was the first federal law to criminalize human trafficking in the United States.¹⁴ It was subsequently reauthorized as the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, and 2008.¹⁵ The TVPRA of 2008 expired on September 30, 2011; the TVPRA of 2011 is currently under consideration in the US Senate and House of Representatives for reauthorization.¹⁶

B. The Need for State Anti-Trafficking Law

In addition to the federal laws that are currently in place to combat human trafficking, state legislation is also vital to eradicating this form of modern day slavery.¹⁷ State anti-trafficking laws are crucial to combating human trafficking for several reasons: (1) law enforcement is a local issue, and state and local law authorities are generally the first to come in contact with the victim;¹⁸ (2) state laws would supplement federal law and provide for an additional avenue of prosecution;¹⁹ (3) local authorities are more familiar with the local area and can spot smaller trafficking rings such as “mom-and-pop” operations;²⁰ (4) states can tailor their laws to specifically

STATES: A REVIEW OF THE LITERATURE (Aug. 2009), <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/>. In 2004, the US government reported an estimate of 14,500 to 17,500 victims trafficked annually into the United States. SISKIN & WYLER, *supra* note 5, at 22. However, this estimate remains uncertain due to methodological weaknesses. *Id.*

12. SISKIN & WYLER, *supra* note 5, at 22 n.54. A possible explanation is that there is a lack of consensus among law enforcement officials and service providers in defining what it means to be a US citizen trafficked within the United States. *Id.*; CLAWSON ET AL., *supra* note 11, at 6.

13. Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

14. *State and Federal Laws*, POLARIS PROJECT, <http://www.polarisproject.org/resources/state-and-federal-laws> (last visited Mar. 18, 2013).

15. *Id.*

16. See Trafficking Victims Protection Reauthorization Act of 2011, S. 1301, 112th Cong. (2011), GOVTRACK.US, available at <http://www.govtrack.us/congress/bill.xpd?bill=s112-1301> (last updated Mar. 9, 2012); See also Trafficking Victims Protection Reauthorization Act of 2011, H.R. 2830, 112th Cong. (2011), available at <http://www.govtrack.us/congress/bill.xpd?bill=h112-2830> (last updated Nov. 29, 2011).

17. S. Res. 414, 108th Cong. (2004) (enacted).

18. Vanessa B. M. Vergara, *Looking Beneath the Surface: Illinois' Response to Human Trafficking and Modern-Day Slavery*, 38 U. TOL. L. REV. 991, 998 (2007); 2009 ATT'Y GEN. ANN. REP. 10, available at <http://www.justice.gov/archive/ag/annualreports/tr2009/agreport/humantrafficking2009.pdf> [hereinafter *Attorney General's 2009 Annual Report*].

19. Stephanie L. Mariconda, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. THIRD WORLD L. J. 151, 176 (2009).

20. Jessica E. Ozalp, *Halting Modern Slavery in the Midwest: The Potential of Wisconsin Act 116 to Improve the State and Federal Response to Human Trafficking*, 2009

address their unique needs;²¹ and most importantly, (5) to ensure that no state is a haven for such activity.²² Until 2003, state anti-trafficking laws were non-existent.²³ In recognition of the need for state legislation, many states passed anti-trafficking laws.²⁴ As of this date, West Virginia and Wyoming are the only two states that have not enacted human trafficking laws.²⁵

C. Human Trafficking on the Rise in Indiana?

On January 30, 2012, Indiana passed new human trafficking legislation to amend its existing human trafficking laws in preparation for the NFL's Super Bowl event on February 5, 2012.²⁶ Recent history indicates that human trafficking crime follows large sporting events and conventions.²⁷ Indiana is notable for its major sporting and convention

WIS. L. REV. 1391, 1401 (2009); *Dying to Leave: Business of Human Trafficking; Business Structures*, PBS.ORG (Sept. 25, 2003), <http://www.pbs.org/wnet/wideangle/episodes/dying-to-leave/business-of-human-trafficking/business-structures/1420/>.

21. John Tanagho, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with its Federal and State Counterparts*, 38 LOY. U. CHI. L.J. 895, 919 (2007).

22. Kathleen A. McKee, *Domestic Human Trafficking Series: "It's 10:00 P.M. Do You Know Where Your Children Are?"* 23 REGENT U.L. REV. 311, 326 (2010/2011).

23. Vergara, *supra* note 18, at 998. In 2004, the Department of Justice released the Model State Anti-Trafficking Criminal Statute as a guide for state legislatures to use in constructing their anti-trafficking statute. Tanagho, *supra* note 21, at 899. In the same year, the US Senate also passed a bi-partisan senate resolution that strongly encouraged the states to adopt anti-trafficking statutes similar to the Model. *See* S. Res. 414, *supra* note 17.

24. Chuck Neubauer, *Nine States Lag in Laws to Stop Human Trafficking*, THE WASHINGTON TIMES (Aug. 25, 2011), <http://www.washingtontimes.com/news/2011/aug/25/nine-states-lag-in-laws-to-stop-human-trafficking/>.

25. *Id.* The other states referenced in this article (Alaska, Arkansas, Colorado, Montana, South Carolina, and South Dakota) have weak human trafficking laws. *Id.* The article listed Massachusetts as one of the three remaining states that do not have any human trafficking laws. *Id.* However, this is no longer the case because on November 21, 2011, Massachusetts Governor Deval Patrick signed the state's first anti-human trafficking legislation. Press Release, Governor of Massachusetts, Governor Patrick Signs Anti-Human Trafficking Legislation (Nov. 21, 2011), *available at* <http://www.mass.gov/governor/pressoffice/pressreleases/2011/11/21-antihuman-trafficking-bill.html>.

26. Amanda Rakes, *Gov. Daniels Signs Bill to Toughen Human Trafficking Laws Ahead of Super Bowl*, FOX59.COM, (Jan. 30, 2012, 11:35 AM), <http://www.fox59.com/news/wxin-daniels-human-trafficking-law-gov-daniels-signs-bill-to-toughen-human-trafficking-laws-ahead-of-super-bowl-20120130,0,1275073.column>; Press Release, Bryan Corbin, Indiana Attorney General's Office, Attorney General's Statement on Signing of New Human Trafficking Law (Jan. 30, 2012), *available at* http://www.in.gov/portal/news_events/74079.htm.

27. Troy Kehoe, *Lawmakers Look to Toughen Human Trafficking Laws Ahead of Super Bowl*, WISHTV.COM (July 20, 2011, 8:44 PM), http://www.wishtv.com/dpp/news/local/marion_county/lawmakers-look-to-toughen-human-trafficking-laws-ahead-of-super-bowl; Jenny Montgomery, *Efforts Begin to Toughen Human Trafficking Laws Before the Super Bowl*, THE INDIANA LAWYER (Oct. 26, 2011), <http://www.theindianalawyer.com/ag-says-strictier-stance-needed/PARAMS/article/27406>.

events such as the Brickyard 400, Indianapolis 500, and the National Collegiate Athletic Association (NCAA) Men's Collegiate Basketball Final Four Tournament.²⁸ The Super Bowl is widely known to attract large crowds and generate millions of dollars in revenue, whether from ticket sales or increased revenues for local businesses.²⁹ Human traffickers also view the Super Bowl as the perfect event from which to profit given the crowds and the demand that come with it.³⁰ In 2011, Texas Attorney General Greg Abbott commented that the Super Bowl "is the biggest human trafficking event in the United States."³¹ The State of Florida estimated "tens of thousands of people," mostly young girls, were sold as sex slaves during the Miami Super Bowl in 2010.³²

Indiana Attorney General Greg Zoeller acknowledged that "human trafficking is a problem that has been ignored until recently."³³ He further stated, "It's one that is growing"³⁴ At a news conference at the Indiana Statehouse, Indiana Governor Mitch Daniels also stated that he had "only recently learned the extent of the human trafficking problem and called it 'heinous.'"³⁵ Unfortunately, this is the grim reality of human trafficking: it is a silent crime that remains underneath the radar until a major event occurs that awakens the need for increased awareness of the issue or until it is considered ripe for attention.

Human trafficking is an issue from which the midwestern United States is not immune.³⁶ It is increasingly becoming a problem even in non-border states and in those states that do not have deeply-rooted international communities.³⁷ In a two-part news series investigation on human trafficking

28. Kehoe, *supra* note 27. The Indiana Convention Center's website provides a list of upcoming events held between 2011 and 2013 and also the number of attendees. *Upcoming Events in the Indiana Convention Center: December 30, 2011 – December 29, 2013*, INDIANA CONVENTION CENTER, <http://www.icclos.com/upcoming-events.aspx> (last visited Mar. 18, 2013). Both the Brickyard 400 and Indianapolis 500 are popular car racing events in the United States. See *Brickyard 400*, INDIANAPOLIS MOTOR SPEEDWAY, <http://www.indianapolismotorspeedway.com/brickyard400/> (last visited Mar. 18, 2012).

29. Rick Horrow & Karla Swatek, *The Super Bowl Is a Money Bowl*, BUSINESSWEEK.COM (Feb. 4, 2010), http://www.businessweek.com/lifestyle/content/feb2010/bw2010023_998169.htm.

30. Press Release, Erin Reece, Ind. Att'y Gen. Office, Zoeller Part of State, National Effort to Combat Human Trafficking Threat (Sept. 30, 2011).

31. Kehoe, *supra* note 27.

32. *Id.*

33. *Indiana AG Warns Sex Trafficking Ahead of Super Bowl*, WISHTV.COM (Sept. 30, 2011), http://www.wishtv.com/dpp/super_bowl_xlvi/indiana-ag-warns-sex-trafficking-ahead-of-super-bowl [hereinafter *Indiana AG*].

34. *Id.*

35. John Tuohy, *With Eye on Super Bowl, Lawmakers Target Trafficking*, INDYSTAR.COM (Dec. 17, 2011, 12:51 AM), <http://www.indystar.com/apps/pbcs.dll/article?AID=2011112170324>.

36. Ozalp, *supra* note 20, at 1393.

37. *Id.*; Tanagho, *supra* note 21, at 900. Border states such as California, Texas, New

in Indiana, law enforcement officials confirmed occurrences of human trafficking in the Midwest and in Indianapolis.³⁸ The city of Toledo, Ohio was named as one of the nation's biggest hubs for teen prostitution and human trafficking subsequent to a federal investigation that resulted in a 100-page indictment of thirty-one people involved in a nationwide trafficking ring that bought, sold, and transported women and girls as young as twelve years old around the country.³⁹ Indianapolis was linked to this federal indictment when women and girls were transported from Toledo to Indianapolis for prostitution purposes.⁴⁰ Thus, even Indiana is not impervious to the mobile business of human trafficking.

The Department of Justice has identified Indianapolis as a potential destination for traffickers.⁴¹ Domestic violence victims' advocates, human rights attorneys, and immigration lawyers report an increasing number of victims each year in Indiana.⁴² On May 20, 2008, the Sunshine Spa and the Apple Studio Spa of Richmond, Indiana, were among the nineteen massage parlors in Indiana, Kentucky, and Ohio that were raided by local and federal authorities.⁴³ The federal government suspected that the parlors illegally transported women from Korea and forced them to be sex slaves in order to "earn their way into the country."⁴⁴

Furthermore, on May 4, 2011, a human trafficking ring was discovered on the northwest side of Indianapolis.⁴⁵ It was a multi-state human trafficking ring in which women were transported from Central

York, and Florida have higher occurrences of human trafficking. *Id.* at n. 39; Veronica Lewin, *Bill Would Extend Human Trafficking Task Force*, LEGISLATIVE GAZETTE (Apr. 25, 2011), <http://www.legislativegazette.com/Articles-c-2011-04-25-76750.113122-Bill-would-extend-human-trafficking-task-force.html>.

38. Sandra Chapman, *Part One: Against Their Will*, WTHR.COM, <http://www.wthr.com/Global/story.asp?S=4945355> (last visited Mar. 18, 2013); *See also* Celia Williamson, et al., *Ohio Trafficking in Persons Study Commission Research and Analysis Sub-Committee Report on the Prevalence of Human Trafficking in Ohio to Attorney General Richard Corday 13* (Feb. 10, 2010), *available at* <http://www.ohioattorneygeneral.gov/TraffickingReport>.

39. Chapman, *supra* note 38.

40. *Id.*

41. *Id.*

42. Rebecca Berfanger, *Human Trafficking Concerns: Cases on the Rise in Indiana*, THE INDIANA LAWYER, Nov. 10, 2010, at 1.

43. Kathryn Burcham, *Human Trafficking Suspected at Two Richmond Massage Parlors*, WHIOTV.COM (May 20, 2008), <http://www.whiotv.com/news/news/human-trafficking-suspected-at-two-richmond-massag/nFCn3/>. Massage parlors in Richmond, Lawrenceburg, New Albany, Northern Kentucky, Cincinnati, and Indianapolis were shut down. *Federal Sex Trafficking Cases in the United States 2000 – 2008*, POLARIS PROJECT (2009), http://logolite-ent.com/Federal_Sex_Trafficking_Cases_in_the_United_States_2000-2008.pdf.

44. Burcham, *supra* note 43.

45. Russ McQuaid, *Human Trafficking Ring Busted on Indianapolis Northwest Side*, FOX59.COM (May 4, 2011, 4:07 PM), <http://www.fox59.com/wxin-human-trafficking-human-trafficking-ring-busted-on-indianapolis-northwest-side-20110504,0,6448763.story>.

America to work as prostitutes in four midwestern states.⁴⁶ Investigators suspect that the ring had existed for as long as ten years.⁴⁷ The traffickers used intimidation and beatings to control their victims.⁴⁸ There were multiple houses operating in several states each day of the week.⁴⁹ On October 3, 2011, the Indianapolis police served search warrants on massage parlors for suspected human trafficking and other criminal activity.⁵⁰ The investigation consisted of searches in Marion County and also at an undisclosed business in Fishers, Hamilton County.⁵¹

On December 1, 2011, Shared Hope International, a non-profit organization seeking to eradicate sex trafficking, released the Protective Innocence Initiative report cards, which assessed each state's child sex trafficking laws.⁵² Indiana received a letter "D," and more than half the states received an "F."⁵³ In response to the potential increase of underage prostitution in connection with the Super Bowl and in recognition of the weaknesses in the state's human trafficking laws, Indiana's new law sought to tighten the prosecution for sex trafficking of minors.⁵⁴ However, now that the Super Bowl has ended, the question becomes, "Will Indiana continue to seek ways to improve its human trafficking laws, or will the issue of human trafficking fall behind the scenes and require another event to trigger such attention again?"

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Police Raid Massage Parlors in Human Trafficking Probe: Several Agencies Involved in Raid*, THE INDYCHANNEL.COM (Oct. 3, 2011), <http://www.theindychannel.com/news/29373408/detail.html> [hereinafter *Police Raid Massage Parlors*]. US Highway 31 is a north-south highway that connects Michigan to Alabama. Robert V. Droz, *U.S. Highways: From U.S. 1 to U.S. 830*, <http://www.us-highways.com/usbt.htm> (last updated Oct. 5, 2007). Fishers is a town in Hamilton County, Indiana. *Police Raid Massage Parlors*. As of 2010, Fishers has a population of 76,794 and a median household income of \$75, 638. TOWN OF FISHERS, *Quick Facts*, <http://www.fishers.in.us/egov/docs/1314216280330.htm> (last visited Mar. 18, 2013).

51. *Police Raid Massage Parlors*, *supra* note 50.

52. Renee Blair, *The Protected Innocence Challenge Report Card Release: On the Ground in San Antonio!*, SHARED HOPE INT'L (Nov. 30, 2011), <http://sharedhope.org.gravitatehosting.com/SHIBlog/tabid/75/PostID/81/Default.aspx>. To access each state's report card, see PROTECTED INNOCENCE CHALLENGE: STATE REPORT CARDS ON THE LEGAL FRAMEWORK OF PROTECTION FOR THE NATION'S CHILDREN, SHARED HOPE INT'L (2011), *available at* http://sharedhope.org/wp-content/uploads/2012/10/PIC_ChallengeReport_2011.pdf.

53. Barb Berggoetz, *New Indiana Law Will Strengthen Penalties Against Child Sex Trafficking*, INDYSTAR.COM (Jan. 31, 2012, 7:55 AM), <http://www.indystar.com/article/20120131/NEWS02/201310320/New-Indiana-law-will-strengthen-penalties-against-child-sex-trafficking>.

54. *Super Bowl Attracts Human Trafficking*, WLFI.COM (Dec. 20, 2011), <http://www.wlfi.com/dpp/news/local/super-bowl-attracts-human-trafficking>; *See infra* Part II. B.

D. How Indiana Can Take a Stronger Stance Against Human Trafficking

This Note addresses the issue of how Indiana can further strengthen its human trafficking laws by examining the international legal framework regarding human trafficking. Part I of this Note introduces background information about human trafficking. Specifically, it will discuss the definitions of human trafficking, the causes of human trafficking, the different forms of human trafficking, and the consequences of human trafficking. Part II examines the current federal and state laws in place to combat human trafficking. Part III discusses the international legal framework for combating human trafficking. Specifically, Part III explores and compares the conventions and legislation passed by the United Nations, the European Union, and the Council of Europe to combat human trafficking. Part III analyzes each organization's legal documents with respect to their protection and asset forfeiture measures. Finally, Part IV discusses the recommendations of this Note. Specifically, this Note concludes with recommendations as to how Indiana can further strengthen its trafficking laws by creating an asset forfeiture provision in which seized assets would provide for a state human trafficking victims fund. The seized assets could fund legal and social services for victims of human trafficking and also provide training to law enforcement.

I. BACKGROUND ON HUMAN TRAFFICKING

A. Definition of Human Trafficking

The term "human trafficking" was first defined in 2000.⁵⁵ The United

55. Anne T. Gallagher, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 12 (Cambridge Univ. Press 2010); *Attorney General's 2009 Annual Report*, *supra* note 18, at 2. However, human smuggling should not be confused with human trafficking, although they share common aspects. SCARPA, *supra* note 5, at 68. Primarily, human smuggling is a crime against the States, while human trafficking is a crime against the individual. *Id.* "Human smuggling typically involves the provision of a service, generally procurement or transport, to people who knowingly consent to that service in order to gain illegal entry into a foreign country." SISKIN & WYLER, *supra* note 5, at 2. Thus, human smuggling is always transnational and the smuggled individual consents to being smuggled. U.S. Dep't of Health and Human Serv., *Fact Sheet: Human Trafficking*, ADMINISTRATION FOR CHILDREN & FAMILIES, http://www.acf.hhs.gov/trafficking/about/fact_human.html (Aug. 2, 2012). Second, the relationship between the smuggled individual and the smuggler is that of a client and service provider. SCARPA, *supra* note 5, at 68. The smuggler agrees to illegally transport the smuggled individual in exchange for a fee and, the "contract" terminates upon arrival at the destination. *Id.* "[H]uman trafficking involves the ongoing exploitation of victims in order to generate illicit profits for the criminals." Konrad, *supra* note 6, at 87. Nevertheless, it is important to be aware that while a person may have consented to being smuggled, he or she could become a trafficked person if circumstances give rise to exploitative conditions. SISKIN & WYLER, *supra* note 5, at 2; SCARPA, *supra* note 5, at 69.

Nations provided the first internationally recognized definition of human trafficking under Article 3(a) of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (the “UN Protocol”). It states:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵⁶

Article 3(b) of the UN Protocol further provides that it is irrelevant whether or not the victim gave consent if any of the means set forth in the Article 3(a) definition are used to exploit the victim.⁵⁷ The methods of exploitation provided by the UN definition are not exhaustive. Exploitation may include additional forms, whether known or unknown.⁵⁸

Six weeks prior to the adoption of the UN Protocol, the TVPA was enacted in the United States.⁵⁹ The TVPA does not define “human trafficking,” but it does define “severe forms of human trafficking” as:

- (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or which the person induced to perform such act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or

56. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, 2237 U.N.T.S. 319, at 42 (entered into force Dec. 25, 2003), *available at* <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> [hereinafter U.N. Protocol]; SCARPA, *supra* note 5, at 60.

57. U.N. Protocol, *supra* note 56, at 43.

58. SCARPA, *supra* note 5, at 5. The United Nations has included forced begging, illicit adoptions, and child soldiers as additional forms of exploitation. SISKIN & WYLER, *supra* note 5, at 1.

59. 2011 TIP REPORT, *supra* note 9, at 16.

obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.⁶⁰

The term “sex trafficking” is further defined as “the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act.”⁶¹ The UN and US definitions have their commonalities and differences. For example, both definitions recognize that “trafficking,” in relation to child trafficking, applies whether the child was taken forcefully or voluntarily.⁶² The definitions do not distinguish between domestic trafficking and cross-border trafficking.⁶³ However, the definitions differ in that the US definition does not include organ removal as a form of exploitation.⁶⁴

Both the UN and US definitions of trafficking can be broken down into three elements: the act, the means, and the purpose.⁶⁵ All three elements must be established to constitute trafficking in adult persons.⁶⁶ The three elements as a whole can be viewed as a process⁶⁷ that begins with the “act” of recruiting, harboring, transporting, or obtaining the victim⁶⁸ by “means” including but not limited to, threat, use of force or coercion, or fraud⁶⁹ for the final “purpose” of exploitation, including but not limited to commercial sex acts, labor services, involuntary servitude, or peonage.⁷⁰

60. Trafficking Victims Protection Act, 22 U.S.C. § 7102 (2000).

61. *Id.* “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person. *Id.*

62. SISKIN & WYLER, *supra* note 5, at 2; SCARPA, *supra* note 5, at 5.

63. SISKIN & WYLER, *supra* note 5, at 2.

64. *Id.*

65. *Human Trafficking*, U.N. OFFICE ON DRUG AND CRIME, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Mar. 18, 2013); *The AMP Model: Elements of the Crime of “Severe Forms” of Trafficking in Persons*, POLARIS PROJECT, <http://www.polarisproject.org/resources/resources-by-topic/human-trafficking> (last visited Mar. 18, 2013) [hereinafter *The AMP Model*].

66. SCARPA, *supra* note 5, at 60; *The AMP Model*, *supra* note 65.

67. SCARPA, *supra* note 5, at 60.

68. *Id.*; *The AMP Model*, *supra* note 65. This element could be established by a variety of activities besides the listed ones. Gallagher, *supra* note 55, at 29.

69. SCARPA, *supra* note 5, at 60; Under the TVPA, “coercion” means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process. Trafficking Victims Protection Act, 22 U.S.C. § 7102 (2000).

70. See *supra* notes 66, 68 and accompanying text; 22 U.S.C. § 7102.

B. Causes of Human Trafficking

The causes of human trafficking vary transnationally and domestically. Transnationally, the causes of human trafficking can be explained by examining the relationship between the push and pull factors.⁷¹ The push factors are the factors that push the individuals out of their country of origin, thus producing the supply of potentially trafficked persons.⁷² Lack of employment and educational opportunities, poverty, and economic instability are the main push factors in countries of origin.⁷³ Other factors such as gender and ethnic discrimination, natural disasters, political instability, globalization of the world economy, new communication channels, and improved transportation systems and routes may also account for human trafficking.⁷⁴ The pull factors that draw these individuals from countries of origin into countries of destination are the “demand for [their services], the possibilities of higher standards of living, and the perceptions of many in poor communities that better opportunities exist in larger cities or abroad.”⁷⁵ Primarily, it is the demand for the goods produced by the trafficked workers and the resulting profitability that permit human trafficking to continue to flourish.⁷⁶ Therefore, in order to effectively combat human trafficking, the solution does not necessarily lie in prosecution alone, but should also take into account the demand element.⁷⁷

Domestically, children are the most at risk for domestic sex trafficking.⁷⁸ Age, poverty, history of childhood sexual abuse, familial substance or physical abuse, learning disabilities, loss of a parent by abandonment or death, running away, homelessness, lack of a support system, and sexual identity issues have all been identified as factors that place youth at risk for sex trafficking.⁷⁹ Therefore, these underlying causes should be considered if we are to effectively fight human trafficking on a domestic level.

C. Different Forms of Human Trafficking

This section will discuss the major forms of exploitation related to

71. SCARPA, *supra* note 5, at 12.

72. KATHRYN CULLEN-DUPONT, HUMAN TRAFFICKING 23 (2009).

73. SCARPA, *supra* note 5, at 13.

74. SISKIN & WYLER, *supra* note 5, at 4.

75. SHELLEY, *supra* note 7, at 37. The United Nations has indicated that Belgium, Germany, Greece, Israel, Italy, Japan, the Netherlands, Thailand, Turkey and the United States are popular destination countries. CULLEN-DUPONT, *supra* note 72, at 25.

76. 2011 TIP REPORT, *supra* note 9, at 19.

77. *Id.*

78. CLAWSON ET AL., *supra* note 11, at 8.

79. *Id.* at 8-11; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §2, 119 Stat. 3558 (2006).

human trafficking: sexual exploitation, labor exploitation and organ trafficking.⁸⁰

1. Sexual Exploitation

The United Nations Office of Drugs and Crime's Global Report on Trafficking in Persons (UNODC's Global Report) identifies sexual exploitation as the most common form of human trafficking (79%).⁸¹ Victims of sexual exploitation are mainly women and young girls.⁸² Profits from sexual exploitation are estimated at \$28 billion per year.⁸³

A large number of the women trafficked are recruited by means of deception.⁸⁴ The traffickers can be relatives, friends, or unknown persons.⁸⁵ There is evidence that even women sometimes play the role of trafficker; some of these women are former victims.⁸⁶ Traffickers often use the bait and switch method when recruiting women. The women are promised educational or job opportunities as nannies, maids, factory workers, restaurant workers, sales clerk, or as models.⁸⁷ Upon their arrival at the work destination, the women are forced into commercial sex industries such as prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism.⁸⁸

80. SCARPA, *supra* note 5, at 22. Other forms of human trafficking include illegal adoptions and child soldiers. *Id.*

81. U.N. Office of Drug and Crime, *Global Report on Trafficking in Persons*, 6 (Feb. 2009), available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf [hereinafter *Global Report*].

82. U.N. Office of Drug and Crime, *UNODC Report on Human Trafficking Exposes Modern Form of Slavery*, <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (last visited Mar. 18, 2013); CULLEN-DUPONT, *supra* note 72, at 48.

83. Financial Action Task Force (FATF), *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*, 16 (July 2011), available at <http://www.fatf-gafi.org/dataoecd/28/34/48412278.pdf> [hereinafter FATF].

84. CULLEN-DUPONT; *supra* note 72, at 10; Trafficking Victims Protection Act, 22 U.S.C.S. § 7101(b)(2) (LexisNexis 2012).

85. SCARPA, *supra* note 5, at 17.

86. *See supra* notes 81-82.

87. 22 U.S.C.S. § 7101(b)(4) (LexisNexis 2012); CULLEN-DUPONT, *supra* note 72, at 10.

88. 22 U.S.C.S. § 7101(b)(2) (LexisNexis 2012); CLAWSON ET AL., *supra* note 11, at 3. "Sex tourism is the travel by buyers of sexual services for the purpose of procuring sexual services from another person in exchange for money and/or goods. . . . Sex tourists create a demand which drives the recruitment of more victims to be trafficked to commercial sex markets to meet their demands." Shared Hope Int'l, *Demand: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, The Netherlands, and the United States* 1 (2007), available at <http://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf>. Child sex tourists "travel to foreign countries to engage in sexual activity with children." SOWMIA NAIR, U.S. DEP'T OF JUSTICE, CHILD SEX TOURISM, <http://www.webcitation.org/5oSAQaLZT>

Traffickers maintain control over their victims by using multiple methods such as loss of identity, isolation, psychological and physical abuse, and debt bondage.⁸⁹ “Many of the dehumanizing practices that were used during the Holocaust to produce passive victims are replicated by the traffickers.”⁹⁰ Upon the victim’s arrival at the destination, the trafficker will confiscate their identification documents, such as passports, thus rendering them captive and vulnerable.⁹¹ Without identification documents, the victim has no identity and no legal status.⁹² Furthermore, the victim cannot seek protection in his or her country’s embassy since he or she lacks proof of citizenship.⁹³

Traffickers will often disorient their victims by moving them away from their families to an unfamiliar location.⁹⁴ Because the victims are unfamiliar with the language and the culture of such location, the victim is further rendered helpless.⁹⁵ Traffickers also use physical abuse and psychological threats to induce compliance.⁹⁶ Individual victims who resist compliance are tortured, raped, and beaten in front of other victims to demonstrate the futility of resistance.⁹⁷ The trafficker may also threaten the victim with death or serious harm to a family member to gain control.⁹⁸

Financially, the trafficker could also maintain control over the victim through debt bondage.⁹⁹ “[W]omen and girls are forced to continue in prostitution through the use of unlawful ‘debt’ purportedly incurred through their transportation, recruitment, or even their crude ‘sale’ – which exploiters insist they must pay off before they can be free.”¹⁰⁰ It is an endless debt in which the victims are repaying the trafficker for the costs incurred from their own ‘sale’ and the costs incurred subsequent to their sale.¹⁰¹ Rarely is a victim able to pay off the entire debt.¹⁰² Initially, a victim

(last visited Mar. 18, 2013). “Many nations with thriving sex tourism industries are nations that suffer from widespread poverty resulting from turbulent politics and unstable economies. Poverty often correlates with illiteracy, limited employment opportunities, and bleak financial circumstances for families.” *Id.* As a result, recruiters easily lure their future victims by promising them with job or education opportunities when in fact they will be prostituted. *Id.* Furthermore, in desperation for money, some poor families have prostituted their own children or sold them into prostitution. *Id.*; For US law against sex tourism, see 18 U.S.C.A. § 2423(a)-(g) (West 2012).

89. SISKIN & WYLER, *supra* note 5, at 6.

90. SHELLEY, *supra* note 7, at 107.

91. CULLEN-DUPONT, *supra* note 72, at 11.

92. SHELLEY, *supra* note 7, at 107.

93. *Id.*

94. Trafficking Victims Protection Act, 22 U.S.C.S. § 7101(b)(5) (LexisNexis 2012).

95. *Id.*

96. 2011 TIP REPORT, *supra* note 9, at 7.

97. See SHELLEY, *supra* note 7; See CULLEN-DUPONT, *supra* note 72.

98. See CULLEN-DUPONT, *supra* note 72.

99. *Id.*

100. 2011 TIP REPORT, *supra* note 9, at 7.

101. See CULLEN-DUPONT, *supra* note 72. Subsequent costs include food, medicine,

may have hope in paying off the debt and will work based on this hope, but in reality, it is an impossible task that the trafficker knows will seldom be accomplished.

2. Labor exploitation

While sex trafficking is more widely known and publicized, labor trafficking tends to be overlooked and is rarely given the attention that it deserves. UNDOC's Global Report reveals forced labor is the second most reported form of human trafficking (18%).¹⁰³ Victims of labor trafficking are forced to work in a variety of labor sectors including, but not limited to: domestic services, restaurants, hospitality, janitorial work, sweatshops, agriculture, construction, and forced begging.¹⁰⁴ The following sections will shed light on two industries of forced labor that often remain hidden from the public eye: domestic services and agriculture.

Domestic slavery is one of the "most invisible forms of exploitation."¹⁰⁵ Domestic workers generally work and live within a private home in which they provide domestic services such as cooking, cleaning, and caring for children or a family.¹⁰⁶ Because domestic workers live and work within the privacy of a home, much of their inhumane living and working conditions are shielded from public visibility.¹⁰⁷ In many instances, domestic workers work extremely long hours, are deprived of their identification documents, isolated and prohibited from having outside contact, underpaid or not paid, malnourished, and subjected to sexual and psychological abuse.¹⁰⁸ Furthermore, a domestic worker is not afforded the basic labor protections provided by the National Labor Relations Act because he or she is not considered an "employee."¹⁰⁹

Domestic workers have been found to work in the homes of doctors, lawyers, businessmen, and diplomats.¹¹⁰ In the past and the present, there have been many reported instances in the United States of foreign diplomats

condoms, and rent. *Id.*

102. *Id.* at 11.

103. *Global Report*, *supra* note 81.

104. CLAWSON ET AL., *supra* note 11, at 3; OSCE, *2010 Annual Report*, *supra* note 3, at 9. Other forms of labor exploitation include use of child camel jockeys in illegal camel races in the Gulf States and involvement in drug trafficking and petty theft. SCARPA, *supra* note 5, at 29-30.

105. OSCE, *2010 Annual Report*, *supra* note 3, at 11.

106. Mohamed Y. Mattar, *Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later*, 19 AM. U. J. GENDER SOC. POL'Y & L. 1247, 1286 (2011).

107. 2011 TIP REPORT, *supra* note 9, at 8.

108. OSCE, *2010 Annual Report*, *supra* note 3, at 12; SCARPA, *supra* note 5, at 31.

109. CULLEN-DUPONT, *supra* note 72, at 49.

110. *Id.*

exploiting and abusing domestic workers.¹¹¹ Currently, foreign diplomats such as ambassadors or other diplomatic officers are immune from civil and criminal prosecution in the United States.¹¹² In January 2008, a federal judge awarded more than \$1 million in damages to Zipora Mazengo, a domestic worker for the Tanzanian diplomat, Alan Mzengi, Minister of Consular Affairs at the Tanzania embassy in Washington, DC.¹¹³ Mazengo claimed the following mistreatment: she was forced to work 112 hours per week with no pay, her passport was taken from her, the diplomat's wife beat her, she was denied medical treatment for an infected ingrown toenail for two years, and she could not leave the home to see her dying sister without someone accompanying her.¹¹⁴ Three months after the judge awarded damages to Mazengo, Mzengi returned to Tanzania and is currently an adviser to the President of Tanzania.¹¹⁵ To date, Mazengo has only been able to obtain \$2,000 through garnishments from Mzengi's US bank account.¹¹⁶

Agriculture is another industry in which a significant level of human trafficking occurs.¹¹⁷ "Victims of labor trafficking have been found among the nation's migrant and seasonal farm workers, including men, women, families, or children as young as five or six years old who harvest crops and raise animals in fields, packing plants, orchards, and nurseries."¹¹⁸ These victims could be US citizens, legal permanent residents, foreign nationals with H-2A temporary agricultural work visas, or undocumented immigrants.¹¹⁹ Trafficked farm workers usually work in distant and isolated areas, which hide their poor living and working conditions from the public.¹²⁰ Trafficked farm workers typically have language barriers that further prevent them from reporting their mistreatment or seeking assistance.¹²¹ Similar to domestic workers, trafficked farm workers are not afforded the protections provided under the National Labor Relations Act

111. Janie Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 88 N.C. L. REV 1627, 1641-42 (2010).

112. *Id.* at 1644-45.

113. E. Benjamin Skinner, *Modern-Day Slavery on D.C.'s Embassy Row?*, TIME (June 14, 2010), <http://www.time.com/time/nation/article/0,8599,1996402,00.html?artId=1996402?contType=article?chn=us>.

114. *Id.*

115. *Id.*

116. *Id.*

117. Shelley Cavalieri, *The Eye That Blinds Us: The Overlooked Phenomenon of Trafficking into the Agricultural Sector*, 31 N. ILL. U. L. REV 501, 513 (2011) (an estimated 10.4% of all trafficking cases are in agriculture).

118. *Labor Trafficking in Agriculture*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us/agriculture-a-farms> (last visited Mar. 18, 2013).

119. *Id.*

120. Cavalieri, *supra* note 117, at 514.

121. *Id.*

thus rendering them even more vulnerable to exploitation.¹²² Even if the worker entered into the United States with a H-2A work visa, the visa is valid only if the worker remains with the employer who sponsored his or her visa.¹²³ Therefore, the worker is caught in a no-win situation in which he or she has to choose between continuing with the current employer and enduring the exploitative conditions or having their visa invalidated and becoming an undocumented immigrant.¹²⁴

On April 20, 2011, the US Equal Employment Opportunity Commission (the EEOC) filed its largest agricultural labor trafficking lawsuit to date in Hawaii and Washington against Global Horizons, Inc.¹²⁵ The EEOC alleges that Global Horizons trafficked over 200 Thai male victims to work on eight farms located in Washington and Hawaii, subjecting them to discriminatory and exploitative conditions.¹²⁶ Similar to other human trafficking cases, these trafficked workers were promised high salaries and temporary work visas.¹²⁷ However, these were empty promises that Global Horizons had no intention of fulfilling. The trafficked workers had their passports taken away and were placed in debt bondage as a result of the exorbitant recruitment fees.¹²⁸ They also lived in rat and insect infested housing conditions and were subjected to retaliatory threats.¹²⁹ Labor trafficking is a reality, and it should not be considered secondary in terms of importance.

3. Trafficking in Human Organs

Organ trafficking is another form of human trafficking that is gaining momentum due to its lucrative nature, especially for kidneys.¹³⁰ To date, there are over 100,000 waiting list candidates in the United States for an organ, of which over 95,000 are waiting for a kidney.¹³¹ The United Network for Organ Sharing reported that in 2010, approximately 4,540

122. CULLEN-DUPONT, *supra* note 72, at 50.

123. Cavalieri, *supra* note 117, at 515.

124. *Id.*

125. Press Release, U.S. Equal Emp't Opportunity Comm'n, EEOC Files Its Largest Farm Worker Human Trafficking Suit Against Global Horizon Farms (Apr. 20, 2011), available at <http://www.eeoc.gov/eeoc/newsroom/release/4-20-11b.cfm>.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. David Glovin, Michael Smith, & David Voreacos, *Kidney Broker Pleads Guilty in First U.S. Organ-Traffic Case*, BLOOMBERG (Oct. 27, 2011), <http://www.bloomberg.com/news/2011-10-27/kidney-broker-pleads-guilty-in-first-u-s-organ-trafficking-prosecution.html>.

131. U.S. Dep't of Health and Human Servs., *Data: Waiting List Candidates*, ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK, <http://optn.transplant.hrsa.gov/data/> (last visited Mar. 18, 2013).

people in the United States died while waiting for a kidney.¹³² The shortage of kidneys in relation to the demand has created a black market for kidneys around the world. Current US law prohibits the selling and buying of organs, but has not prevented people from resorting to the black market in desperate times.¹³³

On October 24, 2011, the United States had its first organ trafficking case when “kidney broker,” Levy Izhak Rosenbaum, pled guilty to three counts of organ trafficking in federal court in Trenton, New Jersey.¹³⁴ The defendant alleged that three people paid him a total of \$410,000 to broker the sale of kidneys.¹³⁵ The defendant acknowledged that he “woodshed” the donor and the client by fabricating a story that deceived hospital personnel into believing the kidney donation was a voluntary act.¹³⁶ Reputable hospitals, including Johns Hopkins Hospital, were identified as sites where black market transplant surgeries were performed.¹³⁷ Hospitals have been criticized for lack of procedure to ascertain the source of the donated organs.¹³⁸

There are serious ethical implications involved when “the organ becomes a commodity and financial considerations become the priority for the involved parties instead of the health and well-being of the donors and recipients.”¹³⁹ Therefore, before any hospital or transplant center accepts a “donated” organ, it should consider whether the “donated” organ came from a selfless voluntary act of a donor or whether it was offered at the expense of the donor’s well-being by means of threat, fraud, or coercion.

132. David W. Freeman, *Organ Theft? Guilty Plea Spotlights Illegal Organ Trade*, CBS NEWS (Oct. 28, 2011), http://www.cbsnews.com/8301-504763_162-20126993-10391704-organ-theft-guilty-plea-spotlights-illegal-organ-trade/.

133. National Organ Transplant Act of 1984, 42 U.S.C. § 274(e) (2011). Transplant tourism is when “people from wealthier countries register for transplant surgeries in poorer countries.” CULLEN-DUPONT, *supra* note 72, at 23. “Nancy Scheper-Hughes, founding director of Organ Watch, estimates that approximately 15,000 kidneys are taken from involuntary donors every year.” *Id.* However, transplant tourism does not include a recipient and the donor who is a relative traveling across borders because their country lacks the medical services to perform the surgery or if it is through “official regulated bilateral or multilateral organ sharing program.” D.A. Budiani-Saberi & F.L. Delmonico, *Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities*, 8 AM. J. OF TRANSPLANTATION 925, 926 (2008), available at http://www.cofs.org/Publications/Budiani_and_Delmonico-AJT_April_2008.pdf.

134. Glovin, *supra* note 130.

135. *Id.*

136. *Id.*

137. *Id.*

138. See Freeman, *supra* note 132.

139. Budiani-Saberi & Delmonico, *supra* note 133, at 926.

D. Consequences of Human Trafficking

The ramifications of human trafficking greatly affect society and the individual.¹⁴⁰ On the societal level, human trafficking feeds organized crime which threatens state security, promotes the breakdown of social structures within communities and families, undermines the democratic values of life and liberty, and hinders upward social mobility.¹⁴¹ On the individual level, trafficked persons suffer physical and psychological effects.¹⁴² Victims of forced labor suffer from “chronic back, hearing, cardiovascular or respiratory problems.”¹⁴³ Victims of sexual exploitation run a high risk of contracting sexually transmitted diseases, HIV/AIDS, and other reproductive related illnesses, especially when contraceptives are not provided.¹⁴⁴ Those that survive the sexual exploitation often suffer from psychological issues and substance abuse and have difficulty reintegrating back into society.¹⁴⁵ These are scars that do not go away overnight, but instead leave a lasting impression of the trauma suffered and will deeply affect their outlook in life.¹⁴⁶ The remnants of the past will have an impact on their trust in society, especially if a friend or family member committed the trafficking. Therefore, these costs to society and to the individual should be considered when the question of whether to adopt a stronger stance against human trafficking is raised.

II. CURRENT LAWS IN THE UNITED STATES

Recognizing the prevalent nature of human trafficking and the serious human rights violations associated with it, both federal and state anti-trafficking laws were enacted. This section explores the current federal and state human trafficking laws in the United States. The TVPA was the first federal law to combat human trafficking and Congress reauthorized it in 2003, 2005, and 2008.¹⁴⁷ Indiana’s human trafficking laws are codified at

140. SHELLY, *supra* note 7, at 60.

141. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT*, June 2005, at 13 -15 (June 2005) [hereinafter 2005 TIP REPORT].

142. *Id.* at 14.

143. Mariconda, *supra* note 19, at 165-66.

144. SHELLY, *supra* note 7, at 63.

145. *Id.*; Psychological illnesses include “posttraumatic stress, painful flashbacks, anxiety, fear, incapacitating insomnia, depression, sleep disorders, and panic attacks” *Id.* Others may suffer from a “loss of appetite, uncontrolled aggression, self-blame, thoughts of suicide, self-harm, and constant crying” *Id.* Social stigmatism of prostitution in some societies further compounds the victim’s difficulty in reintegrating. SCARPA, *supra* note 5, at 21; 2005 TIP REPORT, *supra* note 141, at 13.

146. SHELLY, *supra* note 7, at 60.

147. See Polaris Project, *supra* note 14.

Ind. Code § 35-42-3.5-1-4 and Ind. Code § 5-2-1-9(a)(10).¹⁴⁸

A. The Trafficking Victims Protection Act

The TVPA symbolized the first of many responses by the United States in its fight against human trafficking. “[T]he fundamental international framework used by the United States and the world to combat contemporary forms of slavery” is the “3P” framework – Prevention, Protection, and Prosecution.¹⁴⁹ In 2009, Secretary of State Hillary Rodham Clinton added the “fourth P” – Partnership, which is “building new partnerships with governments and [non-government organizations] around the world” to combat human trafficking collectively.¹⁵⁰ The following sections will discuss the TVPA and its subsequent reauthorizations.

Prior to the TVPA, the United States prosecuted many human trafficking cases under the Mann Act and other involuntary servitude and labor statutes.¹⁵¹ However, these laws were ineffective in fighting modern day slavery.¹⁵² The TVPA established a definition for “severe forms of trafficking in persons.”¹⁵³ It increased the penalties for peonage, forced labor, and sale into involuntary servitude.¹⁵⁴ It mandated restitution and forfeiture.¹⁵⁵ The TVPRA of 2003 enhanced the prosecution of traffickers by making human trafficking a predicate offense for RICO (Racketeer Influenced Corruption Organization Act) charges.¹⁵⁶ It additionally created a federal civil remedy for trafficking victims, which allowed them

148. IND. CODE ANN. § 35-42-3.5-1 – 4 (West 2012); IND. CODE ANN. § 5-2-1-9(a)(10) (West 2012).

149. U.S. Dep’t of State, *Four “Ps”: Prevention, Protection, Prosecution, Partnerships*, <http://www.state.gov/g/tip/4p/partner/index.htm> (last visited Mar. 18, 2013).

150. *Id.*

151. *Attorney General’s 2009 Annual Report*, *supra* note 18, at 2. The Mann Act, also known as the White Slave Traffic Act, makes it a federal crime to knowingly transport any person (including persons under the age of eighteen) in interstate or foreign commerce for the purpose of prostitution or to engage in any sexual activity. The Mann Act, 18 U.S.C.S. §§ 2421-28 (LexisNexis 2011). The act also makes it a crime to knowingly persuade, induce, entice, or coerce an individual to travel in interstate or foreign commerce to engage in prostitution or in any sexual activity. *Id.*

152. *See generally Attorney General’s 2009 Annual Report*, *supra* note 18, at 2.

153. *See Trafficking Victims Protection Act*, 22 U.S.C.S § 7102 (LexisNexis 2012).

154. SISKIN & WYLER, *supra* note 5, at 45. Penalties increased from ten to twenty years of imprisonment and potentially life in imprisonment if aggravating factors are found. *Id.* Aggravating factors include death during the commission of such violations, kidnapping, aggravating sexual abuse, or attempted murder. *Id.*

155. 18 U.S.C.A. § 1594(d) – (e) (West 2012). Forfeiture includes any property used in the commission of the crime or any property derived from the commission of the crime.

156. *Federal Legislation*, NORTHEASTERN UNIV., <http://www.northeastern.edu/human-trafficking/federal-state-responses-to-human-trafficking/federal-legislation/> (last visited Mar. 18, 2013).

pursuance of a civil action against the trafficker(s) in federal court.¹⁵⁷ Further, the TVPRA of 2008 expanded the prosecution of human trafficking by creating new criminal offenses,¹⁵⁸ modifying the standard of proof for sex trafficking,¹⁵⁹ widening the crime of labor trafficking and sex trafficking of a minor,¹⁶⁰ imposing criminal liability on those who use fraud to recruit workers abroad for employment in the United States,¹⁶¹ and punishing those who benefit financially from their participation in a venture that is engaged in peonage or in the furtherance of human trafficking.¹⁶²

The TVPA also established preventative measures to combat human trafficking.¹⁶³ For example, it required the President to establish international initiatives to increase economic opportunities for the potential victims and programs to increase public awareness of human trafficking.¹⁶⁴ The TVPA also authorized the President to provide assistance to foreign countries to combat human trafficking, while sanctioning those that failed to comply adequately.¹⁶⁵ The TVPRA of 2003 further inhibited human

157. *Attorney General's 2009 Annual Report*, *supra* note 18, at 2.

158. *Id.* at 3. The new offenses included imposing penalties on those who obstruct, attempt to obstruct, or in any way interfere with the investigation and prosecution of trafficking crimes. See 18 U.S.C.A. §§ 1583(a)(3), 1584(b), 1590(b), 1591(d), 1592(c) (West 2012).

159. 18 U.S.C.A. § 1594(d) – (e) (West 2012). It lowered the standard of proof for the crime of sex trafficking of children by requiring the government to only show that the defendant acted in reckless disregard of the fact that the means of force, threat of force, fraud, or coercion would be used to cause the person to engage in a commercial sex act (previously, it required the government to show that the defendant knew that force, fraud, or coercion would be used). 18 U.S.C.A. § 1591(a)(2) (West 2012); See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222, 122 Stat. 5044, 5069 (2008), available at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf> [hereinafter TVPRA 2008].

160. *Attorney General's 2009 Annual Report*, *supra* note 18, at 3. For labor trafficking, it “expanded the crime of forced labor by providing that “force” is a means of violating the law.” *Id.*; See also 18 U.S.C.A. § 1589(a)(1) (West 2012). For sex trafficking of a minor, the government no longer has to demonstrate that the defendant knew that the person engaged in commercial sex was under the age of eighteen. 18 U.S.C.A. § 1591(c) (West 2012). It requires the government to only prove that the defendant had a reasonable opportunity to observe the minor. *Id.*; See also TVPRA 2008 § 222.

161. *Attorney General's 2009 Annual Report*, *supra* note 18, at 4; See also 18 U.S.C.A. § 1351 (West 2012).

162. 18 U.S.C.A. § 1593A (West 2012); See also TVPRA 2008 § 222.

163. Trafficking Victims Protection Act, 22 U.S.C. § 7104 (a) – (c)(2000).

164. See *id.* § 7104 (a) – (b); Examples of economic initiatives may include microcredit lending programs, skills training, programs to keep children in elementary and secondary schools, educational programs to inform about the danger of trafficking, and grants to nongovernmental organizations to foster and promote the political, economic, social, and educational roles of women in their countries. *Id.* at § 7104 (a).

165. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, §§ 109 - 110, 114 Stat. 1464, 1481 (2000), available at <http://www.gpo.gov:80/fdsys/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>. The President is authorized to provide assistance to foreign

trafficking by requiring federal departments or agencies to terminate contracts with overseas contractors who engaged in sex or labor trafficking.¹⁶⁶ Additionally, the TVPRA of 2005 created “extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government.”¹⁶⁷ Moreover, the TVPRA of 2008 authorized the Secretary of State to implement measures to protect domestic servants from abuse and to suspend the issuance of A-3 and G-5 worker visas for a diplomatic mission or international organization with a history of exploitation and trafficking.¹⁶⁸

Lastly, the TVPA and its reauthorizations provided protection to victims of human trafficking. Primarily, the TVPA created two special immigrant statuses for international victims (continued presence and T nonimmigrant status, or “T-visa”) in order to provide immigration relief and to facilitate the investigation and prosecution of the trafficker.¹⁶⁹ A US Immigration and Customs Enforcement official grants continued presence to “an individual identified as a victim of human trafficking who is a potential witness in the investigation or prosecution of the trafficker.”¹⁷⁰ A victim with continued presence is generally permitted to stay in the United States for a discretionary period of time determined by the Department of Homeland Security.¹⁷¹ However, a T-visa permits the victim temporary residency for up to four years, and the victim can petition for permanent residency afterwards.¹⁷² If the victim is granted continued presence or a T-

countries directly or through nongovernmental organizations for programs or projects that are designed to help them meet the minimum standards for eliminating trafficking (as defined in § 103). *See Id.* §109. For foreign countries that fail to comply with the minimum standards, sanctions may include withholding non-humanitarian and non-trade assistance. *See Id.* § 110. For FY 2011, President Obama fully withheld non-humanitarian and non-trade related foreign assistance to Eritrea and North Korea. SISKIN & WYLER, *supra* note 5, at 15. Partial waivers were granted to Burma, Cuba, Iran, and Zimbabwe. *Id.* Full waivers were granted to the Democratic Republic of Congo, the Dominican Republic, Kuwait, Mauritania, Papua New Guinea, Saudi Arabia, and Sudan on the basis of national interest reasons. *Id.*

166. *See* 22 U.S.C.A. §7104(g); *see also* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 3, 117 Stat. 2875, 2876-77 (2003), *available at* <http://www.gpo.gov:80/fdsys/pkg/PLAW-108publ193/pdf/PLAW-108publ193.pdf>.

167. *Attorney General's 2009 Annual Report*, *supra* note 18, at 3; *See also* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 103, 119 Stat. 3558, 3562 (2006), *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-109publ164/pdf/PLAW-109publ164.pdf>.

168. SISKIN & WYLER, *supra* note 5, at 48-49; *see also* TVPRA 2008 §§ 202 – 203, 122 Stat. at 5055-59. Measures include requiring employers to provide their employees with pamphlets informing them of their rights and setting interview guidelines for consular offices. *See id.* § 202.

169. CLAWSON ET AL., *supra* note 11, at 16; SISKIN & WYLER, *supra* note 5, at 24.

170. U.S. DEP'T OF HOMELAND SEC., CONTINUED PRESENCE: TEMP. IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING 2 (2010), *available at* <http://www.dhs.gov/xlibrary/assets/ht-uscis-continued-presence.pdf>.

171. CLAWSON ET AL., *supra* note 11, at 16.

172. SISKIN & WYLER, *supra* note 5, at 24-25. To be eligible for a T-visa, the following

visa, he or she is eligible for refugee benefits and services that are not available to US citizens and permanent residents.¹⁷³ International victims of trafficking who are under the age of eighteen are eligible for benefits and services upon receipt of an eligibility letter from the Department of Health and Human Services, and can also apply for the Unaccompanied Refugee Minor Program.¹⁷⁴

Additionally, the TVPA required that while a victim is held in the

criteria must be met: the trafficking victim must (1) be a victim of a severe form of trafficking as defined under the TVPA; (2) be physically present in the United States due to the trafficking; (3) has complied with reasonable requests for assistance in the investigation or prosecution of the trafficking (unless under the age of eighteen); (4) demonstrated extreme hardship involving unusual and severe harm upon removal; and (5) be admissible to the United States or obtain a waiver for inadmissibility. *Id.* at 25. *See also* U.S. DEP'T OF HOMELAND SEC., *Instructions for Form I-914, Application for T Nonimmigrant Status*, www.uscis.gov/files/form/i-914instr.pdf (last visited Mar. 18, 2012). "A waiver of inadmissibility is available for health related grounds, public charge grounds, or criminal grounds if the activities rendering the alien inadmissible were [due to their] victimization." SISKIN & WYLER, *supra* note 5, at 25. Under the TVPA, the victim must also obtain certification from a federal law enforcement officer that he or she is a victim of trafficking and has complied with reasonable request to cooperate in the investigation and prosecution of the trafficker. *Id.* at n. 68. The TVPRA of 2003 revised this requirement and authorized the Secretary of Health and Human Services to consider statements from state and local enforcement officers for certification since they are generally the first to come in contact with the victim. *See* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4, 117 Stat. 2875, 2877 (2003), available at <http://www.gpo.gov:80/fdsys/pkg/PLAW-108publ193/pdf/PLAW-108publ193.pdf>. The TVPRA of 2008 additionally modified the T-visa qualifications by "amending the physical presence provision to include presence on account of an investigation or prosecution" and "exempting adults unable to cooperate with reasonable requests for assistance in the investigation or prosecution due to physical or psychological trauma." *Attorney General's 2009 Annual Report*, *supra* note 18, at 37. *See also* TVPRA 2008 § 201.

173. CLAWSON ET AL., *supra* note 11, at 16. "Some of the refugee-specific services that victims of trafficking are eligible to receive through HHS and NGOs are Refugee Cash and Medical Assistance, housing or shelter assistance, food assistance, income assistance, employment assistance, English language training, health care assistance, mental health services, and assistance for victims of torture." *Id.* Other benefit programs that certified victims may apply for are TANF and Medicaid. *Id.*; *see also* Trafficking Victims Protection Act of 2000, 22.U.S.C.A §7105(b)(1) (West 2012). Certified victims are also eligible for employment assistance from the Department of Labor's One-Stop Career Center System. CLAWSON ET AL., *supra* note 11, at 16. US citizens who are victims of trafficking are eligible for mainstream benefits such as Temporary Assistance for Needy Families (TANF), Medicaid, and the Supplemental Nutrition Assistance Program (also known as the Food Stamp Program). *Id.* "However, anyone applying for mainstream benefits must do so through the State in which they reside and must meet the eligibility requirements for each program. Variations in State application processes, documentation requirements..., and the movement of victims once they are rescued may make it difficult for victims to access these services." *Id.* (citing from Holcomb, et al., *The Application Process for TANF, Food Stamps, Medicaid and SCHIP: Issues for Agencies and Applicants, Including Immigrants and Limited English Speakers*, THE URBAN INSTITUTE (2003), <http://www.urban.org/url.cfm?ID=410640>).

174. CLAWSON ET AL., *supra* note 11, at 17.

custody of the federal government, he or she cannot be detained in a facility inappropriate to their status as a crime victim.¹⁷⁵ The victim should receive necessary medical care, information about his or her rights and translations services, and protection if his or her safety is at risk.¹⁷⁶ The TVPA and TVPRA of 2005 also authorized appropriations for state and local government and nongovernmental organizations to provide victim service programs at the local level.¹⁷⁷ Finally, the TVPRA of 2008 created and authorized appropriations for new grant programs for US citizen victims.¹⁷⁸

B. Indiana's Human Trafficking Laws

Indiana State Representative Terri Austin authored the state's first human trafficking law in 2006 in response to the discovery of two teenagers who were trafficked from Vietnam and Mexico into the city of Anderson, Indiana.¹⁷⁹ One situation involved a captor promising a family that their thirteen-year-old daughter would have educational opportunities, while the second situation involved an eighteen-year-old who was brought over as a mail-order bride.¹⁸⁰ For months subsequent to their arrival, both victims suffered physical, mental, and emotional abuse as sex slaves.¹⁸¹ The trauma suffered by both victims did not surface until one victim was thrown out into the street when a new girl arrived and neighbors heard the cries of the other victim and called the police.¹⁸²

Indiana's anti-trafficking law took effect on July 1, 2007 notwithstanding its near defeat in the Indiana legislature. However, since the passage of the statute, there has only been one conviction.¹⁸³ On January

175. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 107, 114 Stat. 1464, 1477 (2000), available at <http://www.gpo.gov:80/fdsys/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf> [hereinafter TVPA 2000].

176. *Id.*

177. *Id.*; See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 204, 119 Stat. 3558, 3571 (2006), available at <http://www.gpo.gov/fdsys/pkg/PLAW-109publ164/content-detail.html>.

178. SISKIN & WYLER, *supra* note 5, at 50. For a detailed breakdown of the appropriations made for the fiscal years of 2001 till 2011, see *id.* at 51-53.

179. Sandra Chapman, *Part Two: Against Their Will*, WTHR.COM, <http://www.wthr.com/global/Story.asp?s=4945370> (last visited Mar. 16, 2012) [hereinafter Chapman, *Part Two*]; See also *House Bill 1414*, INDIANA GENERAL ASSEMBLY, <http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2006&session=1&request=getBill&docno=1414> (last updated Feb. 27, 2006, 5:13PM).

180. Chapman, *Part Two*, *supra* note 179.

181. *Id.*

182. *Id.*

183. Press Release, Marion County Prosecuting Attorney, Terry R. Curry, The Marion County Prosecutor's Office Files First Charges Under Amended Human Trafficking Statute (Mar. 15, 2012), available at <http://www.indy.gov/eGov/County/Pros/NewsCenter/Documents/03-15%20Human%20Trafficking%20Charge%20Under%20Amended%20Law.pdf>.

25, 2011, Indiana secured its first state conviction on human trafficking charges.¹⁸⁴ The defendant, Chris Smiley, was convicted of human trafficking, promoting prostitution, battery, intimidation, and strangulation.¹⁸⁵ On February 9, 2011, Smiley was sentenced to ten years on the human trafficking charge.¹⁸⁶ The Chris Smiley case was the first case in the state and in Marion County to go to trial.¹⁸⁷ The human trafficking charge is rarely prosecuted due to the difficulty involved in obtaining a conviction.¹⁸⁸ For example, in prior Marion County cases, there were instances when “the defendant(s) fled the country, or the victim(s) chose not to be witnesses, or the defendant(s) agreed to plea to other charges that carried the same weight as the human trafficking charge.”¹⁸⁹ These circumstances created either an additional barrier for the prosecution to overcome or rendered the human trafficking charge irrelevant in light of other charges. On January 30, 2012, Indiana’s Governor Mitch Daniels signed the new human trafficking legislation, Senate Enrolled Act 4, which amended Indiana’s existing human trafficking laws.¹⁹⁰

Currently, Ind. Code § 35-42-3.5-1 through Ind. Code § 35-42-3.5-4 as well as Ind. Code § 5-2-1-9 are Indiana’s human trafficking laws.¹⁹¹ Ind. Code § 35-42-3.5-1(a) – (d) provides the prosecution measures.¹⁹² Ind. Code § 35-42-3.5-1(a) states that a person commits a Class B felony of promoting human trafficking when he or she, “by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person to engage the other person in forced labor or involuntary servitude; or to force the other person into marriage, or prostitution.”¹⁹³ The new

184. *Id.*; Rebecca Berfanger, *Prosecution Raises Awareness of Human Trafficking*, THE INDIANA LAWYER, Mar. 2, 2011.

185. Press Release, Lara Beck, Marion County Prosecutor’s Office, Marion County’s Prosecutor’s Office Secures First Conviction on Human Trafficking Charges (Jan. 25, 2011).

186. Berfanger, *supra* note 184. In addition to the human trafficking sentence, the defendant was sentenced to four years for the battery conviction, four years for the intimidation conviction, and 545 days on a strangulation conviction. *Id.* These sentences will run concurrently. *Id.* The defendant will also serve five years for possession of cocaine conviction that will run consecutively. *Id.*

187. *Id.*

188. Kehoe, *supra* note 27.

189. Berfanger, *supra* note 184.

190. See Gov. Daniels Signs Bill to Toughen Human Trafficking Laws Ahead of Super Bowl, *supra* note 26.

191. IND. CODE ANN. § 35-42-3.5-1 - 4 (West 2012); IND. CODE ANN. § 5-2-1-9 (West 2012).

192. IND. CODE ANN. § 35-42-3.5-1(a) – (d) (West 2012), amended by Act of Jan. 30, 2012, Senate Enrolled Act No. 4, available at <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>. Effective July 1, 2012, IND. CODE ANN. § 35-42-3.5-1(e) provides a defense to a prosecution under IND. CODE ANN. § 35-42-3.5-1(b)(2)(B) (West 2012).

193. IND. CODE ANN. § 35-42-3.5-1(a) (West 2012). “A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the

legislation expanded the list of punishable offenses to include forced participation in sexual conduct as defined by Ind. Code § 35-42-4-4.¹⁹⁴ As a result, Indiana's current statute now criminalizes several forms of human trafficking, including forced labor, involuntary servitude, forced marriage, forced prostitution, and forced participation in sexual conduct.¹⁹⁵

The new legislation also strengthened Indiana's existing regulation on the trafficking of a minor.¹⁹⁶ Primarily, it created a new provision, Ind. Code § 35-42-3.5-1(b), which provides that a person commits a Class B felony of promotion of human trafficking of a minor when he or she "recruits, harbors, or transports a child less than sixteen years of age with the intent of engaging the child in forced labor or involuntary servitude or inducing or causing the child to engage in prostitution or participate in sexual conduct as defined by Ind. Code § 35-42-4-4."¹⁹⁷ When the case involves the human trafficking of a minor in contrast to an adult, the prosecutor has a lower burden of proof and is not required to prove the element of force, threat of force, or fraud.¹⁹⁸

The new law also modified existing legislation on the sex trafficking of a minor. Prior to the enactment of the new law, a parent, guardian, or custodian of a child (under the age of eighteen) commits a Class A felony of sex trafficking of a minor under Ind. Code § 35-42-3.5-1(c) when he or she sells or transfers custody of the child for the purposes of prostitution.¹⁹⁹

advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000)." IND. CODE ANN. § 35-50-2-5 (West 2012).

194. IND. CODE ANN. § 35-42-3.5-1(a) (West 2012), amended by Act of Jan. 30, 2012, Senate Enrolled Act No. 4, at 5, available at <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>. "Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person. IND. CODE ANN. § 35-42-4-4 (West 2012).

195. See IND. CODE ANN. § 35-42-3.5-1(a) – (d) (West 2012), amended by Act of Jan. 30, 2012, Senate Enrolled Act No. 4, available at <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>. Effective July 1, 2012, IND. CODE ANN. § 35-42-3.5-1(e) provides a defense to a prosecution under IND. CODE ANN. § 35-42-3.5-1(b)(2)(B).

196. See *Gov. Daniels Signs Bill to Toughen Human Trafficking Laws Ahead of Super Bowl*, *supra* note 26.

197. Act of Jan. 30, 2012, Senate Enrolled Act No. 4, at 6, available at <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>.

198. IND. CODE ANN. § 35-42-3.5-1(a) – (b), amended by Act of Jan. 30, 2012, Senate Enrolled Act No. 4, at 6, available at <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>; Michael Puente, *Indiana Governor Signs Human Trafficking Bill*, WBEZ (Jan. 30, 2012), <http://www.wbez.org/story/human-trafficking-bill-heads-indiana-governor-95922>; Elizabeth Prann, *Indiana Passes Human Trafficking Law in Time for Super Bowl*, FOXNEWS (Feb. 2, 2012), <http://www.foxnews.com/us/2012/02/02/human-trafficking-law-passes-before-super-bowl/>.

199. Act of Jan. 30, 2012, Senate Enrolled Act No. 4, at 6, available at <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>. "A person who commits a

However, upon a critical review of this section, the law failed to consider individuals other than a parent, guardian or a custodian of a child who could also commit such acts.²⁰⁰ Recognizing this loophole, Indiana amended the existing statute by replacing “parent, guardian, or a custodian” with “a person who is at least eighteen years of age.”²⁰¹ It also lowered the age requirement of a child from under the age of eighteen to under the age of sixteen.²⁰² Therefore, current Indiana law prohibits any individual from selling or otherwise transferring custody of a minor under the age of sixteen for the purposes of prostitution.

Additionally, a person commits a Class C felony under Ind. Code § 35-42-3.5-1(d) when he or she offers to pay money or other property to another person for an individual that the person knows has been coerced into forced labor, involuntary servitude, or forced prostitution.²⁰³ Thus, Indiana’s human trafficking laws proscribe the promotion of human trafficking, sex trafficking of a minor, and the acceptance of services from a trafficked person.

Ind. Code §35-42-3.5-2 through Ind. Code § 35-42-3.5-4 provides the protective measures for the victim.²⁰⁴ For example, Ind. Code § 35-42-3.5-2 establishes restitution to the victim.²⁰⁵ Thus, in addition to the penalties set forth under Ind. Code § 35-42-3.5-1, it requires the court to order the convicted offender to make restitution to the victim pursuant to Ind. Code § 35-50-5-3.²⁰⁶ Indiana also provides the victim with a civil cause of action against the convicted offender pursuant to Ind. Code § 35-42-3.5-3.²⁰⁷ Under the aforementioned section, the victim may also recover from such person actual damages, court costs (including fees), punitive damages determined by the court, and reasonable attorney’s fees.²⁰⁸ The statute of limitations for such claims is two years after conviction of the trafficking offense.²⁰⁹

Similar to federal law, Ind. Code §35-42-3.5-4 (a)-(b) delineates the

Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).” IND. CODE ANN. § 35-50-2-4 (West 2012).

200. Puente, *supra* note 198.

201. Act of Jan. 30, 2012, Senate Enrolled Act No. 4, at 6, *available at* <http://www.in.gov/legislative/bills/2012/PDF/SE/SE0004.1.pdf>.

202. *Id.*

203. *Id.*; “A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).” IND. CODE ANN. § 35-50-2-6 (West 2012).

204. IND. CODE ANN. § 35-42-3.5-2 - 4 (West 2012).

205. IND. CODE ANN. § 35-42-3.5-2 (West 2012).

206. *Id.*; IND. CODE ANN. § 35-50-5-3 (West 2012).

207. IND. CODE ANN. § 35-42-3.5-3 (West 2012).

208. *Id.*

209. *Id.*

treatment of a victim of trafficking and the issuance of the Law Enforcement Agency Declaration (the “LEA Declaration”).²¹⁰ Specifically, Ind. Code §35-42-3.5-4 (a) provides that a victim of trafficking may not be detained in a facility that is inappropriate to their status as a crime victim.²¹¹ It also prohibits penalizing the victim with jail time and fines.²¹² It further requires protection for the victim if their safety is at risk or if there is a danger of being recaptured by the trafficker.²¹³ This includes taking measures to protect the victim and family members from intimidation and retaliatory threats and ensuring that the victim and family members’ names are not disclosed to the public.²¹⁴ Additionally, Ind. Code §35-42-3.5-4(b) requires a law enforcement agency to provide the victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, Form I-914 Supplement B) pursuant to 8 C.F.R. § 214.11(f)(1) within fifteen days of the agency’s first contact with the victim.²¹⁵ This declaration serves as the primary evidence that he or she is a victim and has complied with the reasonable request for assistance in the investigation and the prosecution of the trafficker(s),²¹⁶ thus satisfying certain eligibility requirements for a T-1 nonimmigrant status visa.²¹⁷ If the law enforcement agency denies the victim a LEA Declaration, the agency must provide the victim with an explanation of the reasons for the denial within fifteen days.²¹⁸ The alleged victim may provide additional evidence for reconsideration, and the agency has seven days from the receipt of the additional evidence to reconsider the denial.²¹⁹

Lastly, Ind. Code § 5-2-1-9(a)(10) establishes the standards for law enforcement training in human and sex trafficking.²²⁰ It outlines the minimum standards for a course of study on human and sex trafficking, which is required for “each person accepted for training at a law enforcement training school or academy and for in-service training program

210. IND. CODE ANN. § 35-42-3.5-4 (a)-(b) (West 2012).

211. IND. CODE ANN. § 35-42-3.5-4 (a) (West 2012).

212. *Id.*

213. *Id.*

214. *Id.*

215. IND. CODE ANN. § 35-42-3.5-4(b) (West 2012); 8 C.F.R. § 214.11 (2011).

216. *See* CLAWSON ET AL., *supra* note 11; *See also* U.S. CITIZENSHIP & IMMIGR. SERVICES, *Instructions for Form I-914, Application for T Nonimmigrant Status*, at 5, available at www.uscis.gov/files/form/i-914instr.pdf (last updated Apr. 11, 2011); For a copy of the Form I-914 and the Form I-914, Supplement B, *see also* U.S. DEP’T OF HOMELAND SEC., *I-914 Application for T Nonimmigrant Status*, <http://www.uscis.gov/i-914> (last updated July 25, 2012).

217. *See supra* note 171; *See also* U.S. CITIZENSHIP & IMMIGR. SERVICES, *Instructions for Form I-914, Application for T Nonimmigrant Status*, at 5, www.uscis.gov/files/form/i-914instr.pdf (last updated May 4, 2012).

218. IND. CODE ANN. § 35-42-3.5-4(b) (West 2012).

219. *Id.*

220. IND. CODE ANN. § 5-2-1-9(a)(10) (West 2012).

for law enforcement officers.”²²¹ The course of study must cover these topics:

- (A) Examination of the human and sexual trafficking laws (IC 35-42-3.5)[;]
- (B) Identification of human and sexual trafficking [;]
- (C) Communicating with the traumatized persons [;]
- (D) Therapeutically appropriate investigative techniques [;]
- (E) Collaboration with federal law enforcement officials [;]
- (F) Rights of and protections afforded to the victim [;]
- (G) Providing documentation that satisfies the Declaration of the Law Enforcement Officer for Victim for Trafficking In Persons (Form I-914, Supplement B) requirements established under federal law [; and]
- (H) The availability of community resources to assist the [victim].²²²

Thus, Indiana law currently requires training for law enforcement to better understand and recognize the human trafficking crime.²²³

Human trafficking is an issue that still requires Indiana’s attention even though the Super Bowl is a past event. While the new legislation primarily tightened prosecution in regards to sex trafficking of a minor, it temporarily cured only one aspect of the human trafficking problem. Linda Smith, president and founder of Shared Hope International, reported that her organization’s tracking of several US cities’ activity indicates that Indianapolis has an aggressive trafficking market.²²⁴ Therefore, recognizing that human trafficking is an issue that will continue to exist in Indiana, additional countermeasures must be taken to inhibit its growth. The Ohio Trafficking in Persons Study Commission confirms that traffickers are strategic in choosing a place to set up business.

State laws do play a role in the decision making of human trafficking organizations that are sophisticated and networked. Those more sophisticated trafficking rings are aware of the laws and potential risk of doing business in a particular US state. In a quote from Raymond and Hugh’s (2001) report, it is apparent that traffickers look for states with more lenient laws.²²⁵

221. *Id.*

222. *Id.*

223. *Id.*

224. Berggoetz, *supra* note 53.

225. Williamson et al., *supra* note 38. “In the Midwest, women are trafficked around the

If Indiana has a weaker human trafficking statute in comparison to its bordering states, traffickers will potentially choose Indiana to establish their businesses.²²⁶ Human trafficking is a problem that could easily fester into a larger problem if left unattended. A larger problem equates to more time and resources needed to untangle and combat the problem. While additional countermeasures are taken to fight human trafficking, we must not neglect care and support for the victim. Such care and support is essential to the victim's recovery and reintegration as a productive member of society.²²⁷ Lastly, "[j]ustice . . . is the crowning glory of the virtues . . ." ²²⁸ Justice demands Indiana continue to seek ways to protect present and future victims of human trafficking.

III. INTERNATIONAL LEGAL FRAMEWORK

Slavery is no relic of the past, but instead an institution that has been allowed to slip through the cracks of justice to repeat itself in history again.²²⁹ The United States and the international community have condemned slavery and involuntary servitude for its encroachment on an individual's unalienable right to life, liberty, and the pursuit of happiness.²³⁰

region, as well as to the East and West Coast: from Minneapolis to Tampa, Memphis, New York, Chicago, Seattle, Denver, St. Louis and Las Vegas. Law enforcement officials in this region reported that large numbers of US women are domestically trafficked to other states, because Minnesota laws are stricter than in these states, and the sex businesses move to more permissive regions." JANICE G. RAYMOND & DONNA M. HUGHES, *COAL. AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES* 56 (2001), available at http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf.

226. *Id.*

227. CLAWSON ET AL., *supra* note 11, at 36.

228. MARCUS TILLIUS CICERO: *DE OFFICIIS* (Walter Miller trans., London: Heinemann 1913), available at <http://www.archive.org/stream/deofficiiswithen00ciceuoft#page/20/mode/2up/search/crowning+glory>.

229. David R. Hodge & Cynthia A. Lietz, *The International Sex Trafficking of Women and Children: A Review of the Literature*, 22 *AFFILIA: J. WOMEN & SOC. WORK* 163 (2007); See also Trafficking Victims Protection Act, 22 U.S.C. § 7101(b)(1) (2000).

230. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1468 (2000), available at <http://www.gpo.gov:80/fdsys/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the [International Labor Organization]1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the [United Nations] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98 [Traffic in Women and Girls]; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe. *Id.*

Today, both communities abhor slavery in its modern form as it runs afoul of these well-established principles.²³¹ However, in order to effectively combat human trafficking, due to its transnational nature, cooperation and partnership among countries is required.²³² Thus, both the United States and the international community respectively enacted anti-trafficking legislation to jointly curb human trafficking.²³³ For example, in 2000 the United States passed the TVPA and reauthorized it in subsequent years.²³⁴ Internationally, the United Nations, the European Union, and the Council of Europe also passed measures to combat human trafficking.²³⁵ Other international, regional, and sub-regional organizations have also undertaken initiatives to fight trafficking in persons.²³⁶

231. *Id.*; For a detailed table of international treaties and instruments from the year of 1814 to 2010, see GALLAGHER, *supra* note 55, at xxiii – lvi.

232. *Partnerships*, U.S. DEP'T OF STATE, <http://www.state.gov/j/tip/4p/partner/> (last visited Mar. 18, 2013); *See also* U.N. OFFICE ON DRUGS AND CRIME, INTERNATIONAL FRAMEWORK FOR ACTION: TO IMPLEMENT THE TRAFFICKING IN PERSONS PROTOCOL 9 (2009), available at http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf [hereinafter UNODC, INTERNATIONAL FRAMEWORK FOR ACTION].

233. *International, Regional, and Sub-Regional Organizations Combating Trafficking in Persons*, U.S. DEP'T OF STATE, <http://www.state.gov/j/tip/rls/tiprpt/2011/166862.htm> (last visited Mar. 18, 2013) [hereinafter U.S. Dep't of State, *International*].

234. *See supra* Part II.A.

235. U.S. Dep't of State, *International*, *supra* note 233.

236. *See* African Union (Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006)(being updated for 2011-2013)); Association of Southeast Nations (ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children (2004)); Commonwealth of Independent States (Agreement on the Cooperation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues (2005), Programme of Cooperation of the Member States of the Commonwealth of Independent States in Combating Human Trafficking (2011-2013); Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT Memorandum of Understanding on Cooperation Against Trafficking in Greater Mekong Sub-Region (2004), Second COMMIT Sub-Regional Plan of Action (2008-2010)); International Labour Organization (ILO Convention No. 29 on Forced Labour, ILO Convention No. 105 on Abolition of Forced Labour, ILO Convention No. 182 On the Worst Forms of Child Labour); Economic Community of West African States (ECWAS Declaration on Fight against Trafficking in Persons (2001), ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003), extended until 2011), Joint ECOWAS/ECCAS Regional Plan of Action to Combat Trafficking in Persons, especially Women and Children (2006-2008)); League of Arab States (Arab Framework Act on Combating Trafficking in Persons (2008), Arab Initiative to Combat Trafficking in Persons (2010)); Organization of American States (Work Plan to Combat Trafficking in Persons in the Western Hemisphere 2010-2012); Organization for Security and Cooperation in Europe (OSCE Action Plan to Combat Trafficking in Human Beings (2003), Platform for Action Against Human Trafficking (2007)); Regional Conference on Migration (Regional Conference on Migration Plan of Action); Southern African Development Community (SADC Regional Plan of Action on Trafficking in Persons (2009-2019); and the South Asian Association for Regional Cooperation (SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)). U.S. Dep't of State, *International*, *supra* note 233; *See also* U.N. Office

The US Department of State acknowledged that while the Trafficking Victims Protection Act] “meaningfully affects the Thirteenth Amendment to the US Constitution, [it] also reflects the norms of international anti-slavery law.”²³⁷ In the 2009 US Attorney General’s Annual Report to Congress and Assessment of US Government Activities to Combat Trafficking in Persons, the US government recommended “increase[d] efforts to exchange best practices, lessons learned, and research with UN agencies and international organizations ... that provide technical assistance to combat human trafficking.”²³⁸ Through these exchanges of information and lessons learned, the United States and the international community can discover new and effective methods to fight human trafficking and also learn from each other the pitfalls to avoid. The United States, the United Nations, the European Union, and the Council of Europe have coordinated efforts to effectively combat human trafficking.²³⁹ The following sections of this Note will examine these measures taken by the United Nations, the European Union, and the Council of Europe to inhibit human trafficking.

A. The United Nations, the European Union, and the Council of Europe

1. The United Nations

“The United Nations is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights.”²⁴⁰ The UN General Assembly adopted the Protocol to Prevent,

of the High Comm’r for Human Rights, *Summary of Regional and Sub-Regional Structures and Initiatives to Counter Trafficking in Persons*, (Dec. 2010), available at http://www.ohchr.org/Documents/Issues/Trafficking/Dakar_summary_structures_en.pdf [hereinafter OHCHR, *Summary of Regional*], for a detailed description of each organization and their initiatives. Some of these regional legal instruments including, but not limited to, the Ouagadougou Action Plan, ECOWAS Initial Plan, OSCE Action Plan, ECOWAS Declaration, ASEAN Declaration are considered “soft” laws of trafficking. Gallagher, *supra* note 55, at 141 n.567-570. “Soft” law on trafficking has two meanings: “[it] can refer to principles contained in treaties [that] do not prescribe precise rights or obligations or otherwise provide precise directives as to which behaviors its authors are committed to” or it can “refer to nontreaty instruments that, despite often employing the ‘hard’ language of obligation, do not, of themselves bind States.” *Id.* at 139.

237. 2011 TIP REPORT, *supra* note 9, at 16.

238. *Attorney General’s 2009 Annual Report*, *supra* note 18, at 13.

239. SISKIN & WYLER, *supra* note 5, at 24; Caroline O’Reilly, *Coordination Between International Agencies to Combat Trafficking in Human Beings*, ILO (Sept. 13, 2010), http://www.ilo.org/sapfl/Informationresources/Speeches/WCMS_144758/lang--en/index.htm.

240. *UN at a Glance*, UNITED NATIONS, <http://www.un.org/en/aboutun/index.shtml> (last visited Mar. 18, 2013). To date, there are a total of 193 members in the United Nations, with South Sudan as the most recent addition in 2011. *Growth in United Nations membership, 1945 – present*, UNITED NATIONS, <http://www.un.org/en/members/growth.shtml> (last visited

Suppress, and Punish Trafficking in Persons, especially Women and Children (the “UN Protocol”), supplementing the Convention against Transnational Organized Crime (the “UN Convention”) on November 15, 2000.²⁴¹ To date, 154 countries are party to the UN Protocol and of the 154 countries, 117 have signed it.²⁴² The UN Protocol is the “first globally legally binding instrument with an agreed definition on trafficking in persons.”²⁴³ It requires ratifying States to criminalize the conduct set forth in Article 3 of the UN Protocol and to adopt anti-trafficking measures.²⁴⁴ To ensure that the ratifying States are complying with the UN Protocol, Article 32(3)(d)-(e) of the UN Convention establishes a Conference of Parties whose duties include a periodical review and examination of the implementation of the UN Convention and the UN Protocol and making recommendations when necessary.²⁴⁵ Reciprocally, each State is required to provide the Conference of Parties with information on the national measures adopted in implementing the Convention and the UN Protocol.²⁴⁶ Lastly, and most importantly, the UN Protocol adopts a human rights approach in which “the human rights of trafficked persons shall be at the centre of all efforts to combat trafficking and to protect, assist and provide

Mar. 18, 2013).

241. United Nations, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO (2004), <http://www.unodc.org/unodc/en/treaties/CTOC/> [hereinafter U.N. TOC Protocol]. The convention was supplemented with a total of three protocols. The two other protocols were the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms. It is important to note that before a State could become a party to the UN Protocol, the State must ratify the Convention. Gallagher, *supra* note 55, at 73. “A State Party to the Convention is not bound by a Protocol unless it also becomes party to that Protocol.” *Id.* The Convention and the UN Protocol are interpreted together. *Id.*; See also U.N. Protocol, *supra* note 56, at art. 1.

242. UNITED NATIONS TREATY COLLECTION, CHAPTER XVIII PENAL MATTERS: 12. A. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (Nov. 15, 2000) http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en. The United States signed the UN Protocol on December 13, 2000, and ratified it on December 3, 2005 following the Senate’s advice and consent on October 7, 2005. SISKIN & WYLER, *supra* note 5, at 17. “Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act.” *Glossary of Terms Relating to Treaty Actions*, UNITED NATIONS, http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#entry (last visited Mar. 18, 2013). Acceptance, approval, and accession have the same legal effect as ratification. *Id.*

243. U.N. TOC Protocol, *supra* note 241. See Part I.A. for the UN definition of trafficking in persons. *Id.*

244. *Id.* See also U.N. Protocol, *supra* note 56, at art. 3 & 5.

245. SCARPA, *supra* note 5, at 70; See also U.N. GENERAL ASSEMBLY, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: RESOLUTION / ADOPTED BY THE GENERAL ASSEMBLY, (2001), A/RES/55/25, art. 32, available at <http://www.unhcr.org/refworld/docid/3b00f55b0.html> (last visited Mar. 18, 2013) [hereinafter U.N. Convention].

246. U.N. Convention, *supra* note 245, at art. 32(5).

redress to those affected by trafficking.”²⁴⁷

2. *The European Union*

The European Union is an economic and political partnership of twenty-seven countries.²⁴⁸ “It [delivered] half a century of peace, stability, and prosperity, helped raise living standards, launched a single European currency [Euro],” and is progressively building a single Europe-wide market in which people, goods, services, and capital move among Member States as freely as within one country.²⁴⁹ Although the European Union was primarily formed for an economic purpose, it has evolved into an organization that promotes human rights and democracy as well.²⁵⁰ The three main pillars of the European Union are economic harmonization, a common security and foreign policy, and justice and home affairs.²⁵¹ On July 19, 2002, the Council of European Union adopted the Council Framework Decision on Combating Trafficking in Human Beings (the “EU Decision”), a legally binding instrument to combat human trafficking.²⁵² It required all the Member States to “harmonize their domestic criminal

247. Roza Pati, *States’ Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus and Russia*, 29 B.U. INT’L L.J. 79, 125 (2011).

248. *How the EU Works*, EUROPEAN UNION, http://europa.eu/about-eu/basic-information/index_en.htm (last visited Mar. 18, 2013). The twenty-seven countries or Members are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, and United Kingdom. *How the EU Works: Countries*, EUROPEAN UNION, http://europa.eu/about-eu/countries/index_en.htm (last visited Mar. 18, 2013).

249. *How the EU Works*, *supra* note 248.

250. *Id.*

251. OHCHR, *supra* note 236, at 17.

252. European Union: Council of the European Union, *Council Framework Decision 2002/629 on Combating Trafficking in Human Beings*, 19 July 2002, 2002/629/JHA, 2002 O.J. (L203), [hereinafter EU, *Council Framework Decision*], available at <http://www.unhcr.org/refworld/docid/3ddcfb7b2.html> (last visited Mar. 18, 2013) The Council of European Union “is where national ministers from each EU country meet to adopt law and coordinate policies.” See also European Union, COUNCIL OF EUROPEAN UNION, http://europa.eu/about-eu/institutions-bodies/council-eu/index_en.htm (last visited Mar. 18, 2013). The Council of European Union “passes EU laws, coordinates the broad economic policies of EU member countries, signs agreements between the EU and other countries, approves the annual EU budget, develops the EU’s foreign and defence policies, and coordinates cooperation between courts and police forces of member countries” *Id.* However, the Council of European Union should not be confused with another European Union institution called the European Commission. *Id.* “The European Commission is the [European Union’s] executive body and represents the interests of Europe as a whole (as opposed to the interests of individual countries).” *About the European Commission*, EUROPEAN COMM’N, http://ec.europa.eu/about/index_en.htm (last updated Nov. 16, 2012).

legislation” with the EU Decision before August 1, 2004.²⁵³ To ensure compliance, it obliged the Council to assess each Member State’s implementation of the EU Decision and to prepare a report detailing the assessment for the Commission.²⁵⁴ Furthermore, on June 4, 2009, the Council invited all Member States to participate in an informal EU network of National Rapporteurs or equivalent mechanisms, which had “the task of ...monitoring the implementation of measures envisaged in the Framework Decision.”²⁵⁵

Although the EU Decision represented a major step for the European Union in its fight against human trafficking, it has been criticized for primarily being a criminal justice response instead of being victim-centered.²⁵⁶ Thus, on April 5, 2011, the European Union adopted a new Directive (the “2011 Directive”) on preventing and combating trafficking in human beings and protecting victims, which replaced the 2002 Council Framework Decision.²⁵⁷ The 2011 Directive “takes a victim centered

253. Connie Rijken & Eefje de Volder, *The European Union’s Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings: A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law*, 25 CONN. J. INT’L L. 49, 55 (2009); See also *Council Framework Decision*, *supra* note 252, at art. 10. Member States are also required to provide “the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision” to the General Secretariat of the Council by August 1, 2004. *Id.*

254. EU, COUNCIL OF FRAMEWORK DECISION, *supra* note 252, at art. 10.

255. Gallagher, *supra* note 55, at 109.; See also *National Rapporteurs*, EUROPEAN COMM’N, <http://ec.europa.eu/anti-trafficking/section.action?sectionPath=National+Rapporteurs> (last updated Nov. 1, 2012); See also *European Comm’n Fight Against Trafficking in Human Beings, Council Conclusions on Establishing an Informal EU Network of National Rapporteurs* (June 4, 2009), available at http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FEU+Policy%2FCouncil+Conclusions+on+National+Rapporteur+Network+2009_en.pdf&fileName=Council+Conclusions+on+National+Rapporteur+Network+2009_en.pdf&fileType=pdf. In the 2011 EU Directive, it mandated Member States to take necessary measures to establish national rapporteurs or equivalent mechanisms to monitor the implementation of the Directive at the national level. See *infra* note 257, at art. 19.

256. Rijken & de Volder, *supra* note 253, at 49. Article 7 of the EU Decision only “outline[d] minimum protection measures for trafficking victims, establishing that the investigations and prosecutions of the offences covered by the Framework Decision should not be dependent on their report or accusation of the traffickers.” SCARPA, *supra* note 5, at 181. Thus, the lack of protection for victims of trafficking became one of the biggest criticisms for the EU Decision and also one of the primary reasons for the passage of the 2011 Directive, which repealed the EU Decision. Gallagher, *supra* note 55, at 99 & 106.

257. The European Parliament and the Council of the European Union, Directive 2011/36/EU, of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing, Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101/1), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> (last visited Mar. 18, 2013) “EU directives lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so.” *Application of EU Law: What Are EU Directives?*, EUROPEAN COMM’N,

approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of the implementation."²⁵⁸ Member States are required to "transpose [the Directive] into national legislation by April 6, 2013."²⁵⁹

3. *The Council of Europe*

The Council of Europe is an international organization comprised of forty-seven countries of Europe.²⁶⁰ "The primary aim of the Council of Europe is to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law."²⁶¹ Since the 1980s, the Council has actively fought trafficking in human beings.²⁶² On May 16, 2005, the Council of Europe adopted the Council of Europe Convention on Action against Trafficking in Human Beings (the "CoE Convention").²⁶³ The CoE Convention is the "only regional international treaty in this area that primarily focuses on the protection of the rights of the victim."²⁶⁴ Article 1

http://ec.europa.eu/eu_law/introduction/what_directive_en.htm (last updated June 25, 2012).

258. *Directive 2011/36/EU*, EUROPEAN COMM'N FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS, NEW EU DIRECTIVE TO FIGHT HUMAN TRAFFICKING, <http://ec.europa.eu/anti-trafficking/entity.action?id=77172b8d-5d04-4cf0-b276-49f733ab93c8> (last updated Dec. 19, 2011); The UN agencies also acknowledge and value the European Union for stepping up its efforts in terms of strengthening victim protection and focusing on prevention in the new Directive. UNODC, ET AL., Joint UN Commentary on the EU Directive: A Human Rights-Based Approach 16 (2011), available at <http://www.unwomen.org/wp-content/uploads/2011/12/UN-Commentary-EU-Trafficking-Directive-2011.pdf> [hereinafter UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE].

259. 2011 EU Directive, *supra* note 257, at art. 22. The 2011 EU Directive also contains implementation and reporting procedures. *Id.* at art. 22-23.

260. The forty-seven countries are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, The Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom. *The Council of Europe in Brief: 47 Countries, one Europe*, COUNCIL OF EUROPE, <http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en> (last visited Mar. 18, 2013).

261. *The Council of Europe in Brief: Our Objectives*, COUNCIL OF EUROPE, <http://www.coe.int/aboutCoe/index.asp?page=nosObjectifs&l=en> (last visited Mar. 18, 2013).

262. OHCHR, *supra* note 236, at 14.

263. COUNCIL OF EUROPE, COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, May 16, 2005, C.E.T.S 197, [hereinafter CoE Convention]. available at <http://www.unhcr.org/refworld/docid/43fded544.html> (last visited Mar. 18, 2013).

264. See OHCHR, *supra* note 236, at 14. The CoE Convention adopted the same definition of "trafficking in persons" and "trafficking in children" as the UN Protocol.

of the CoE Convention provides that the purposes of the CoE Convention are “to prevent and combat trafficking in human beings, while guaranteeing gender equality; to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution”²⁶⁵ To date, thirty-four of the forty-seven Member States have ratified the CoE Convention and an additional nine Member States have signed it.²⁶⁶ It is also open to ratification by the European Union and by States who are not members of the Council of Europe.²⁶⁷

Article 1(2) of the CoE Convention provides that “[i]n order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.”²⁶⁸ Article 36 of the CoE Convention creates a monitoring mechanism composed of two bodies: (1) the Group of Experts on Action against Trafficking in Human Beings (GRETA), which consists of ten to thirty-five highly qualified experts; and (2) the Committees of the Parties, a political body consisting of representatives from all the parties to the CoE Convention.²⁶⁹ Further, Article 38 sets out the rules and procedure for evaluating the

SCARPA, *supra* note 5, at 163; *See also* CoE Convention, *supra* note 263, at 37. The Council of Europe acknowledges in their Explanatory Report on the CoE Convention that in order to effectively combat human trafficking and help its victim, it is important to adopt an internationally recognized definition for the term, “trafficking in human beings.” *Id.* However, unlike the UN Protocol, the CoE Convention “applies to trafficking cases irrespective of whether they involve organized crime or are transnational in nature.” Pati, *supra* note 247, at 122.

265. CoE Convention, *supra* note 263, at art. 1. “Trafficking in human beings can be seen as both a violation of human rights and a form of gender discrimination and violence against women and girls.” UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, *supra* note 258, at 20.

266. The thirty-four States that ratified the CoE Convention are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Ireland, Italy, Latvia, Luxembourg, Malta, Moldova, Montenegro, The Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, The former Yugoslav Republic of Macedonia, Ukraine, and United Kingdom. *Council of Europe Convention on Action Against Trafficking in Human Beings C.E.T.S No. 197*, COUNCIL OF EUROPE TREATY OFFICE, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=04/11/2011&CL=ENG> (last updated Apr. 11, 2011) [hereinafter Council of Europe Treaty Office]. “Ratification is an act by which the State expresses its definitive consent to be bound by the treaty. Then, the State Party must respect the provisions of the treaty and implement it.” *Glossary of the Treaties*, COUNCIL OF EUROPE, http://conventions.coe.int/?pg=/Treaty/Glossary_en.asp (last visited Mar. 18, 2013).

267. *See* OHCHR, *supra* note 236, at 14. To date, neither the European Union nor any non-member State (Belarus, Canada, Holy See, Japan, Mexico, United States of America) has signed the CoE Convention. *See also* Council of Europe Treaty Office, *supra* note 266.

268. CoE Convention, *supra* note 263, at art. 1(2).

269. *Id.* at art. 36-37. *See also* SCARPA, *supra* note 5, at 158.

implementation of the CoE Convention.²⁷⁰ Specifically, it requires GRETA to evaluate the Parties' implementation of the CoE Convention by "conducting . . . an evaluation procedure divided into rounds, so that each round can be dedicated to the in-depth analysis of the implementation by States Parties of some specific provisions of the Convention."²⁷¹ It further granted GRETA the discretion to determine the length of each round.²⁷² For example, in February 2010, GRETA commenced its first evaluation round by sending the first ten countries that became Parties to the CoE Convention a questionnaire for information.²⁷³ The first round evaluation lasts four years and is currently scheduled to end in 2013.²⁷⁴

B. A Comparative Analysis of the Un Protocol, the 2011 Directive, and The CoE Convention

The following sections will compare and contrast the UN Protocol, the 2011 Directive, and the CoE Convention in two aspects: protection of the victim and prosecution.

1. Protection

"Victims who break free from their traffickers' control generally find themselves in a position of great insecurity and vulnerability."²⁷⁵ The UN Human Rights - Office of the High Commissioner of Human Rights released a Commentary for the Recommended Principles and Guidelines on Human Rights and Human Trafficking, which provides that the "[s]tates

270. CoE Convention, *supra* note 263, at art. 38.

271. *Id.* See also SCARPA, *supra* note 5, at 158.

272. CoE Convention, *supra* note 263, at art. 38.

273. *Action Against Trafficking in Human Beings: 1st Evaluation Round: Timetable 2010 - 2013*, COUNCIL OF EUROPE, http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/Timetable_en.asp#TopOfPage (last visited Mar. 18, 2013). The first ten countries were Republic of Moldova, Romania, Austria, Albania, Georgia, Slovak Republic, Bulgaria, Croatia, Denmark, and Cyprus. *Id.* The deadline for the first group to reply by was September 1, 2010. *Id.* In February 2011, the first evaluation round questionnaire was sent to a second group consisting of the next ten parties to the CoE Convention. *Id.* The second group of countries was France, Bosnia and Herzegovina, Norway, Malta, Portugal, Latvia, Armenia, Montenegro, Poland, and United Kingdom. *Id.* The deadline for the second group to reply by was September 1, 2011. In February 2012, the first evaluation round questionnaire was sent to the third group of the next ten parties to the CoE Convention. *Id.* The third group of countries was Spain, Luxembourg, Serbia, Belgium, the Former Yugoslav Republic of Macedonia, Slovenia, The Netherlands, Sweden, Azerbaijan, and Ireland. *Id.* The deadline for the third group to reply by was June 1, 2012. *Id.* Tentatively, in February of 2013, the first evaluation round questionnaire was scheduled to be sent to the fourth and last group of countries (Italy, San Marino, Ukraine, Andorra, Iceland, and Finland). *Id.*

274. *Id.*

275. Gallagher, *supra* note 55, at 297.

shall ensure that trafficked persons are protected from further exploitation and harm and to have access to adequate physical and psychological care.”²⁷⁶ One author notes that

[t]he nature of the obligation on States to provide care and support of victims of trafficking is inextricably tied up with their status as victims of crime and victims of human rights violations – a status that, as noted above, provides such victims with a right to be treated with humanity and with respect for their dignity and human rights, as well as with an entitlement to measures that ensure their well-being and avoid re-victimization.²⁷⁷

The UN Protocol, the 2011 Directive, and the CoE Convention respectively contain provisions that protect and assist victims of trafficking. Examples of these provisions include prohibition against prosecution and detention of the victim,²⁷⁸ better identification of the victim,²⁷⁹ and protecting the privacy and identity of the victim.²⁸⁰ The following sections will focus on the physical and psychological care and access to legal counsel provisions to highlight the victim-centered aspect of the UN Protocol, the 2011 Directive, and the CoE Convention.

First, “[r]ecovery is a crucial form of reparation for trafficked persons, which includes medical and psychological care, as well as legal and social services.”²⁸¹ The UN Protocol, the 2011 Directive, and the CoE Convention each provide for victim care and support. For example, while Article 6 of the UN Protocol does not obligate State Parties to provide any specific care, it does require the State Parties to “consider implementing

276. U.N. HUMAN RIGHTS, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING: COMMENTARY 142 (2010), [hereinafter OHCHR, RECOMMENDED PRINCIPLES AND GUIDELINES], available at http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf.

277. Gallagher, *supra* note 55, at 305.

278. 2011 EU Directive, *supra* note 257, at art. 8. See also CoE Convention, *supra* note 263, at art. 12 & 26.

279. 2011 EU Directive, *supra* note 257, at art. 11(4) & 18(3). See also CoE Convention, *supra* note 263, at art. 10. See also Joy Ngozi Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, Human Rights Council, ¶ 64, U.N. Doc. A/HRC/17/35 (Apr. 13, 2011), [hereinafter *Report of the Special Rapporteur*], available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-35.pdf>. States should ensure that relevant authorities are trained in the identification of the trafficked person in order to ensure that trafficked persons have the opportunity to seek remedies as victims of human rights violations.

280. U.N. Protocol, *supra* note 56, at art. 6(1); 2011 EU Directive, *supra* note 257, at art. 12(3); CoE Convention, *supra* note 263, at art. 11.

281. *Report of the Special Rapporteur*, *supra* note 279, at ¶ 24.

measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”²⁸² It suggested the following measures be provided while requiring the State Parties to also take into account the age, gender, and special needs of the victim, especially the special needs of children: appropriate housing; legal advice in the victim’s language; medical, psychological and material assistance; and employment, educational, and training opportunities.²⁸³

Article 11(5) of the 2011 Directive, unlike the UN Protocol, obligates Member States to provide assistance and support services on a consensual and informed basis.²⁸⁴ A human rights approach, which the 2011 Directive adopted, requires that provision of care and support to the victim be informed and non-coercive.²⁸⁵ Article 11(5) of the 2011 Directive mandated Member States to ensure that victims of trafficking, “including persons provisionally identified as victims of trafficking or at risk of being trafficked” be provided with the following assistance and support: appropriate and safe accommodation, material assistance such as food and clothing, medical and psychological treatment, counseling and information related to health care and their legal rights, and translation and interpretation services.²⁸⁶

Similar to the UN Protocol, the 2011 Directive further requires Member States to attend to victims with special needs under Article 11(7).²⁸⁷ However, the 2011 Directive provides, more specifically than the UN Protocol, that victims with special needs includes those who are pregnant, disabled, have a mental or psychological disorder, or are suffering from a serious form of psychological, physical or sexual violence.²⁸⁸ Moreover, Member States are to ensure that the assistance and support for the victim is not made conditional on his or her willingness to cooperate in a criminal investigation or prosecution.²⁸⁹ However, this is qualified with the additional language “without prejudice to Directive 2004/81/EC or similar national rules.”²⁹⁰ Therefore, access to support and assistance under

282. U.N. Protocol, *supra* note 56, at art. 6(3).

283. *Id.* at art. 6(4).

284. 2011 EU Directive, *supra* note 257, at art. 11(5).

285. UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, *supra* note 258, at 54. See also 2011 EU Directive, *supra* note 257, at pmb. ¶ 7.

286. UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, *supra* note 258, at 54. See also 2011 EU Directive, *supra* note 257, at art. 11(5).

287. 2011 EU Directive, *supra* note 257, at art. 11(7).

288. *Id.*

289. *Id.* at art. 11(3).

290. *Id.* Directive 2004/81/EC provides victims with temporary residence but conditional on their cooperation with the authorities. However, the Joint UN Commentary on the EU Directive has stated that such conditions “not only compromise[s] trafficked persons’ rights,

the 2011 Directive is not entirely unconditional.

Similar to the 2011 Directive, Article 12 of the CoE Convention mandates each Party to provide on a consensual and informed basis the following assistance and support measures for victims of trafficking, including those who have been “provisionally identified as such[, that]. . . cannot be reserved only for those agreeing to act as witnesses[.]”²⁹¹

[A]ppropriate and secure accommodation, psychological and material assistance . . . ; access to emergency medical treatment; translation and interpretation services, when appropriate; counseling and information, in particular as regards to their legal rights and the services available to them, in a language that they can understand; assistance to enable their rights and interest to be presented and considered at appropriate stages of criminal proceedings against offenders; [and] access to education for children.²⁹²

Requiring State Parties to provide assistance on an unconditional basis is a critical distinction that separates the CoE Convention from the 2011 Directive.²⁹³ Placing conditions on victim assistance runs contrary to a victim-centered or human rights based approach.²⁹⁴ It “denies the legal nature of both the [victim’s] entitlement [to receive assistance as a victim of a human rights violation] and [a reciprocal] obligation [of the State to provide such assistance].”²⁹⁵

The Explanatory Report of the CoE Convention (the “Explanatory Report”) provides the rationale for the aforementioned assistance measures.²⁹⁶ For example, it recommends special protected shelters for victims of trafficking when appropriate and secure accommodation.²⁹⁷ Such

including to full recovery, but may also be counterproductive from a law enforcement perspective since it is often unclear what ‘cooperation’ is expected from trafficked persons.” UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, *supra* note 258, at 46-47.

291. Gallagher, *supra* note 55, at 116.

292. CoE Convention, *supra* note 263, at art. 12(1).

293. *Id.* at art. 12(6). While the UN Protocol does not make any reference to this, the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council does state that “protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.” Office of High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Addendum*, at 3, U.N. Doc. E/2002/68/Add.1 (May 20, 2002), available at <http://www.un.org/ga/president/62/ThematicDebates/humantrafficking/N0240168.pdf>. [hereinafter U.N. Economic and Social Council, *Recommended Principles*]. Therefore, it can be inferred that the United Nations is supportive of this principle of separating protection and support from legal cooperation. Gallagher, *supra* note 55, at 299.

294. UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, *supra* note 258, at 47.

295. Gallagher, *supra* note 55, at 298.

296. See generally COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264.

297. *Id.* at ¶ 152; See also Organization for Security and Co-operation in Europe, OSCE

shelters would provide stability and security to the victim, round-the-clock victim reception, immediate response to emergencies, and qualified personnel who can assist the victim.²⁹⁸ It also highlights the importance of language assistance for victims who do not speak the language of the destination country in order to minimize the feeling of isolation and to ensure that they are able to understand their legal rights.²⁹⁹ Moreover, it acknowledges the significance of providing psychological assistance to help the victim overcome trauma and reintegrate into society.³⁰⁰ Therefore, in comparison to the 2011 Directive and the UN Protocol, the CoE Convention is more explicit and substantive in terms of assisting the victim's recovery. Overall, providing comprehensive care and support is essential to an effective recovery for the victim and an obligation to the victim.

Second, access to legal assistance is critical in “ensur[ing] that victims are able to participate in legal proceedings freely, safely, and on the basis of full information.”³⁰¹ Both the 2011 Directive and the CoE Convention contain a provision for free legal counseling and information for victims of human trafficking. For example, Article 12 of the 2011 Directive requires Member States to ensure that victims of trafficking have access without delay to legal counseling regarding legal representation and for claiming compensation.³⁰² Having access “without delay” to legal counseling is a key element that distinguishes the 2011 Directive from the UN Protocol and the CoE Convention. It serves as a “safeguard against undue delays” and ensures that “legal aid and legal counseling are to be granted without delay, including before a decision is reached regarding the financial means of the victim.”³⁰³ The 2011 Directive further obligates free legal counseling and legal representation when the victim does not have sufficient financial resources.³⁰⁴ Often, trafficked persons will not be able to afford legal counsel; the 2011 Directive takes this into account.³⁰⁵

Action Plan to Combat Trafficking in Human Beings, July 24, 2003, Decision No. 557; PC.DEC/557, available at: <http://www.unhcr.org/refworld/docid/4a54bc2dd.html> (last visited Mar. 18, 2013). It also explained that shelters can “provide safety, access to independent advice and counseling in a language known by the victim, first hand medical assistance and an opportunity for reflection delay after the experienced trauma.” *Id.* § 4.1. It further stated that access to shelters for all victims of trafficking should be provided regardless of their “readiness to co-operate with authorities in investigations.” *Id.* § 4.2. The Organization for Security and Cooperation in Europe is comprised of fifty-six countries and is the “world’s largest regional security organization.” Org. for Sec. & Cooperation in Europe, *Who We Are*, <http://www.osce.org/who> (last visited Mar. 18, 2013).

298. COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at ¶ 154.

299. *Id.* at ¶158.

300. *Id.* at ¶156.

301. UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, *supra* note 258, at 66.

302. 2011 EU Directive, *supra* note 257, at art. 12.

303. *See supra* note 301.

304. 2011 EU Directive, *supra* note 257, at art. 12.

305. *Report of the Special Rapporteur*, *supra* note 279, ¶ 47. *See also supra* notes 99-

Article 15(2) of the CoE Convention, while similar to Article 12 of the 2011 Directive in mandating each Party to provide legal assistance and free legal aid to victims, differs in one aspect.³⁰⁶ The Explanatory Report clarifies that Article 15(2) “does not give the victim an automatic right to free legal aid. It is for each Party to decide the requirements for obtaining such aid.”³⁰⁷ However, it also states that Parties must additionally consider Article 6 of the Council of Europe’s European Convention on Human Rights (the “ECHR”) when implementing Article 15(2).³⁰⁸ Article 6 of the ECHR provides for the right to a fair trial.³⁰⁹ The Explanatory Report provides that “[e]ven though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings,” the European Court of Human Rights case law also recognizes the right to free legal assistance in a civil matter provided by Article 6(1) of ECHR is determined by the Court.³¹⁰ The Court recognizes that “effective access to a court may necessitate free legal assistance.”³¹¹ Therefore, in determining whether to grant free legal assistance, the Court considers the “complexity of the procedure” and the “emotional character of a situation” to discern a person’s ability to present their case.³¹² The Explanatory Report concludes that “even in the absence of legislation granting free legal assistance in civil matters, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.”³¹³ Thus, while the CoE Convention requires State Parties to provide legal

102.

306. CoE Convention, *supra* note 263, at art. 15(2).

307. COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at 53.

308. *Id.* The European Convention on Human Rights was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953. The Convention gave effect to certain of the rights stated in the Universal Declaration of Human Rights and established an international judicial organ [European Court of Human Rights] with jurisdiction to find against States that do not fulfill their undertakings. COUNCIL OF EUROPE, EUROPEAN COURT OF HUMAN RIGHTS, THE ECHR IN 50 QUESTIONS 5 (2012), available at http://www.echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ_ENG_JANV2012.pdf. The European Convention on Human Rights is applicable at the national level. It has been incorporated into the legislation of the States Parties, which have undertaken to protect the rights defined in the Convention. Domestic courts therefore have to apply the Convention. Otherwise, the European Court of Human Rights would find against the State in the event of complaints by individuals about failure to protect their rights. *Id.* “States that have ratified the Convention, also known as ‘States Parties,’ have undertaken to secure and guarantee to everyone within their jurisdiction, not only their nationals, the fundamental civil and political rights defined in the Convention.” *Id.*

309. *European Convention for the Protection of Human Rights and Fundamental Freedoms*, COUNCIL OF EUROPE, (1950), available at <http://www.unhcr.org/refworld/docid/3ae6b3b04.html> (last visited Mar. 18, 2013).

310. COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at ¶196.

311. *Id.*

312. *Id.*

313. *Id.*

assistance and free legal aid to its victims, such access still depends on the conditions set by State Parties and the standards of Article 6 of the ECHR.

Unlike the 2011 Directive and the CoE Convention, the UN Protocol does not specifically contain a provision for free legal assistance to victims of trafficking. The UN Protocol does at least require each State Party to ensure that their domestic legal or administrative system contain measures that provide victims of trafficking with information on relevant court and administrative proceedings and assistance to enable them to testify in criminal proceedings against the trafficker.³¹⁴ However, on April 13, 2011, Joy Ngozi Ezeilo, the UN Special Rapporteur on trafficking in persons, especially women and children, submitted a report to the UN Human Rights Council in which she recommended that States Parties provide victims of trafficking with free legal assistance because it is an “essential precondition for all trafficked persons to exercise their right to an effective remedy.”³¹⁵ Furthermore, she recommended that State Parties ensure that the lawyers who are providing such assistance are adequately trained in the rights of trafficked persons and able to effectively communicate with victims of human rights violations.³¹⁶ Overall, legal assistance provided should be timely, free, and effective to ensure that the victim is meaningfully represented.

2. Prosecution

“A criminal justice response to trafficking . . . seeks both to end impunity for traffickers and to secure justice for victims”³¹⁷ To effectively combat human trafficking, criminalization is an essential component to punish the trafficker and secure justice for the victim.³¹⁸ However, even if the trafficker is arrested or punished, the illegally procured proceeds of the trafficking crime are often still within the control of the trafficking network, thus sustaining the criminal enterprise’s activities.³¹⁹ Part of securing justice for the victim includes seizing the proceeds of the trafficking crime in order to ensure that the trafficker is not rewarded for his or her unjust activities.³²⁰

[A]ssets and proceeds of trafficking could include property and monies such as: profits from the services and exploitation of the victim; costs paid by victims (including

314. U.N. Convention, *supra* note 245, at art. 25(1)-(3).

315. *Report of the Special Rapporteur, supra* note 279, ¶ 74.

316. *Id.*

317. Gallagher, *supra* note 55, at 370.

318. *Id.* at 371.

319. *Id.* at 400

320. *Id.*

for passports, visas, or transport), for example where the victim has paid for illegally facilitated migration and subsequently became a victim of trafficking; vehicles used to transport victims; factories, brothels, boats and farms where the exploitation took place; profits from the sale or resale of a person from one trafficker to another; and the value of unpaid services and salaries that would otherwise have been paid to the persons exploited.³²¹

Thus, the following sections will focus on the asset confiscation aspect of the UN Protocol, the 2011 Directive, and the CoE Convention. State Parties that ratified both the UN Convention and the UN Protocol are required, under Article 12 of the UN Convention, to adopt measures in their respective legal systems for the confiscation of proceeds derived from the trafficking crime and the instrumentalities that were used in the commission of such crime.³²² The UN Convention also establishes “a number of mechanisms to enhance international cooperation with respect to confiscation in order to eliminate advantages to criminals presented by national borders and differences in legal systems.”³²³ These mechanisms ensure that traffickers do not have a safe haven to hide their illegal gains.³²⁴ While the UN Convention does not specifically mandate how State Parties are to deal with the confiscated proceeds or property, it does provide that they are to “give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime”³²⁵ The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking (the “UN Recommended Principles and Guidelines”) further supports this principle by encouraging State Parties to make legislative provisions that specifically provide for the confiscated proceeds to be used to benefit the victim.³²⁶ More importantly, it recommends the use of confiscated assets to finance a victim compensation fund.³²⁷ The compensation fund would make

321. *Id.* at 400-401.

322. U.N. Convention, *supra* note 245, at art. 12. “A State that is a party to the Convention and not the [UN] Protocol would be required to establish that trafficking, is under its law, a ‘serious crime’ as defined in the Convention for the provisions to apply to trafficking offences.” OHCHR, RECOMMENDED PRINCIPLES AND GUIDELINES, *supra* note 276, at 221.

323. OHCHR, RECOMMENDED PRINCIPLES AND GUIDELINES, *supra* note 276, at 221. These mechanisms “enable countries to give effect to foreign freezing and confiscation orders and [allow] countries [to] work together in recovering criminal assets” Gallagher, *supra* note 55, at 400. *See* U.N. Convention, *supra* note 245, at art. 13.

324. Gallagher, *supra* note 55, at 400.

325. U.N. Convention, *supra* note 245, at art. 14(2).

326. U.N. Economic and Social Council, *Recommended Principles*, *supra* note 293, at 8.

327. *Id.*

the trafficker pay for the crime and provide reparations to the victim.

Similarly, Article 7 of the 2011 Directive also mandates its Member States to take necessary measures to ensure their local authorities are equipped to seize and confiscate the instrumentalities and proceeds from the trafficking offenses.³²⁸ The Preamble of the 2011 Directive also emphasizes that the Member States should make full use of existing international legal instruments on asset confiscation in combating human trafficking.³²⁹ Thus, it can be inferred that the 2011 Directive endorses the use of supplementary legislative tools to fortify the Member States' ability to confiscate the proceeds from traffickers. More importantly, the 2011 Directive takes a step further than the UN Recommended Principles and Guidelines and encourages Member States to use the confiscated instrumentalities and proceeds from the offenses under this Directive to "support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities"³³⁰ Therefore, in addition to providing compensation for the victim, the confiscated proceeds and instrumentalities can also fund other victim assistance and law enforcement programs.

Article 23(3) of the CoE Convention also requires State Parties to adopt legislative or other measures to allow confiscation of instrumentalities and proceeds derived from the trafficking offenses.³³¹ The

328. 2011 EU Directive, *supra* note 257, at art. 7.

329. *Id.* at pmb1.¶ 13. The existing instruments are (1) Council of Europe, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, Nov. 8, 1990, C.E.T.S 141, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/141.htm> (last visited Mar. 2, 2012) [hereinafter *Convention on Laundering*]; (2) Council Framework Decision 2001/500/JHA, of the Council of European Union of 26 June 2001 on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of Instrumentalities and Proceeds of Crime, 2001 O.J. (L182) 1 - 2, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:182:0001:0002:EN:PDF> [hereinafter Council Framework Decision 2001], and (3) Council Framework Decision 2005/212/JHA, of the Council of European Union of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, 2005 O.J. (L68) 49, 51, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:068:0049:0051:EN:PDF> [hereinafter Council Framework Decision 2005]. Article 3 of the Council Framework Decision 2005 extended the powers of confiscation to an offense committed within the Council Framework Decision 2001 and also the Council Framework Decision 2002 on combating trafficking in human beings. *Id.* at art. 3. See Council Framework Decision, *supra* note 252 on combat trafficking in human beings.

330. 2011 EU Directive, *supra* note 257, at pmb1. ¶ 13.

331. CoE Convention, *supra* note 263 at art. 23(3). The Explanatory Report provides that this provision correlates with the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS No. 141] in that "confiscating the proceeds of crime is an effective anti-crime weapon." COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 263, at 61. Article 1 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime provides the definitions for the following terms: proceeds, property, instrumentalities, and confiscation. *Convention on Laundering, supra* note 329, at art. 1(a)-(d).

CoE Convention recognizes that trafficking in human beings is primarily for financial profit. Therefore, measures depriving the traffickers of such assets are necessary to successfully combat human trafficking.³³² Similar to the 2011 Directive and the UN Recommended Principles and Guidelines, the CoE Convention suggests that the confiscated assets could be used to establish a “fund for victim compensation”³³³ The Explanatory Report explains that even though a court may order a trafficker to compensate the victim, victims are rarely compensated because the trafficker has disappeared or has declared bankruptcy.³³⁴ Thus, Article 15 the CoE Convention requires State Parties to guarantee compensation for the victim, and proposes the compensation fund as a possible means to facilitate that guarantee.³³⁵

Furthermore, similar to the 2011 Directive, the CoE Convention also suggests that the confiscated assets could finance “measures or programmes for social assistance to and social integration of victims.”³³⁶ However, upon a closer examination, the CoE Convention in contrast to the 2011 Directive, does not suggest that the confiscated assets be used for law enforcement counter-trafficking activities.³³⁷ Therefore, it can be inferred that the 2011 Directive takes a broader approach to include funding for law enforcement activities from the confiscated assets, while the CoE Convention focuses more on victim compensation and recovery. Overall, asset confiscation can potentially serve as an effective method in disabling the trafficker’s criminal enterprise, and provide funding for victim and law enforcement assistance.

IV. RECOMMENDATIONS

While Indiana toughened its stance against sex trafficking of a minor with increased penalties and jail time, the question remains, “What happens to the instrumentalities and profits derived from the trafficking crime?” This Note recommends that Indiana create an asset forfeiture provision in its human trafficking laws which would permit the forfeiture of instrumentalities and proceeds derived from the trafficking crime. Such deprivation decreases the profits that sustain the trafficker’s criminal activity and provides the state with revenue to finance a human trafficking victims’ fund. Assets from the trafficking victims fund can finance victim services and law enforcement activities. The following sections discuss in

332. COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at 61.

333. CoE Convention, *supra* note 263, at art. 15(4).

334. COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at 53.

335. CoE Convention, *supra* note 263, at art. 15(4); *See also* COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at 53.

336. COUNCIL OF EUROPE, EXPLANATORY REPORT, *supra* note 264, at 53.

337. *Id.*

greater detail why Indiana should adopt an asset forfeiture provision into their human trafficking law.

A. Cutting the Lifeblood of the Trafficker

Indiana should adopt an asset forfeiture provision into their human trafficking laws as a way to undermine the human trafficking enterprises. By confiscating the illicit profits and removing the instrumentalities of the crime from circulation, asset forfeiture “strikes at the very core of criminal organizations.”³³⁸ For example, asset forfeiture has been instrumental in the fight against drug trafficking.³³⁹ Profits are the driving force behind drug trafficking and racketeering.³⁴⁰ International drug trafficking syndicates generate millions of US dollars from the smuggling and selling of illegal drugs in the United States.³⁴¹ These illicit profits fuel and sustain the drug trafficking enterprise.³⁴² Asset forfeiture allows law enforcement to remove the profits of the crime and “to ensure that ‘crime does not pay.’”³⁴³

Similarly, asset forfeiture is integral to the fight against human trafficking.³⁴⁴ Primarily, human trafficking is a profit-driven, low-risk crime.³⁴⁵ In 2005, the ILO estimated that trafficked persons forced into or subject to economic exploitation generated \$4 billion in annual profits.³⁴⁶ It also estimated \$28 billion in annual profits from forced commercial sexual exploitation, with \$13.3 billion generated within industrialized countries.³⁴⁷

When individuals are willing to buy commercial sex, they create a market and make it profitable for traffickers to sexually exploit children and adults. When consumers are willing to buy goods and services from industries that rely on forced labor, they create a profit incentive for labor traffickers to maximize revenue with minimal production

338. *Oversight of Federal Asset Forfeiture: Its Role in Fighting Crime Before the Subcomm. on Criminal Justice Oversight of the Comm. on the Judiciary*, 106TH CONG. 31 (1999) (statement of Sen. Patrick Leahy) available at <http://www.gpo.gov/fdsys/pkg/CHRG-106shrg66959/pdf/CHRG-106shrg66959.pdf> [hereinafter *Oversight of Federal Asset Forfeiture*].

339. *Id.* at 1.

340. *Id.*

341. *Id.* at 39.

342. *Id.* at 35.

343. *Id.*

344. Gallagher, *supra* note 55, at 400.

345. *Id.*

346. FATF, *supra* note 83, at 16.

347. *Id.*

costs.³⁴⁸

In addition, unlike drug trafficking where the trafficker has to “constantly restock their product as their commodity may be sold only once,” the human trafficker can repeatedly exploit the trafficked person.³⁴⁹ In other words, the human trafficker can sell and resell the trafficked person, while a drug trafficker has to expend time and resources in manufacturing the illegal drug again and run the risk of law enforcement discovering their illicit activities. Therefore, while drug trafficking may be very profitable, there are substantial risks.³⁵⁰ Alternatively, human trafficking is a low-risk crime.³⁵¹ Factors such as lack of public awareness of the issue, law enforcement not adequately trained to respond, ineffective laws, lack of prosecution or investigation of the crime, and victims fearing reprisal against themselves and their families distinguish human trafficking as a low-risk crime.³⁵² Therefore, the combination of substantial profits and low risks makes human trafficking an appealing crime to a trafficker. Asset forfeiture raises the risks and lowers the profits and incentive for a criminal to either get involved with or continue the trafficking activity.³⁵³

Moreover, the illicit profits derived from the sale and resale of a person not only sustains the trafficking enterprise, but it also fuels other related crimes.³⁵⁴

Criminal groups develop “horizontal interdependencies” . . . “which refers to the connections established among different activities by the same criminal organization and indicates a pattern of diversification. Criminal enterprises make use of the skills, routes, existing contacts and corrupt networks developed in certain markets in specific countries and expand into other illicit markets.”³⁵⁵

The criminal enterprises involved in human trafficking are often linked to migrant smuggling, extortion, document fraud and forgery, money laundering, auto theft and drug trafficking.³⁵⁶ Traffickers have also been

348. *Why Trafficking Exists*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview/why-trafficking-exists> (last visited Mar. 18, 2013).

349. SHELLEY, *supra* note 7, at 87.

350. *Id.* at 88.

351. *Id.* at 89.

352. *See generally, Why Trafficking Exists, supra* note 348.

353. Gallagher, *supra* note 55, at 400.

354. 2005 TIP REPORT, *supra* note 141, at 13-14.

355. ALEXIS ARONOWITZ ET AL., ORG. FOR SECURITY AND CO-OPERATION IN EUROPE, ANALYSING THE BUSINESS MODEL OF TRAFFICKING IN HUMAN BEINGS TO BETTER PREVENT THE CRIME 27 (2010) [hereinafter OSCE, ANALYSING THE BUSINESS MODEL].

356. *Id.* Konrad, *supra* note 6, at 80.

known to force their victims to commit illegal activities such as stealing and drug trafficking.³⁵⁷ Therefore, criminal fines and imprisonment are inadequate to fight human trafficking unless the proceeds of the trafficking crime are removed and the trafficking enterprise is disabled.³⁵⁸ Asset forfeiture ensures that the proceeds from the trafficking offense are not used to perpetuate related criminal activities in addition to the trafficking offense.

Additionally, asset forfeiture could take the instrumentalities of crime out of circulation.³⁵⁹ For example, if a drug dealer uses a house to sell drugs to children as they pass by on the way to school, the removal of the residence as a drug source deters the crime and helps ensure the safety of the community.³⁶⁰ Similarly, the forfeiture of real property prevents the trafficker's enterprise from continuing with illegal activities such as prostitution.³⁶¹ Furthermore, forfeiture of a vehicle, aircraft, or vessel denies the trafficker the ability to transport victims to different locations for the purposes of exploitation.³⁶² Therefore, asset forfeiture removes the instrumentalities of crime and impedes the trafficker from expanding criminal activities.

The removal of financial assets is also important in the fight against human trafficking. Financial assets are the lifeblood of the human trafficking enterprise and could serve as alternative evidence of criminal activity.³⁶³ For example, the financial assets can "substantiate or corroborate a case of human trafficking . . . by demonstrating to the court that the income of an individual or of a legal person far exceeds that which can be explained by legitimate sources."³⁶⁴ Therefore, asset forfeiture not only ensures that the trafficker is not benefiting from their illegal gain, but also serves as evidence to support the criminal conviction of the trafficker.³⁶⁵

Lastly, asset forfeiture has proven an effective tool in confiscating the proceeds and instrumentalities of the trafficking enterprise in the United States and internationally.³⁶⁶ For example, in *United States v. Maksimenko*, Michail Aronov forfeited \$641,500 and paid over \$1 million in restitution after a jury convicted him for operating a human trafficking ring in which he forced Eastern European women to work as exotic dancers in Detroit-

357. OSCE, ANALYSING THE BUSINESS MODEL, *supra* note 355, at 27.

358. Gallagher, *supra* note 55, at 400. *See also* 2005 TIP REPORT, *supra* note 141, at 13-14.

359. *Oversight of Federal Asset Forfeiture*, *supra* note 338, at 18.

360. *Id.*

361. *See supra* notes 46-49.

362. *See supra* note 39.

363. Konrad, *supra* note 6, at 84.

364. Gallagher, *supra* note 55, at 400.

365. *Id.*

366. *See infra* notes 367-79. *See also* Dep't of Homeland Security, *Asset Forfeiture Branch*, <http://www.ice.gov/asset-forfeiture/> (last visited Mar. 18, 2013).

area strip clubs.³⁶⁷ The court also ordered another defendant, Aleksandr Maksimenko, to forfeit \$957,050 in cash.³⁶⁸ In *United States v. Zavala and Ibanez*, Defendants Mariluz Zavala and Jorge Ibanez forfeited a residence valued at \$175,000 and bank accounts containing \$30,000 generated from their criminal activities after pleading guilty to conspiracy to commit forced labor, document servitude, engaging in extortionate credit transactions and transferring false alien registration cards.³⁶⁹

Internationally, asset forfeiture has also been a successful measure in confiscating the proceeds and instrumentalities of the trafficking enterprise. For example, Romania, in accordance with the UN Protocol and the EU Decision, criminalized all forms of human trafficking through Law No. 678/2001 on Preventing and Combating Trafficking in Human Beings.³⁷⁰ Article 19 of Law No. 678/2001 “regulates the seizure of assets used for committing trafficking in human beings and the proceeds from such crime.”³⁷¹ In 2007, the officers from the Organized Crime Squad of Pitesti, Romania, investigated and discovered that the Oancea Clan, a well-known clan in the criminal community, operated a sex trafficking ring from 2003 to 2007 in Romania, Spain, and Italy.³⁷² As a result of an indictment, seventeen defendants appeared before the court in criminal proceedings.³⁷³ In addition, the prosecutor of Pitesti, Romania, ordered the seizure of six apartments and lands in Pitesti, two villas in communes, and gold and money, which in total had a total value of 1,350,000 Euros (≈ \$1,766,829.74 USD).³⁷⁴

Furthermore, in evaluating each country’s implementation of the CoE Convention, on December 20, 2011 GRETA released a report that acknowledged Denmark’s compliance with the asset confiscation provision of the CoE Convention.³⁷⁵ Article 75 and 76 of the Danish Criminal Code

367. *Case Updates*, ANTI-TRAFFICKING NEWS BULLETIN (U.S. Dep’t of Justice- Civil Rights Div.), Summer/Fall 2007, at 7, available at http://www.humantrafficking.org/uploads/publications/ATNB_Sept07.pdf. Defendant Aranov was charged with conspiring to violate the civil rights of the dancers through involuntary servitude, immigrant and money laundering conspiracies. *Id.*

368. *Id.* at 7-8.

369. 2005 ATT’Y GEN. REP. 19, available at <http://www.justice.gov/archive/ag/annualreports/tr2005/agreporhumantrafficking2005.pdf>.

370. VERONIKA BILGER ET AL, INT’L CTR. FOR MIGRATION POLICY DEV., STUDY ON THE ASSESSMENT OF THE EXTENT OF DIFFERENT TYPES OF TRAFFICKING IN HUMAN BEINGS IN EU COUNTRIES, 225 (2010), available at <http://research.icmpd.org/1465.html>.

371. *Id.*

372. DUMITRU LICSandRU ET AL, ROMANIA: MINISTRY OF THE INTERIOR AND ADMIN. REFORM, REPORT ON TRAFFICKING IN PERSONS IN ROMANIA: 2007, 77 (2008), <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Romania> pdf.

373. *Id.*

374. *Id.*; XE, *Currency Converter* (Mar. 12, 2012), available at <http://www.xe.com/ucc/convert/?Amount=1350000&From=EUR&To=USD>.

375. See GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

“provide for the confiscation of proceeds from criminal activities. Confiscation may concern any person to whom the proceeds of a criminal act have passed directly as well as those on whose behalf such a person has acted.”³⁷⁶ The report provides three instances of asset confiscation: (1) December 2008, the City Court of Copenhagen convicted two persons of trafficking in human beings and confiscated 20,000 DKK (Danish Krone)(≈ \$3,538.42 USD);³⁷⁷ (2) March 2010, the City Court of Copenhagen convicted two persons for trafficking in human beings and confiscated 130,000 DKK (≈ \$22,999.95 USD) from each defendant;³⁷⁸ and (3) January 2011, the Court of Frederiksberg convicted three persons of trafficking in human beings and confiscated 50,000 DKK (≈ \$8,845.62 USD) from two defendants and 497,500 DKK (≈ \$88,009.18 USD) from a third defendant.³⁷⁹

The continued success of asset forfeiture in the fight against human trafficking on the domestic and international levels provides a compelling basis for Indiana to adopt an asset forfeiture provision. Indiana should adopt an asset forfeiture provision that provides for the removal of proceeds and instrumentalities of crime from the hands of the trafficking organization. Asset forfeiture provisions deprive the trafficking enterprise of the financial means to continue their trafficking and other illicit activities. Further, the confiscated assets can potentially serve as alternative evidence to support a criminal conviction of the trafficker in a human trafficking case.

B. Make the Trafficker Pay: Creation of a Human Trafficking Victims Fund

In addition to an asset forfeiture provision, Indiana should take one additional step and create a human trafficking victims fund from the forfeited assets. This Note proposes that Indiana appropriate the forfeited assets to fund law enforcement anti-trafficking programs and victim services similar to the 2011 Directive’s recommendations. The following sections will discuss the importance of using the forfeited assets to finance a human trafficking fund.

(GRETA), COUNCIL OF EUROPE, REPORT CONCERNING THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS BY DEN.: FIRST EVALUATION ROUND, 40 (2011), [hereinafter GRETA, DENMARK], *available at* http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_21_FGR_DN_K_en.pdf.

376. *Id.*

377. *Id.*; XE, *Currency Converter* (Mar. 12, 2012), *available at* <http://www.xe.com/ucc/convert/?Amount=20000&From=DKK&To=USD>.

378. GRETA, DENMARK, *supra* note 375; XE, *Currency Converter* (Mar. 12, 2012), *available at* <http://www.xe.com/ucc/convert/?Amount=130000&From=DKK&To=USD>.

379. GRETA, DENMARK, *supra* note 375; XE, *Currency Converter* (Mar. 12, 2012), *available at* <http://www.xe.com/ucc/convert/?Amount=50000&From=DKK&To=USD>; XE, *Currency Converter* (Mar. 12, 2012), *available at* <http://www.xe.com/ucc/convert/?Amount=497500&From=DKK&To=USD>.

Asset forfeiture is a powerful tool because it removes the proceeds and instrumentalities of crime from the criminal organization, but more importantly, it provides funding for community and law enforcement programs.³⁸⁰ For example, the US federal government promotes asset forfeiture as an “invaluable tool for law enforcement to implement productive drug interdiction programs and purchase equipment for anti-drug programs.”³⁸¹ The Comprehensive Crime Control Act of 1984 created the Department of Justice Assets Forfeiture Fund and the Treasury Department Appropriations Act, P.L. 192-393 established the Treasury Forfeiture Fund.³⁸² Both of these Funds receive proceeds from forfeiture and have allocated some of the forfeited assets to state and local agencies to provide for community programs, victim restitution and law enforcement programs combating drug trafficking.³⁸³ Furthermore, forfeited real property from the Department of Justice Asset Forfeiture Fund has been transferred to community action groups to be used as community centers.³⁸⁴ Therefore, asset forfeiture ensures that the forfeited proceeds of the crime are not channeled back into criminal organizations, but instead are used for the betterment of society.

Similar to drug trafficking, the forfeited proceeds of the human trafficking crime could provide funding for victim services and law enforcement programs designed to educate law enforcement personnel in recognizing human trafficking and assessing the needs of the trafficked victims. For example, on November 21, 2011, Governor Deval Patrick of Massachusetts signed into law a bill against human trafficking (the “MA Bill”).³⁸⁵ The MA Bill created a Victims of Human Trafficking Fund (the “Fund”), which consists of assets forfeited and seized and fines from the crimes established under the MA Bill.³⁸⁶ The MA bill designates the state treasurer as the custodian of the Fund, and directs the state treasurer to transfer funds from the Fund to the victim and witness assistance board pursuant to section 4 of Chapter 258B of the Massachusetts General Laws.³⁸⁷ The board administers Fund grants to public, private non-profit, or community-based programs to provide services to victims of human

380. *Oversight of Federal Asset Forfeiture*, *supra* note 338, at 41.

381. *Id.* at 76.

382. Dep't of Justice, *The Fund*, http://www.justice.gov/jmd/afp/02fundreport/02_2.html (last updated Aug. 2011). See also Nat'l Criminal Justice Reference Serv., *Treasury Forfeiture Fund*, available at <https://www.ncjrs.gov/html/tff.htm> (last visited Mar. 18, 2013).

383. *Oversight of Federal Asset Forfeiture*, *supra* note 338, at 32-33. For example, forfeiture monies were used to build a new forensic laboratory for the New York State Police, educational programs for children to resist drugs and gangs, and law enforcement training. *Id.*

384. *Id.* at 43.

385. See Press Release, *supra* note 25.

386. *Id.* See also MASS. GEN. LAWS ANN. ch. 10, § 66A (2012).

387. MASS. GEN. LAWS ANN. ch. 10, § 66A (2012).

trafficking.³⁸⁸

The creation of a fund from the forfeited proceeds, to provide for victim services and law enforcement programs, has also been implemented at the international level. For example, in compliance with the asset confiscation provision of the CoE Convention, GRETA reports that Albania passed Law No. 10/192 on the Prevention of and Fight against Organised Crime and Trafficking through Preventive Measures against Assets on December 3, 2009, which replaced the 2004 law that covered only confiscated proceeds from organized crime.³⁸⁹ The law entered into force in January 2010, but “the new mechanism for administering confiscated assets was not introduced until July 2010.”³⁹⁰ This law “[sets] up . . . a ‘Special State Fund for Preventing Criminality,’ [which is] sourced from property and assets sequestered and confiscated by decision of the First Instance Court for Serious Crimes”³⁹¹ During the 2009-2010 fiscal year, 50% of the confiscated proceeds were allocated to this fund.³⁹² The purpose of the fund is to “finance projects aimed at improving the exercise of justice, but must also serve social purposes, such as the rehabilitation and reintegration of victims of trafficking.”³⁹³ Article 37(3)(b) of Law No. 10/192 provides that non-profit organizations, including shelters for victims of trafficking and rehabilitative centers, are some of the beneficiaries of the fund.³⁹⁴ GRETA reported that the first set of confiscated properties is currently being sold and all the proceeds could go towards the fund.³⁹⁵

Similar to its domestic and international counterparts, Indiana should create a human trafficking victims fund from the forfeited proceeds of the crime. To effectively combat human trafficking, it is simply not enough to

388. *Id.*

389. GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (GRETA), COUNCIL OF EUROPE, REPORT CONCERNING THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS BY ALB: FIRST EVALUATION ROUND 39 (2011), available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_22_FGR_ALB_en.pdf [hereinafter GRETA, ALBANIA].

390. *Id.* at 39.

391. *Id.* at 33.

392. *Id.*

393. *Id.*

394. *Id.* See also Parliament on the Republic of Alb., Law No. 10.192, On Preventing and Combating the Organized Crime and Trafficking Through Preventive Measures Against Property, art. 37(3)(b), available at http://www.minfin.gov.al/minfin/pub/28_ligji_nr_10192_english_1297_1.pdf.

395. See GRETA, ALBANIA, *supra* note 389, at 33. Law No.10/192 replaced Albania’s 2004 law by extending the seizure and confiscation of assets to the human trafficking crime. It also “gives greater powers to the agency tasked with administering confiscated assets with a view to [ensure] that these yield income . . . can be divided between victims to compensate them and [the Special State Fund].” *Id.* Further, Law No. 10/192 “provides for a reversal of the burden of proof, i.e. it is for the person whose assets are sequestered or confiscated to prove that they are not the proceeds of crime.” *Id.*

criminalize the behavior by increasing the criminal sanctions of fines and imprisonment.³⁹⁶ It requires a multi-disciplinary approach. The “more comprehensive a state’s legislation, the more likely that state will be successful in the fight against human trafficking”³⁹⁷ Thus, the forfeited proceeds of the crime would provide Indiana the financial means to adopt a multi-disciplinary approach in combating human trafficking.

The forfeited proceeds could be used to provide law enforcement with the necessary training to identify victims of human trafficking.³⁹⁸ Often, law enforcement officials are the first to encounter victims of human trafficking.³⁹⁹ However, factors such as the hidden nature of the crime, the trafficker’s constant guard of the victim, lack of immigration documentation, and the invisibility of trafficked domestic servants make it difficult to identify the victim.⁴⁰⁰ Additionally, there have been instances where law enforcement officials have treated victims of sex trafficking as criminals and arrested them for prostitution.⁴⁰¹ Other instances also involve law enforcement arresting and deporting undocumented immigrants even though the undocumented immigrants may have been victims of human trafficking.⁴⁰² Furthermore, there is a risk that domestic, child victims of sex trafficking “will be perceived as runaways, throwaways, and delinquents rather than as victims of trafficking.”⁴⁰³ Therefore, it is crucial for law enforcement to “have the proper training and tools . . . to be able to correctly apply the trafficking law, make the proper distinctions, and refer trafficking victims for health and human services.”⁴⁰⁴

Law enforcement should also receive training in communicating with international victims of human trafficking who fear law enforcement.⁴⁰⁵ In many instances, international victims fear law enforcement due to personal experiences with corrupt government officials, or because the trafficker has told the victims that if they are caught by law enforcement, they will be arrested and deported.⁴⁰⁶ Thus, the forfeited proceeds can be used to provide law enforcement with the necessary training in victim identification and

396. See Konrad, *supra* note 6, at 85.

397. Vanessa Bouche & Dana Wittmer, *Human Trafficking Legislation Across the States: The Determinants of Comprehensiveness*, U. OF NEB.-LINCOLN (Oct. 1, 2009), available at <http://digitalcommons.unl.edu/humtraffconf/6/>; See also Konrad, *supra* note 6, at 85.

398. CLAWSON ET AL., *supra* note 11, at 15.

399. Ozalp, *supra* note 20, at 1401.

400. CLAWSON ET AL., *supra* note 11, at 6.

401. *Id.* at 15.

402. *Id.*

403. McKee, *supra* note 22, at 1.

404. See *supra* note 398.

405. Heather J. Clawson et al., *STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS: FINAL REPORT*, U.S. DEP’T OF HEALTH & HUMAN SERV., 20 (Dec. 2009), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/Final/index.pdf>.

406. *Id.*

assistance to ensure more victims are rescued and provided with the necessary care and support.

The forfeited proceeds can also be used for victim services. After the victim has been identified and rescued, it is essential to rehabilitate and reintegrate the victim as a productive member of society.⁴⁰⁷ “Recovery is a crucial form of reparation for trafficked persons, which includes medical and psychological care, as well as legal and social services.”⁴⁰⁸ However, to provide effective recovery, it is important to recognize that the needs of international victims may differ from the needs of domestic victims of human trafficking.⁴⁰⁹ Both international and domestic victims of human trafficking generally require safety, housing, food, clothing, and medical and psychological care.⁴¹⁰ Law enforcement and service providers both reported that housing for victims of trafficking is limited.⁴¹¹ Forfeited assets can be used to build shelters exclusively for victims of trafficking, thus providing them with the safety and care that they need. Alternatively, forfeited property can be renovated and used as shelters for human trafficking victims or as victim assistance centers.

Unlike domestic victims, international victims often require legal assistance and language assistance in addition to housing, food, and medical care.⁴¹² International victims have an “immediate need for legal assistance/representation to handle issues related to immigrant status, provide legal representation that may be required in an ongoing investigation and prosecution of the trafficking case, or provide counsel in a civil lawsuit against the trafficker or in a potential custody case.”⁴¹³ Frequently, victims of trafficking do not have the financial means to afford legal counsel.⁴¹⁴ Thus, the forfeited assets can be used to provide victims of trafficking with free legal assistance to ensure that they are advised of their rights and adequately represented.

International victims also often need language assistance, such as an interpreter or a translator, to facilitate communication between the victim and those who are providing assistance.⁴¹⁵ However, while language assistance may aid in the communication process, the victim may not talk

407. See SISKIN & WYLER, *supra* note 5, at 10.

408. *Report of the Special Rapporteur*, *supra* note 279, ¶ 24, at 7.

409. CLAWSON ET AL., *supra* note 11, at 11-13.

410. *Id.*

411. Heather J. Clawson & Nicole Dutch, ADDRESSING THE NEEDS OF VICTIMS OF HUMAN TRAFFICKING: CHALLENGES, BARRIERS AND PROMISING PRACTICES, U.S. DEP'T OF HEALTH & HUMAN SERV., 6 (Aug. 2008), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/Needs/ib.pdf>.

412. CLAWSON ET AL., *supra* note 11, at 11-12.

413. *Id.* at 11, 34.

414. See *Report of the Special Rapporteur*, *supra* note 279, at 13.

415. CLAWSON ET AL., *supra* note 11, at 12.

about their trafficking experience.⁴¹⁶ Victims of sex trafficking may not be comfortable discussing their experiences with someone of the same culture because of the associated shame and stigma.⁴¹⁷ A person's cultural background is more than just the language itself; it also embodies customs, values, and traditions. Forfeited assets can be used for language skills training and cultural awareness programs.

Lastly, Indiana should create a human trafficking fund using forfeited assets of the crime to increase funding for victim services.⁴¹⁸ As the public becomes more aware of human trafficking, and more victims are identified, additional funding will be required to provide services to trafficking victims.⁴¹⁹ Initially, the US Department of Health and Human Services and the Office of Refugee Resettlement handled all victim assistance by providing grants to non-governmental organizations (NGOs).⁴²⁰ Once the victim received certification (or was granted a T-visa or continued presence), he or she was eligible for services and refugee benefits.⁴²¹ However, pre-certified victims or victims waiting for certification were not eligible for these benefits.⁴²² As a result, the US Department of Justice's Office of Victims of Crime (the "OVC") created funding to provide additional support to NGOs providing assistance to trafficking victims prior to certification.⁴²³ For example, in the 2010 fiscal year, the OVC granted the City of Indianapolis/Julian Center \$60,000 to "provide comprehensive services to pre-certified foreign national victims of human trafficking as well as case management support and legal assistance to certified victims."⁴²⁴ However, absent these federal grants, "NGOs lack funding . . .

416. Clawson & Dutch, *supra* note 411, at 7.

417. *Id.*

418. See generally *Human Trafficking: Recent Trends: Hearing Before the Subcomm. on Border, Maritime, & Global Counterterrorism of the Comm. on Homeland Sec.*, 111th Cong. 23 (2009) (statement of Anastasia K. Brown), available at <https://www.hsd1.org/?view&did=10574>.

419. *Id.*

420. Dina Francesca Haynes, *Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act*, 6 U. ST. THOMAS L.J. 77, 88 (2008).

421. See *supra* notes 171-72.

422. Haynes, *supra* note 420. See also LAUDAN Y. ARON ET AL., URBAN INSTITUTE, COMPREHENSIVE SERVICES FOR SURVIVORS OF HUMAN TRAFFICKING: FINDINGS FROM CLIENTS IN THREE COMMUNITIES: FINAL REPORT 6 (2006), [hereinafter ARON], available at http://www.urban.org/UploadedPDF/411507_human_trafficking.pdf.

423. Haynes, *supra* note 420. See also ARON, *supra* note 422.

424. 2010 ATT'Y GEN. ANN. REP. 129 (Dec. 2011), available at <http://www.justice.gov/ag/annualreports/tr2010/agreporhumantrafficking2010.pdf>. This funding is also to:

[c]ontinue to build effective community service networks to respond to victims' need; and provide training to increase awareness among criminal justice entities, social service providers, and the public of the rights and needs of trafficking victims until the end of the current grant period. Grantee may use up to 5% of the total grant award to support "prevention" in the area of

for work that is costly: providing shelter and legal, medical, language, and job training services to victims.”⁴²⁵ If there is a lack of funding, victims of human trafficking will not have access to these services. Therefore, the forfeited assets should supplement existing funding to provide a greater provision of care and support to victims of human trafficking.

Overall, by adopting an asset forfeiture provision, the forfeited proceeds will provide Indiana with the financial means to support greater law enforcement anti-trafficking training and comprehensive victim services. More importantly, such a provision secures justice for victims of human trafficking.

V. CONCLUSION

Indiana’s new human trafficking legislation is insufficient to combat human trafficking.

While the new legislation strengthened Indiana’s existing human trafficking laws and tightened the prosecution for the sex trafficking of a minor, it does not effectively impede the human trafficking activity. Human trafficking continues to thrive because of the substantial profits that result from the repeated exploitation of human beings. These illicit profits are the financial underpinnings of the trafficker’s enterprise. Recognizing that fines and imprisonment are inadequate to fight human trafficking, the United Nations, the European Union, and the Council of Europe mandated their respective members to enact asset forfeiture provisions to “cut[] to the heart and motivation behind [human trafficking].”⁴²⁶ Furthermore, they also advocated for the creation of a fund from the forfeited assets to provide funding for victim services and law enforcement programs. Similar to the

awareness-raising and 5% of the total grant award to conduct a program evaluation. *Id.*

During the fiscal year of 2010, the TVPA provided the City of Indianapolis with a \$100,000 grant for:

Continued enhancement and operation of a multi-disciplinary and multi-jurisdictional victim-centered task force with the primary goal being the identification and rescue of foreign victims of trafficking in persons through pro-active investigation; and the secondary goal being the successful prosecution of traffickers. Continued coordination with the Office of Victims of Crime (OVC) –funded victim services provider and the local Office of the U.S. Attorney to identify and rescue victims of all forms of human trafficking and to work with the OVC-funded victim service provider to assist the provider in securing requests for continued presence of T visas for foreign victims. In coordination with victim service providers and task force partners, train law enforcement line officers and persons likely to come into contact with victims of trafficking to be able to recognize the signs of trafficking and its victims.

Id. at 146.

425. Haynes, *supra* note 420, at 89.

426. *Oversight of Federal Asset Forfeiture*, *supra* note 338, at 39.

international community, Indiana should take a stronger stance against human trafficking by establishing an asset forfeiture provision within its existing human trafficking laws. More importantly, it should create a trafficking victims fund from the forfeited assets to provide funding for victim services that will rehabilitate and reintegrate the victim and provide funding for law enforcement programs to better identify victims of trafficking because one victim of trafficking is one too many.