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„Defining a Victim: How Legislative Definitions of Human
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Abbreviation Index

AJP	The Alabaster Jar Project
CATW	Coalition Against Trafficking in Women
CIA	Central Intelligence Agency
CSCE	Commission on Security and Cooperation in Europe
FBI	Federal Bureau of Investigation
GAO	Government Accountability Office
GSN	Global Survival Network
HHS	US Department of Health and Human Services
ICE	Immigration and Customs Enforcement
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
NFNL	New Life New Friends
NGO	Non-Governmental Organization
NOW	National Organization for Women
ORR	Office of Refugee Resettlement
PICW	Presidents Interagency Council on Women
SH	Safe Horizon
TIP	US State Department Trafficking in Persons Report
TVPA	Victims of Trafficking and Violence Protection Act of 2000
U.N.	United Nations
USCIS	US Citizenship and Immigration Services

US

United States of America

VOH

Voices of Hope

WJC

The Workers Justice Center

1. Introduction

Human trafficking is a grave human rights violation that has often been referred to as ‘modern day human slavery’¹ and its abolishment has been a focal issue in the United States and the international community. Starting in 1998 the US set out to create federal anti-trafficking legislation, the result of which was the Victims of Trafficking and Protection act of 2000 (TVPA)². Since then, the TVPA has been seen as the cornerstone of anti-human trafficking legislation in the US, defining trafficking, its victims, and laying out its protections and punishments. Yet despite the high level of interest on the issue, the TVPA and other efforts to combat trafficking have been faced with severe scrutiny due to criticisms regarding the definitions of human trafficking, the unreliability of trafficking data and allegations of anti sex work and immigration incentives being the driving force behind anti-trafficking legislation³[⁴]. A vast range of organizations, ideologies, and political goals were involved in combatting this form of exploitation. The TVPA was developed through a mixing of several factors, including the personal moral convictions of the acts’ sponsors and influences from feminist progressive and sex work abolitionist interest groups. Each of these actors operated with a different definition of sex and labor trafficking, though they all fell under the umbrella of anti-human trafficking efforts. Under these conditions, the definitions that establish the concept of human trafficking remain unstable and contested among different sectors and stakeholders which has direct impacts on trafficking victims as the rights and protections given by the TVPA all depend on being legible as a victim to government officials.

¹ ‘2020 Trafficking in Persons Report’ (US Department of State) 3.

² Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§ 7101-7114, Public Law 108-386 (2000).

³ Wendy Chapkis, ‘Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants’ (2003) 17 *Gender and Society* 923, 925.

⁴ Carole S Vance, ‘Innocence and Experience: Melodramatic Narratives of Sex Trafficking and Their Consequences for Law and Policy’ (2012) 2 *History of the Present* 200, 201.

1.1 Objectives and Research Question

This thesis aimed to analyze the shortcomings of trafficking legislation in terms of victim protection and rehabilitation. The TVPA has been presented as a crucial piece of legislation for protecting the right to an effective remedy for victims of trafficking through assistance and rehabilitation, and the prosecution of their traffickers. Yet as mentioned, the TVPA has also faced severe scrutiny due to criticisms regarding data and allegations of ulterior incentives being the driving force behind anti-trafficking legislation, shaping how the TVPA views and defines trafficking. While there have been extensive discussions regarding the definitions set by the TVPA there has been less of a focus on how these definitions affect victim services and protections. This thesis will analyze the effects and shortcomings of the TVPA, it will look closely at victim services and protections in terms of quality and accessibility and how they are influenced by the definitions set out in the TVPA in order to answer the question as to *how does the TVPA's definitions of trafficking affect the enjoyment of human rights of trafficking victims in terms of victim protection and rehabilitation?*

1.2 Methods & Structure

The research was guided by the three following sub questions: “What were the TVPA’s origins and supporters, what were their goals?”, “Who is protected by the current legislation? Who is not?” and “How is the current legislation applied in practice?”. An analysis of literature, legislation and statistics was conducted along with qualitative research composed of semi-structured interviews using actors from the three largest trafficking “hubs” in the US – California, Texas and New York⁵ – as case studies.

The research was conducted in three parts. Part one consisted of a review of the literature regarding the criticisms around human trafficking in the US and the TVPA. Along with this, a review of statistics regarding human trafficking cases and prosecution rates in the

⁵ Khaled Alrabe and others, ‘Building Trust: Perspectives on a Victim-Centered Approach to Human Trafficking Investigations in Los Angeles County’ (2017) UC Berkeley Human Rights Center, 9.

US was also done. Statistics regarding cases and prosecution rates under the TVPA were accessed through the US State Department, Federal Bureau of Investigation (FBI) and the Department of Justice's databases. Part two consisted of a background analysis of the federal trafficking legislation, the Victims of Trafficking and Violence Protection Act. The legislation's origins, supporters, and drafting were explored along with a look at the TVPA's and the US's relationship with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁶. Information regarding the background and drafting of the TVPA and U.N. Trafficking Protocol was gathered through academic journals, newspaper articles, and US Congress databases. Part three consisted of a content analysis reviewing the TVPA's legal definitions, protections, and conditions set for both victims and government agencies. Information for the content analyses was gathered through the TVPA text and through subsequent federal government websites. Finalizing part three of the research were five semi-structured interviews conducted with actors from NGO and legal sectors regarding their views on the state and actual accessibility of victim services in the US. Given the large number of trafficking NGOs in the US the focus of the interviews was on the states of California, Texas and New York as they are considered to be the main "hubs" of human trafficking in the United States. Interview partners were found through the California⁷, Texas⁸ and New York⁹ state government web pages for human trafficking resources and through the Polaris database of US victim service providers¹⁰[¹¹].

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force December 25, 2003) 2237 UNTS 319.

⁷ 'Getting Help for Victims | State of California - Department of Justice - Office of the Attorney General' (*California Office of the Attorney General*) <<https://oag.ca.gov/human-trafficking/help>> accessed 24 July 2021.

⁸ 'Texas Human Trafficking Resource Center' (*Texas Health and Human Services*) <<https://www.hhs.texas.gov/services/safety/texas-human-trafficking-resource-center>> accessed 24 July 2021.

⁹ 'Providers | Refugee Services' (*New York State Office of Temporary and Disability Assistance*) <<http://otda.ny.gov/programs/bria/providers/Default.asp>> accessed 24 July 2021.

¹⁰ The Polaris project is a nonprofit NGO that works to combat and prevent sex and labor trafficking in North America. Since 2007 Polaris has also operated the US National Human Trafficking Hotline

¹¹ 'National Human Trafficking Referral Directory' (*Polaris Project*)

<<https://ursaminor.polarisproject.org/serviceproviders/>> accessed 2 June 2021.

The interviews were all conducted online via Zoom. Interview partners¹² were given consent forms prior to the interviews that outlined the purpose of the interviews and agreement that their responses would be recorded and used as part of the thesis research, as well as the permission to include information regarding their organizations name and work. The individual interview partners themselves agreed to remain anonymous. Interview partners were all asked the same introductory questions, in which they were asked to describe their job title and duties along with background information regarding their organization and its work with trafficking victims. After the introductory questions, the interviewer adjusted the questions to the specific organization, regarding their needs, funding, collaboration with law enforcement, victim profile and recommendations for policy. This gave the interview partners the opportunity to discuss their views and opinions regarding their specific organization, victim services in the US in general, and the TVPA.

¹² Refer to Annex for list of interview partners.

2. Literature Review

The TVPA has been the target of much academic debate and criticism. While it was seen as major landmark in human rights legislation, instrumental in bringing the issue of human trafficking to the public, it has been criticized for what critics argue is an insufficient impact on human trafficking both domestically and internationally. As this literature review will explain most of the literature regarding the TVPA has centered around arguments that the law has been created as a tool to fight the US' societal anxieties surrounding sexuality, gender and migration. Academic literature has also questioned the actual validity of the claims regarding the true scale of trafficking in the US. Trafficking statistics have been accused of being widely inflated with various methodological errors while proponents of the TVPA argue that trafficking rates are actually being underreported. For the purpose of this thesis, the literature has been divided into the four main areas of argument which are, the perceptions and depictions of trafficking in the US, purported ideological and political biases in the TVPA, US trafficking data and methodology and finally, critiques and obstacles when dealing with trafficking cases.

2.1 Definitions and Public Perceptions of Human Trafficking

2.1.1 TVPA Trafficking Definitions

The TVPA has faced criticisms regarding its approach in defining trafficking. It does not offer a standard definition of trafficking, instead it creates two categories: “severe forms of trafficking” and “sex trafficking”.^{13[14]} Sex trafficking means all those who are recruited, harbored and transported for the purposes of commercial sex which would then include all migrant sex workers regardless of their consent and/or their conditions of labor. Labor migrants are completely excluded from this category. While ‘sex trafficking’

¹³ 22 U.S.C § 7102 103(8).

¹⁴ 22 U.S.C § 7102 103(9).

simply refers to the type of labor being performed, 'severe forms of trafficking' deals with the conditions of labor plus the abusive and deceptive forms of recruitment. Severe forms of trafficking include both labor and sex trafficking but require the explicit presence of "force, fraud or coercion". While the TVPA mentions both "victims of trafficking" and "victims of a severe form of trafficking" in its text, it specifically states that only victims who are found to be victims of "severe forms" of trafficking are eligible for protection under the TVPA. Yet these distinctions between categories of victims were not included in the original drafts of the TVPA¹⁵ and critics argue that these distinctions still do not have any useful purpose as they were brought about due to interest group lobbying such as US business groups who were against the inclusion of labor as a form of trafficking and anti-prostitution groups who wanted a to create an emphasis on sex work.¹⁶ These definitions have shaped both law enforcement's and the public's perception of what trafficking is, and who are and are not victims. The distinction between exploitative labor and trafficking has been especially difficult for many, even to the victims themselves, to identify and understand. These questions have serious consequences, when law enforcement and the general public are unable to understand different forms of trafficking they then do not prioritize its identification.¹⁷

2.1.2 Comparisons to U.N. Trafficking Protocol

There are several important differences between the TVPA definition of trafficking and the U.N. Trafficking protocol definition which states¹⁸,

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or

¹⁵ 'The Travesty of Human Trafficking: A Decade of Failed U.S. Policy' (2010) 55 Social Work 373, 373.

¹⁶ *ibid.*

¹⁷ Amy Farrell and Rebecca Pfeffer, 'Policing Human Trafficking: Cultural Blinders and Organizational Barriers' (2014) 653 The ANNALS of the American Academy of Political and Social Science 46, 50.

¹⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319, Article 3.

of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) ‘Child’ shall mean any person under eighteen years of age.

First, the TVPA makes no specific provisions concerning the role of victim consent, its language gives no definitive answer to whether the consent of the individual to some element of the act of trafficking leads to the conclusion that the individual is a victim of a ‘severe form of trafficking.’ In contrast, the U.N. Protocol expressly excludes the victim's consent as a relevant factor, ‘The consent of a victim...shall be irrelevant where any of the means set forth in subparagraph have been used’. Victims cannot consent to slave-like conditions that are imposed through deception, coercion, or abuse of power under the U.N. Protocol. Second, the U.N. Protocol aims to protect all individuals who it defines as trafficking victims, meanwhile the TVPA has a more expansive definition of who is a victim of trafficking yet only provides protections for victims of ‘severe forms of trafficking.’ The U.N. Protocol also expressly extends the protection of children in all trafficking sectors without the need of coercion while the TVPA only extends this automatic protection to minors in sexual exploitation, leaving child victims of labor trafficking seemingly subject to the same requirements as adult victims.

2.1.3 Human Trafficking Perceptions and Depictions

Law enforcement has expressed difficulty in prioritizing the investigation of human trafficking when the cases did not fit mainstream idea of human trafficking, devoting resources to these crimes was also difficult as police felt they could not justify it to the public who were uninterested in the crimes and felt the resources should be used elsewhere.¹⁹ Police then will often reframe the issue of trafficking as exploitation and prostitution, terms that many officers believed the public could understand and support. When it came to the police's own uncertainty regarding the different possible elements of trafficking, consent was one of the most common areas of uncertainty²⁰[²¹]. Police often struggled to determine whether victims acted freely or whether consent was obtained through force. A possible victim's case could then solely rest on this issue given the explicit mention of fraud and coercion in TVPA's definition for victims of a 'severe form of trafficking'²². In response to this, police would then often focus their efforts on cases that both them and the public would easily view as the most harmful such as the prostitution of minors. In a 2012 study funded by the National Institute for Justice²³ looking at 12 US counties, 85% of trafficking cases identified by police were sex trafficking, within that 85%, 55% were minors, numbers that helped reflect the public and law enforcement belief that trafficking is primarily sex trafficking and that minors were especially vulnerable targets. Cases involving children also garnered police much more public support and praise when compared to others, further motivating their prioritization. On the other hand, police often felt that the public did not equally support their efforts regarding labor trafficking as the victims of these crimes often consisted of adult men who were frequently also undocumented and unlike children, made "unsympathetic" victims.²⁴

¹⁹ Farrell and Pfeffer (n 21) 50.

²⁰ *ibid.*

²¹ Chapkis (n 3) 928.

²² 22 U.S.C § 7102 103(13).

²³ Farrell and Pfeffer (n 21) 48.

²⁴ *ibid* 52.

The idea of “sympathetic and unsympathetic” victims is a reoccurring theme when talking about human trafficking.²⁵ Anti-trafficking campaigns have constructed what some have labeled as a “narrow” understanding of what trafficking is by depicting “idealized” victims to the public. They are often focused on the sex trafficking of women and children in which they are depicted as unwilling and innocent victims, who fall prey to poverty and individual traffickers.²⁶ The incorporation of these subjects as victims into the human rights framework is through displays of tropes of helpless victims and “backwards” culture, these are elements that also make stories more familiar and compelling. The way stories about trafficking victims are depicted produces the narrative we label as violence²⁷, the female sex trafficking victim becomes the conceptual tool through which the public views human rights issues concerning women and girls. Thus, how the public comes to view what is and what is not trafficking relies heavily on the cultural narratives that are being produced. This has a major impact on trafficking victims as there are material benefits that depend on them being legible as victims of trafficking such as protection and services under the TVPA.²⁸ Representations of human rights abuses are complex, they must bring to life factual aspects in emotionally striking ways that can maintain the viewers’ attention and can most importantly, present a sympathetic victim of exploitation.

A. The “Good/Bad” Victim

In creating “sympathetic” victims there has been a differentiation between “innocent” and “guilty” victims depending on their “moral” failures such as sexual agency and economic ambition or their presumed extent of culpability in their own trafficking.²⁹ The U.N. Trafficking Protocol makes a clear indication that if exploitative conditions exist, the victim’s consent at some stage of their trafficking does not mean that they are not a

²⁵ Chapkis (n 3) 928.

²⁶ Ine Vanwesenbeeck, ‘The Making of “The Trafficking Problem”’ (2019) 48 Archives of Sexual Behavior 1964–1965.

²⁷ Julietta Hua, ‘Telling Stories of Trafficking: The Politics of Legibility’ (2014) 12 Meridians: feminism, race, transnationalism 201, 203.

²⁸ Miriam Potocky, ‘Effectiveness of Services for Victims of International Human Trafficking: An Exploratory Evaluation’ (2010) 8 Journal of Immigrant & Refugee Studies 359, 360–361.

²⁹ Chapkis (n 3) 925–926.

trafficking victim.³⁰ Even anti-prostitution, sex worker rights and migrant rights activists have all come to agree that consent should not be the deciding factor when determining what victims should receive assistance³¹[³²]. Meanwhile the TVPA's language such as that found in section 102³³ evokes the images of women and children being kidnapped and defrauded into sexual exploitation creating distinctions between the "innocent victims" of forced prostitution and "guilty" sex workers who knew they would take part in the sex trade along with economic migrants who disregard immigration laws.

The actual factors that drive an individual towards trafficking are part of what sociologist Corinne Schwarz calls a "constrained choice"³⁴. While an individual may be vulnerable they still maintain some degree of agency that enabled their participation in certain forms of labor, even if it was coerced. This can come about due to several push factors such as economic, social or political instability that are often compounded by poverty. These factors can be communal or just individual. Victims may be coerced into exploitative conditions through their own situational or family pressures, meaning what may come across as coercion to some could to the victim seem like exercising their constrained agency. Denying exploited individuals protection simply because they may have been initially "culpable" in their trafficking completely contradicts the human rights goals of anti-trafficking legislation like the TVPA.

The focus on coercion also shows the lack of understating of the gendered aspects of trafficking. Like most other social issues trafficking is heavily shaped by gender relations³⁵. Trafficking has taken a very woman centered approach which has created exclusionary narratives in which women are the passive victims of trafficking and men

³⁰Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS Article 3.

³¹ Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade' (2007) 35 *Politics & Society* 447. 456

³² Chapkis (n 3) 929.

³³ 22 USC § 7101 107.

³⁴ Corinne Schwarz, Emily J Kennedy and Hannah Britton, 'Aligned Across Difference: Structural Injustice, Sex Work, and Human Trafficking' (2017) 29 *Feminist Formations* 1, 10.

³⁵ Tanja Bastia, 'Stolen Lives or Lack of Rights? Gender, Migration and Trafficking' (2006) 39 *Labour, Capital and Society / Travail, capital et société* 20, 25.

are seen the active economic migrants. The majority of trafficking work focuses on sexual exploitation, further supporting the public belief that trafficking is mostly sexual exploitation, while only few of the more recent studies have begun to look at the economic sectors in which men are found in higher numbers such as agriculture and construction³⁶. Apart from the issue of how many women versus men are trafficked into different sectors, gender also influences an individual's reasons to migrate and their resulting trafficking experiences³⁷. The TVPA has failed to reflect these broad understandings and factors of trafficking that may push an individual to "consent" to exploitative labor abroad and instead push the narrative that "good" women and men do not knowingly violate national borders and do not intentionally engage in sex work.

B. The Human Trafficking "Melodrama"

As noted, representation of the victims frames the public perception of the problem. Trafficking is an especially complicated multilayered issue that involves social forces as well as individuals. It is difficult to depict institutions and forms of power through visual narratives using human actors so that it can be understood by the general public. Carole Vance describes how attempts to achieve this often fall short and are instead "melodrama" depictions³⁸. The "melodrama" consists of severe decontextualization, using examples that aim to shock, and efforts to mobilize through horror to create emergency yet often lack a frame of analysis and action. They heavily rely on the idea of the "innocent" female victims, yet they are also innovative and progressive as they on the surface appear to address questions of globalization and inequality. Documentaries are often the preferred medium of the melodrama, these "melomentaries" present simplified worldviews in which problems are clear cut and characters are two dimensionally good or evil. One notable example is the 1996 documentary *The Selling of Innocents* which looked at the trafficking of Nepalese women and girls in India. The documentary was extremely successful, winning the 1997 Emmy for Outstanding Investigative Journalism and was heavily circulated among human rights groups and within federal US agencies such as

³⁶ *ibid* 23.

³⁷ *ibid* 25.

³⁸ Vance (n 4) 200.

the departments of State and Justice³⁹. These plotlines are usually predetermined and set up a triumphant conclusion in which “justice”, usually at the hands of the state, is achieved. Critics argue that these rigid limitations of the melodrama make them completely unsuited for telling such complex stories, in which not all those in trouble are innocent and contributing factors extend deeper than just individual lust or cruelty and in which the solution isn’t as simple as being “rescued” from the situation.

The melodrama documentary’s central figures tend to be young women and girls who are presented as devoid of any sexuality and knowledge, as they were sold into bondage by their families or tricked with the promise of domestic work. With this it is heavily implied that most victims enter these arrangements entirely through force and deception, it makes no acknowledgment of their previous sexual experience or other efforts to leave home to earn money. The victims’ rescuers are often men, or women of higher status, rarely are members of the victim’s own community depicted as part of the rescue. The motives and possible political agendas of the rescuers are also never questioned, any forms of collective action on behalf of the victims are also rarely shown. Another important factor is melodrama’s frequent appeal to state power as the fix all solution to the problem, especially in the form of criminal law enforcement and police intervention. Any questioning of the state’s motives is limited, once the state is depicted as a solution it is then difficult to name any negative role they have in causing trafficking such as migration and labor policies. International critiques are also limited by this, the economic power the global north and its government have are not mentioned. Trafficking is often reduced to just individual acts, consumer choices and awareness⁴⁰. These types of depictions do little to actually remedy the situation of trafficking victims, as they do not address the conditions that led them to seek work abroad and/or accept poor labor conditions. It also hinders the government’s attempt to effectively protect the human rights of those who have been trafficked as it lacks the ability to express a rights-based approach to trafficking and sex work. As further explored in chapter 3, this narrative of the trafficking ‘melodrama’ was heavily used tool both to bring awareness to the issue of trafficking to

³⁹ *ibid* 24.

⁴⁰ Hua (n 31) 206.

the US and during the negotiations and drafting of the TVPA ultimately shaping how trafficking legislation and the issue of trafficking itself was viewed.

2.2 Alleged Ideological and Political Biases of Human Trafficking Policy

2.2.1 Sex Work and the TVPA

The dialogue surrounding the drafting and implementation of the TVPA suggested that government officials strongly believed the historical narrative of human trafficking mainly being a problem of sex trafficking⁴¹. Stories and facts regarding sexual exploitation dominated the TVPA's lobbying narrative; it was presented to both legislators and the public as the necessary response to the rampant sexual exploitation of women and children. Several of the act's key sponsors were members of conservative political parties and organizations who had historically dealt harshly with any issues relating to the poor, women and migrants, yet the TVPA was met with overwhelming support⁴². Trafficked women and children were painted as innocent victims in need of protection from this uniquely abusive situation.

In the debate regarding trafficking, two primary positions are seen regarding sex work⁴³. The first holds that prostitution is inherently damaging for women as it is grounded in gender inequality and legitimizing the sexual exploitation of women by men. Radical feminist abolitionists argue that no woman can ever fully consent to sex work, as it is always coerced, as women would not be driven to sex work if they had the same socioeconomic status as men, thus it should be abolished using the force of the state⁴⁴. They label sex trafficking and sex work as one. This particular view has been argued to have become the dominant narrative when it comes to trafficking policy in the US, especially popular among political conservatives and abolitionist feminists. Sociologist

⁴¹ Jennifer M Chacon, 'Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking' (2006) 74 Fordham Law Review 2977, 3029.

⁴² Chapkis (n 3) 925.

⁴³ Vanwesenbeeck (n 30) 1961.

⁴⁴ Vance (n 4) 202.

Ronald Weitzer has called this the “oppression paradigm”, the mythology that has been created around sex work and trafficking and the consequences it had on laws such as the TVPA⁴⁵. As described, the oppression paradigm depicts all forms of sex work as institutionalized female exploitation due to the structural inequalities between men and women, regardless of the conditions in which it takes place. Another key aspect of this narrative is the idea that “male demand” is one of the main driving forces fueling trafficking. Men are presented as one-dimensional individuals who think their money and gender “entitle them to have sex whenever, wherever, however, and with whomever they wish.” The “melodrama” of trafficking storytelling is inherent in the oppression paradigm as only horror stories of “prostituted women” and “sexual slavery” are presented. Queer and transgender individuals are often left out of these discussions all together⁴⁶.

The second perspective, the “polymorphous paradigm”, highlights that there is a broad spectrum of work and power arrangements in sex work and that there are multiple forms of social inequality that intersect to create prostitution as a form of exploitation⁴⁷[⁴⁸]. Sex work advocates and activists disagree with the abolitionist views and intervention tactics. They recognize the difference between sex trafficking and sex work. While they also acknowledge that patriarchy and female oppression play a large role in society they believe in the right of an individual to engage in sex work whether for survival or as a freely chosen legitimate form of labor. Sex worker rights activists have also objected to the idea that those who pay for sexual services are then nothing more than perpetrators and accomplices to traffickers. Academic research has also supported their belief in demonstrating that clients vary on an array of axes such as demographic background, motivation, and behavior⁴⁹. They also question the idea of intervention by the state, especially one which would overemphasize criminal law and policing as they argue this would actually be detrimental to the victim’s wellbeing and do little to lessen the rates of

⁴⁵ Ronald Weitzer, ‘Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation’ (2011) 101 35, 1339.

⁴⁶ Schwarz, Kennedy and Britton (n 37) 4.

⁴⁷ Weitzer (n 48) 1338.

⁴⁸ Schwarz, Kennedy and Britton (n 37) 5.

⁴⁹ Weitzer (n 48) 1361.

trafficking. The push to simply end the “demand” for sex work make both sex workers and clients vulnerable to abuse on behalf of the state.

A. Sex work and International TVPA Policies

US abolitionist views have also been argued to have shaped the TVPA’s international policies, with policies that promote anti sex work initiatives or outright ban the support of sex work⁵⁰. Under the TVPA the US dedicates large amounts of funds to fight trafficking internationally, countries that receive these funds are often made to take pledges that promise to promote the abolition of prostitution and to prohibit the funding of organizations that do not promote abolitionist views. One example is the Anti-prostitution Loyalty Oath, the oath, which has been in place since 2003, was created under the conservative G.W. Bush administration as part of the initiative to promote abstinence⁵¹. The oath requires any foreign NGO that receive federal anti-trafficking funds to adopt anti prostitution policies. The policy has been criticized as counterproductive, as critics argued that it actually reduced the participation of sex workers and hindered their rights and health especially when it came to the fight against AIDS. Under the TVPA the US has also taken it upon itself to rank and asses’ foreign governments anti trafficking efforts, in the State Department annual Trafficking in Persons Report (TIP)⁵². Countries are placed into three tiers, with tier 1 being in full compliance and tier 3 being not in compliance and making little effort to improve. Countries who are not deemed in compliance with TVPA standards run the risk of being demoted a tier or being sanctioned on behalf of the US. On the president’s discretion, tier 3 countries may be subject to certain restrictions on foreign assistance even on nonhumanitarian and nontrade-related foreign assistance⁵³. The report has faced several criticisms regarding the method of assessment, as the TIP uses criteria developed and

⁵⁰ Vanwesenbeeck (n 30) 1964.

⁵¹ ‘United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003’ <<https://www.govinfo.gov/content/pkg/PLAW-108publ25/pdf/PLAW-108publ25.pdf>> accessed 25 May 2021.

⁵² ‘2020 Trafficking in Persons Report’ (n 1).

⁵³ *ibid* 42.

agreed upon solely by the US along with allegations that it is used as a political tool to sanction countries that the US is already in disagreement with⁵⁴.

2.2.2 Immigration and the TVPA

The TVPA calls for the focus on both domestic and international trafficking, yet the actual enforcement has largely focused on international trafficking⁵⁵. Critics have argued that this focus on trans-border migration has canceled out the intended benefits of the TVPA⁵⁶. The TVPA increases law enforcement and penalties for traffickers, burdens that some have argued will be placed on migrants as it increases the risk and cost of smuggling. Each year US immigration agencies make hundreds of thousands of arrests, yet by government officials own admissions, it is difficult to assess who are individuals who have been “severely victimized and trafficked.”⁵⁷ Migrants, and especially undocumented migrants, can be exploited in countless ways making it difficult for officials to know where to draw the line for exploitation, but this very need to create a distinction is justified by the belief that not all of them can be deserving victims. The distinction between deserving and undeserving victims in the TVPA has been labeled by some as an example of “compassionate conservatism”⁵⁸[⁵⁹]. The willingness to aid a select few by viewing them as exceptions unlike the many who are deserving of punitive measures.

While migrants bear the burden of these trafficking policies, employers remain largely untouched, especially when it deals with labor trafficking offenses⁶⁰. Corporations and subcontractors engage in acts that would qualify as TVPA violations, yet they escape trafficking charges because the workers have been deemed to have consented and thus are not victims of exploitation or their acts are not as sufficiently exploitative to constitute as trafficking⁶¹. Non-citizens are easier targets for harsh punishment than citizens and

⁵⁴ Vanwesenbeeck (n 30) 1964.

⁵⁵ Chacon (n 44) 3009.

⁵⁶ *ibid* 2979.

⁵⁷ Chapkis (n 3) 930.

⁵⁸ Schwarz, Kennedy and Britton (n 37) 6.

⁵⁹ Chapkis (n 3) 930.

⁶⁰ Chacon (n 44) 3032.

⁶¹ *ibid* 3033.

especially corporations. As seen in section 2.1, the general public is also not conditioned to see the general labor exploitation of migrants as an equal offense to sex trafficking. Critics of these anti trafficking tactics argue that for these policies to have any sort of impact it will require equal enforcement and not just against politically unpopular targets such as migrants, otherwise these policies are nothing more than another anti-migration tool. More importantly, the US must also take a look at the role it plays in generating a market for trafficking, such as looking at policies that may actually facilitate trafficking, such as stringent immigration policies⁶².

2.3 Human Trafficking Statistics and Reporting

2.3.1 Methodology and Statistics

When attempting to determine the magnitude of any illicit trade it is important to carefully and critically examine the quality of data sources and its procedures, but US trafficking numbers are often labeled as unreliable, as they have been criticized for lacking clear methodology, source documentation and for the use of varying definitions of trafficking⁶³[⁶⁴][⁶⁵]. The numbers have been seen to range from hundreds of thousands to millions per year along with the continually perpetrated claims that trafficking is “greatly increasing” and reaching “epidemic” levels. These claims are presented with little to no solid evidence, some have cited that the lack of baseline numbers and the “underground” nature of trafficking makes obtaining reliable estimates extremely difficult⁶⁶. The US commonly used the reported number of migrants and estimated number of undocumented migrants per year when estimating a baseline number of trafficking victims, creating a “baseline” number that fluctuates every year⁶⁷. Researchers have pointed out that both estimates of documented and undocumented migrants can be difficult as migrants can be trafficked after they arrived in the US and law enforcement may also just see them as

⁶² *ibid* 3036.

⁶³ Potocky (n 19) 374.

⁶⁴ Chapkis (n 3) 925.

⁶⁵ Weitzer (n 48) 1347.

⁶⁶ TK Logan, Robert Walker and Gretchen Hunt, ‘Understanding Human Trafficking in the United States’ (2009) 10 *Trauma, Violence, & Abuse* 3, 46.

⁶⁷ *ibid* 6.

criminals and not victims. Proponents of the TVPA have argued that this could mean that the numbers are actually being underrepresented and that trafficking rates may be even higher⁶⁸. Other critiques are aimed at the limited inclusion of trafficking sectors and the large focus on sex trafficking with some arguing that it is the largest trafficking sector while other point out that labor may just simply be underrepresented. Some explanations as to why sex work may seem more prevalent is due the more social nature of sex work as they reach out to a wider group of clients and are therefore more visible as opposed to those in labor trafficking⁶⁹[⁷⁰].

One of the first US government trafficking estimates was done in 1999 by the Central Intelligence Agency (CIA), which reported that 50,000 women and children were being trafficked in the US, however their methodology was never explained⁷¹[⁷²]. After that initial estimate it started to decrease, by 2004 the US State Department estimate had dropped to 18,000 as of present day the estimate has been removed all together from the State Department Trafficking in Persons Report⁷³[⁷⁴]. As for the financial proceeds of trafficking, it is commonly stated as the second or third largest criminal trade after drug and arms trafficking, with US annual profits of billions of dollars⁷⁵. These estimates have all been accused of simply being inflated assumptions. The tactics of inflating these numbers are for instance the use of certain definitions such as including all “possible victims” such as “at risk youths”, labels which are strongly subject to a researcher’s personal opinion⁷⁶. Another common definition is labeling any situation in which a person relocates to participate in sex work as sex trafficking. This inclusion of migration for the purposes of sex work has been especially criticized as, while the TVPA includes it by definition, it is not a category eligible for protection⁷⁷. Their inclusion is then seemingly

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid* 10.

⁷¹ Potocky (n 19) 373.

⁷² Chacon (n 44) 2982.

⁷³ ‘2020 Trafficking in Persons Report’ (n 1).

⁷⁴ Potocky (n 19) 374.

⁷⁵ Weitzer (n 48) 1356.

⁷⁶ Vanwesenbeeck (n 30) 1963.

⁷⁷ Chapkis (n 3) 927.

only meant to contribute to the size of the trafficking “crisis”. Government agencies themselves have also expressed skepticism over these statistics. In 2006, two government funded studies including one by the US Government Accountability Office (GAO) highlighted that many trafficking figures had serious methodological errors and numerical discrepancies and concluding that the US government had not established an effective mechanism for estimating victims’ numbers⁷⁸. Other reviews of journals and NGOs found a consistent lack of empirical review and general disclosure of their data and methods⁷⁹[⁸⁰]. NGO figures are typically made for the purpose of advocacy and not derived from careful scientific research, yet these figures are often repeated by others. High numbers alarm the public and motivate officials to act and commit more resources to fight trafficking, and the concerns over the validity of the statistics has had little affect on officials.

2.3.2 TVPA Government Data and Reports

In general, accessing government data on human trafficking is extremely difficult, TVPA activities are spread throughout various federal agencies such as the Departments of State, Labor, Justice, Health & Human Services (HHS), Homeland Security and Defense⁸¹. Within these departments multiple sectors have different responsibilities, all also having their individual reports on the issue. There are also internal government watchdog groups who assess these departments’ anti-trafficking efforts. These include the GAO, Justice Department Office of the Inspector General, White House Office of Management and Budget, and the HHS Office of Planning and Evaluation. Yet there is no central source of information with links to all of the US government human trafficking reports. The reports themselves are compiled annually so there is also no compilation of longitudinal data, creating a longitudinal compilation is also difficult since several reports, although labelled

⁷⁸ Weitzer (n 48) 1353.

⁷⁹ Potocky (n 19) 375.

⁸⁰ Weitzer (n 48) 1354.

⁸¹ ‘US Government Entities Combating Human Trafficking’
<https://www.dhs.gov/xlibrary/training/dhs_awareness_training_fy12/common/cw/data/US_Government_Entities_Combating_Human_Trafficking.pdf> accessed 26 May 2021.

as annual, are often not reported uniformly. Lastly, much of the data regarding trafficking is not made accessible to the public⁸².

2.4 Human Trafficking Cases Under the TVPA

2.4.1 Victim Identification

“Identification” refers to the way trafficking cases come to the attention of law enforcement and are then classified as human trafficking as opposed to other crimes with similar elements such as prostitution or labor exploitation⁸³. Identifying victims has been challenging for law enforcement with research showing that law enforcement often lacks the necessary training and knowledge to investigate trafficking⁸⁴. Investigators such as police detectives generally have the responsibility of identifying and responding to trafficking cases. For the most part they generally receive some form of specialized training in human trafficking, although the extent and quality varies from precinct to precinct. Yet, is it often patrol police officers who are more likely to come in contact with potential trafficking victims while working. Despite this, patrol officers often lack the necessary human trafficking identification training, often cited due to budget restrictions. Law enforcement commonly depends on victim service providers to assist in identifying trafficking and offer support by providing services to victims, but there are some very important mandate differences between the police and victim service providers that complicate their partnership.

While law enforcement’s ultimate goal is criminal prosecution, victim service providers goal is to provide relief to the victim. Victim services recognize that in some cases contacting the police may not be in the best interest of the victim as they may risk being arrested or are not emotionally stable enough to endure a criminal investigation⁸⁵. They

⁸² Potocky (n 19) 375.

⁸³ Farrell and Pfeffer (n 21) 47.

⁸⁴ *ibid.*

⁸⁵ *ibid* 60.

are particularly wary of providing police with information when it pertains to foreign victims as these cases, especially when they deal with labor trafficking, are commonly referred to ICE (Immigration and Customs Enforcement) so victim service providers then only selectively refer cases to law enforcement or work without police consultation⁸⁶. There are also frequent differences in the type of victims' law enforcement and victim service providers identify. In a study ranging from 2007 to 2010 more than 80% of victims identified by US law enforcement anti trafficking task forces were sex trafficking victims meanwhile victim service providers in the same task forces indicated that 64% of the victims served were labor trafficking victims and only 22% were sex trafficking victims and another 10% were victims of both⁸⁷[⁸⁸]. As mentioned in section one the perception of human trafficking that law enforcement holds is often cited as the reason preventing law enforcement from acknowledging a broader range of trafficking, while many police officers do in fact recognize the potential for both sex and labor trafficking they decide to focus on the former over the latter as they perceive it to be the more well perceived and supported cause by the public.

2.4.2 Trafficking Investigations

Police develop norms and routines that guide their actions during different types of criminal investigations, through this they generally know what to expect and can anticipate certain outcomes based on past experiences and expertise⁸⁹. When it comes to new crimes, such as trafficking, investigators will tend to have less experience and are required develop new tactics and expectations⁹⁰. Vice and child exploitation units are often trained to only identify traditional forms of commercial sexual exploitation, they also employ routine vice tactics that are not particularly suited to identify trafficking victims and even more so unsuited to identify labor trafficking⁹¹.

⁸⁶ Logan, Walker and Hunt (n 68) 12.

⁸⁷ Farrell and Pfeffer (n 21) 47.

⁸⁸ *ibid* 51.

⁸⁹ *ibid* 52.

⁹⁰ Logan, Walker and Hunt (n 68) 19.

⁹¹ Farrell and Pfeffer (n 21) 48.

Police investigations have traditionally been reactive, in which police respond to complaints or cases brought to them yet specialized investigators are expected to proactively identify patterns and develop intelligence to identify crimes⁹². The reliance of reactive strategies when it comes to trafficking often stems from the lack of prioritization of such cases, along with the police's own narrow definition of what constitutes trafficking. Police are often found to believe that there is little they can do to proactively identify human trafficking, instead they wait for victims to come forward despite their own recognition that trafficking victims are unlikely to seek help from the police themselves. This leaves the burden largely on victim service providers. Police are also less likely to investigate labor trafficking as opposed to sex trafficking as they are relying on tips and calls from the community instead of proactively investigating potential trafficking venues. When police did proactively identify trafficking cases they frequently used vice strategies such as raids and stings in places such as brothels. These tactics have been criticized for ruining any long-term opportunity to develop intelligence on trafficking networks as they alert potential perpetrators that they are being monitored⁹³. Since police are reacting to tips or happen upon trafficking while on duty, they are often unprepared to conduct interviews and collect data on the spot. Language barriers are also another challenge as many patrol officers do not have foreign language skills. This often leads to misunderstandings due to officers using other witnesses at the scene as translators who may or may not purposefully mistranslate. Another frequent issue was that once a victim was identified, police often did not know how to properly build a human trafficking case⁹⁴. Police notably would also not actively look for labor cases as the locations that have a risk of worker exploitation such factories or farms were not part of routine police patrol, unlike brothels or red-light districts. When the police would receive tips regarding labor trafficking they would often struggle to distinguish unfair labor conditions from labor trafficking crimes. They would then refer the cases to outside federal law

⁹² *ibid* 54.

⁹³ *ibid* 56.

⁹⁴ Logan, Walker and Hunt (n 68) 19.

enforcement agencies with more knowledge on labor regulations, leaving local police unable to develop any skills and experience with labor trafficking cases⁹⁵.

2.4.3 Prosecutions & Victim Assistance

Prosecutions of human trafficking cases under the TVPA has been condemned for emphasizing criminal prosecution and weakening the act's main humanitarian goals of prevention and victim protection⁹⁶. The law requires "severe trafficking victims" to participate extensively in criminal prosecutions in exchange for protection, still prosecution rates remain low. The most recent report from the Department of Justice released in 2018, which covered the 2015 fiscal year, stated that trafficking prosecutions increased from 729 in 2011 to 1,049 in 2015 and counted 769 convictions⁹⁷. When US attorneys decide to prosecute a case, conviction rates are high, about 96%, in 2015 out of the 825 cases that ended in a verdict 769 were convicted. Yet US attorneys often decline to prosecute up to 60% of cases, in 2015 out of the 1923 referred cases only 1049 were selected⁹⁸[⁹⁹]. Proponents of the TVPA point out that prosecution and conviction rates are still higher than pre TVPA rates. In regards to assistance, under the TVPA victims of trafficking could receive social benefits such as financial assistance and housing. For foreign trafficking victims the TVPA also created special nonimmigrant statuses that would allow them to remain in the US such as the T- and U-visas¹⁰⁰[¹⁰¹]. These benefits have been the target of criticism due the hurdles that victims must face in order to be recognized, their required assistance in the investigation and prosecution of traffickers, and the low number of successful benefit recipients¹⁰². This has been argued to be especially burdensome for non-US nationals are they risk deportation both during

⁹⁵ Farrell and Pfeffer (n 21) 57.

⁹⁶ Chacon (n 44) 3024.

⁹⁷ Mark Motivans and Howard Snyder, 'Federal Prosecution of Human-Trafficking Cases, 2015' 15.

⁹⁸ Potocky (n 19).

⁹⁹ Motivans and Snyder (n 99).

¹⁰⁰ 'U and T Visa Certifications | U.S. Department of Labor'

<<https://www.dol.gov/agencies/whd/immigration/u-t-visa>> accessed 26 May 2021.

¹⁰¹ More on T- and U-Visas in section 4.3.3

¹⁰² Potocky (n 19) 374.

identification and even after receiving a temporary right to stay such as a nonimmigrant status¹⁰³.

2.5 Conclusion

The TVPA has been said to be greatly influential in shaping the way both the general public and government officials view human trafficking while at the same time also reflecting societal anxieties regarding sex and migration. The repeated mention of sex trafficking has had an impact on the way the TVPA has been implemented and has in turn created a narrative in which women and children are the most vulnerable victims while labor trafficking is largely ignored and seen as a problem of migrants breaking immigration laws. This narrative has helped shape the idea of “good” and “bad” victims of trafficking that has been further endorsed through its incorporation of the “melodramas” of human trafficking.

Sex work has also been a frequent target in the fight against trafficking with groups such as political conservatives and Radical abolitionist feminists joining together to combat all forms of sex work. Critics have warned these tactics not only do not work but also put trafficking victims at even greater risk. The TVPA has also been accused of promoting anti-immigration efforts under the guise of anti-trafficking efforts, critics have pointed out that the overreliance on border security does little to stop trafficking especially domestic trafficking. The political biases of the TVPA have also been accused to have shaped foreign policy, as the US has required foreign NGOs and even governments to align with its anti-sex work initiatives or risk sanctions. In terms of trafficking numbers, statistics have been labeled as high unreliable as they vary by source and even in definition, while proponents of the TVPA generally acknowledge these discrepancies they argue it could mean the numbers are underreported. Accessing these numbers has proven to be another challenge as multiple federal agencies and offices within these

¹⁰³ Chapkis (n 3) 932.

agencies carry out their own trafficking duties and reports. Victim identification has been minimal as law enforcement has continually struggled to define and deal with trafficking cases especially cases of labor trafficking. Trafficking investigations have faced similar problems with due to reliance on unsuited investigation tactics and a general lack of trafficking knowledge. Federal prosecutions rated of trafficking cases under the TVPA have also remained low yet still higher than pre TVPA rates. Lastly, in terms of assistance, the TVPA has established the right to social and migratory assistance for victims of trafficking yet the requirements for acquiring benefits have been labeled as very burdensome especially for foreign victims.

While the TVPA has been presented as crucial legislation for assisting victims of trafficking its most important components may actually be those it leaves out of its protection, those who do not qualify for services. The TVPA itself acknowledges in its text that trafficking could happen anywhere and to anyone yet they make distinctions on who is and who isn't a victim through its distinctions between victims of "trafficking" and victims of "severe trafficking," and its language which heavily evokes images of women and children in sexual exploitation. The rights and protections given by the TVPA all then depend on being legible as a victim to government officials, thus it is important to look at the parameters set by the language of the TVPA in order to identify possible obstacles victims may face.

Although there have been criticisms regarding the categories of victims set by the TVPA there have been few reviews of the actual victim service programs. Some early research on victim services under the TVPA underscored the possible gaps in terms of service accessibility and the variety of services offered, especially for non-US nationals who were awaiting approval for federal services ¹⁰⁴. The HHS which has been designated as the overhead of the federal victim service programs also has little information regarding the quality of services. There have been several discrepancies in the government's own numbers regarding the number of victims served. Meaning that victim services are being delivered both without knowing the quality, effectiveness nor even their extent of service.

¹⁰⁴ Potocky (n 32) 361.

This thesis will attempt to address this gap with victim services by looking closely at the victim services set out by the TVPA in terms of quality and accessibility which also then, in turn, requires a closer look at how and whom the TVPA defines as a victim.

3. TVPA Origins, Drafting and Debates

Human Trafficking became a growing international concern beginning in the early 1990's¹⁰⁵[¹⁰⁶]. Academics have argued that such concerns emerged from societal anxieties concerning globalization, migration organized crime and female sexuality¹⁰⁷. In the US there was a governmental consensus that steps needed to be taken to address the “trafficking problem.” In response the TVPA was passed in October of 2000¹⁰⁸. The legislation established human trafficking as a new federal crime, created social and migratory benefits for victims and provided for sanctions against foreign states who did not take the appropriate steps to combat trafficking. The enactment of the TVPA had a lot to do with interest groups and their involvement educating policy makers on the nature of human trafficking and the appropriate responses to it. The bills introduced for consideration reflected the differing perspectives of conservative and religious interests and labor concerns. Negotiations of the TVPA turned into divisive debates over definitions, as there was agreed upon definition of trafficking at the time¹⁰⁹. Neo-Abolitionists and evangelical advocates supported the broad interpretations of trafficking, with the hope of eradicating commercial sex while pro sex work activists insisted on the need for more narrow definitions¹¹⁰. As a result of the TVPA's diverse parties involved in its negotiation, such as neo-abolitionist feminists, evangelical Christians, and human rights advocates, the TVPA reflects a wide range of values beliefs and anxieties¹¹¹[¹¹²].

¹⁰⁵ Barbara Stolz, ‘Educating Policymakers and Setting the Criminal Justice Policymaking Agenda: Interest Groups and the “Victims of Trafficking and Violence Act of 2000”’ (2005) 5 *Criminal Justice* 407, 408.

¹⁰⁶ Alicia W Peters, ‘Trafficking in Meaning: Law, Victims, and the State’ (Columbia University 2010) 41.

¹⁰⁷ *ibid.*

¹⁰⁸ ‘VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000’ (n 17).

¹⁰⁹ Peters (n 107) 43.

¹¹⁰ Julie Dahlstrom, ‘The Elastic Meaning(s) of Human Trafficking’ (Social Science Research Network 2019) SSRN Scholarly Paper ID 3500100 394 <<https://papers.ssrn.com/abstract=3500100>> accessed 19 May 2021.

¹¹¹ Stolz (n 106) 408.

¹¹² Peters (n 107) 40.

3.1 The “Human Trafficking problem” in the US

3.1.1 Growing Public and Governmental interest in Trafficking

Two high profile cases helped bring the issue of human trafficking into the mainstream of US society¹¹³[¹¹⁴]. First, in September of 1995 police in El Monte California discovered 72 Thai nationals during a raid of a garment factory¹¹⁵[¹¹⁶]. Having been lured to the US with the promised of employment they were described as working in slave like conditions, being forced to work 18 hours a day, 7 days a week while being paid less than 60 cents an hour. The owners kept them there under threats of violence. The second case was in 1997, the New York City police department discovered a migrant smuggling scheme that involved 62 hearing impaired Mexican migrants who had been brought to the US under the promise of jobs¹¹⁷[¹¹⁸]. Once in the US, they were forced to beg on the streets up to 18 hours a day, 7 days a week. When they failed to reach their quotas, they would face physical and even sexual violence. These cases garnered national media attention by both the public and government officials. They especially highlighted the gaps in the current legislation and its inability to deal with such cases appropriately. Prior to the TVPA trafficking cases were prosecuted under laws regarding involuntary servitude, smuggling, extortion and kidnapping statues, the Mann Act, and labor laws regarding working conditions and compensation¹¹⁹[¹²⁰]. The authority for enforcing these laws was spread across different federal agencies, which meant varying outcomes depending on the

¹¹³ Chacon (n 44) 2987.

¹¹⁴ Peters (n 107) 61.

¹¹⁵ Erin Blakemore, ‘20th-Century Slavery in a California Sweatshop Was Hiding in Plain Sight’ (*Smithsonian Magazine*) <<https://www.smithsonianmag.com/smithsonian-institution/20th-century-slavery-california-sweatshop-was-hiding-plain-sight-180975441/>> accessed 19 June 2021.

¹¹⁶ George White, ‘Workers Held in Near-Slavery, Officials Say’ *Los Angeles Times* (3 August 1995) <<https://www.latimes.com/archives/la-xpm-1995-08-03-mn-31090-story.html>> accessed 19 June 2021.

¹¹⁷ Deborah Sontag, ‘Dozens of Deaf Immigrants Discovered in Forced Labor’ *The New York Times* (20 July 1997) <<https://www.nytimes.com/1997/07/20/nyregion/dozens-of-deaf-immigrants-discovered-in-forced-labor.html>> accessed 19 June 2021.

¹¹⁸ Deborah Sontag, ‘7 Arrested in Abuse of Deaf Immigrants’ *The New York Times* (21 July 1997) <<https://www.nytimes.com/1997/07/21/nyregion/7-arrested-in-abuse-of-deaf-immigrants.html>> accessed 19 June 2021.

¹¹⁹ Peters (n 107) 61.

¹²⁰ Barbara Stolz, ‘Interpreting the U.S. Human Trafficking Debate Through the Lens of Symbolic Politics’ (2007) 29 *Law & Policy* 317.

charges used and the agency that pursued the case. Additionally, there were few provisions designed to assist non-US nationals as they were not legally allowed to reside or work in the US. US law simply did not have one uniform way of dealing with trafficking. In the El Monte case the perpetrators were charged with involuntary servitude, criminal conspiracy, kidnapping, smuggling, and harboring individuals in violation of US immigration law. In the New York case the perpetrators were charged with violations of criminal provisions of the US immigration laws prohibiting the recruitment, smuggling, and harboring of aliens. Yet US officials recognized that these existing legal tools were not enough to properly address the complexities of human trafficking and its victims, specifically there was concern that the then current criminal punishments were not severe enough to address trafficking¹²¹[¹²²][¹²³].

The White House and Clinton administration, including the First Lady Hillary Clinton became increasingly exposed to the issue of human trafficking through various international humanitarian conferences and meetings. Starting in the 1995 Fourth World Conference on Women in Beijing China where trafficking was presented into the political spotlight¹²⁴[¹²⁵][¹²⁶]. Trafficking was framed as gendered human rights issue affecting mostly women, while the word trafficking itself was not used Mrs. Clinton spoke on the harrowing conditions and experiences of women being ‘forced into prostitution¹²⁷.’ On a 1996 trip to Thailand which focused on human rights violations in Asia, Mrs. Clinton along with then Secretary of State Madeline Albright visited the New Life Center¹²⁸. The organization offered housing and education for girls who had been trafficked into prostitution. The trip sought to bring the focus on girls’ education programs in Thailand that were aimed at fighting trafficking, the New Life Center which was run by an

¹²¹ Chacon (n 44) 2989.

¹²² Stolz (n 121) 317.

¹²³ Peters (n 107) 61.

¹²⁴ Stolz (n 106) 413.

¹²⁵ Peters (n 107) 41.

¹²⁶ Amy Chozick, ‘Hillary Clinton’s Beijing Speech on Women Resonates 20 Years Later’ *The New York Times* (5 September 2015) <<https://www.nytimes.com/politics/first-draft/2015/09/05/20-years-later-hillary-clintons-beijing-speech-on-women-resonates/>> accessed 19 June 2021.

¹²⁷ Hillary Clinton, ‘REMARKS FOR THE UNITED NATIONS FOURTH WORLD CONFERENCE ON WOMEN’ (5 September 1995) <<https://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950905175653.txt>> accessed 19 June 2021.

¹²⁸ Stolz (n 106) 414.

American was seen as an ideal example of these efforts. Later on, starting in 1997 NGO and interested groups interested in trafficking began to interact with the White House and other policy makers¹²⁹. In April of that year Gillian Caldwell, Co-Director of the Global Survival Network (GSN) presented his documentary, *Bought & Sold* regarding the international trafficking of women and children from Russia, to a criminal justice conference sponsored by the US departments of State and Justice¹³⁰[¹³¹]. The documentary also received large media attention airing on major US television channels. In July the First Lady along with her chief of staff attended a conference in Vienna, Austria by the American NGO Vital Voices which, works with women leaders regarding the economic empowerment, political participation, and human rights of women¹³²[¹³³]. During that conference members from the La Strada Ukraine delegation expressed the need for international support for trafficked women from the Ukraine. The GSN's documentary was also prominently shown during the conference. Throughout the later part of the 1997 officials from the Presidents Interagency Council on Women (PICW) and the departments of State, Justice and Labor participated in information exchange sessions with NGOs regarding the scope of trafficking and potential forms of victim protections¹³⁴. In March 1998 President Clinton released a Presidential Directive in which he referred to the problem of trafficking in women and girls¹³⁵[¹³⁶][¹³⁷]. The directive went on to charge the PICW with coordinating the US domestic and international trafficking policy. At that time the PICW was chaired by Secretary of state Madeline Albright with the First Lady as honorary chair, it served as a vehicle for bringing staff from various federal agencies together and act against trafficking. PICW staff members

¹²⁹ *ibid.*

¹³⁰ 'Global Survival Network's Footage for *Bought & Sold: An Investigative Documentary about the International Trade in Women*' <<https://legacy.lib.utexas.edu/taro/hrdi/00009/00009-P.html>> accessed 19 June 2021.

¹³¹ Stolz (n 106) 414.

¹³² *ibid.*

¹³³ U.S. Department of State, 'Press Statement: Vital Voices, Women in Democracy' <<https://1997-2001.state.gov/briefings/statements/970709a.html>> accessed 19 June 2021.

¹³⁴ Stolz (n 106) 414.

¹³⁵ 'Memorandum on Steps To Combat Violence Against Women and Trafficking in Women and Girls' <<https://www.govinfo.gov/content/pkg/WCPD-1998-03-16/pdf/WCPD-1998-03-16-Pg412.pdf>> accessed 19 June 2021.

¹³⁶ Peters (n 107) 41.

¹³⁷ Stolz (n 106) 409.

met with NGOs to discuss possible trafficking policy. The groups expressed need for victim's protection along with the prosecution of traffickers, through these discussions the Clintons administration three P's anti trafficking strategy of, Prevention, Protection and Prosecution, developed. Clinton also assigned the Secretary of State and Attorney General with the task of reviewing the current treatment of victims, existing criminal laws, developing strategies for victim protection and assistance, raising awareness, and generating anti trafficking strategies. While many of these events focused on the issue of women and children the Clinton administration stance of trafficking was very broad, it included all labor sectors and the inclusion of men¹³⁸.

3.1.2 Key Supporters of Trafficking Legislation

Starting in 1999, three congress members lead the congressional efforts against trafficking, Representative Chris Smith (Republican, New Jersey), Senator Paul Wellstone (Democrat, Minnesota), and Senator Sam Brownback (Republican, Kansas). Rep. Smith has supported certain aspects of various traditionally liberal causes such as immigration, gun control and health care which have put him at odds with fellow Republicans, with the exception of abortion and LGBTQ rights to which he has opposed¹³⁹. Prior to his involvement in trafficking issues Smith was active in issues regarding the rights of religious minorities and as co-chair of the House Pro-Life Caucus. The issue of sex trafficking was brought to Smith's attention by Evangelical activist Chuck Colson and Michael Horowitz fellow at the conservative think tank the Hudson institute, both of which had strong anti-prostitution goals¹⁴⁰. Senator Wellstone was active on the issues regarding peace, the environment, health care and the immigration¹⁴¹[¹⁴²]. He had been major opponent of both the Gulf and Iraq wars but broke away from some liberal politicians on the issue of gay marriage in the 1990's, although he would later on

¹³⁸ Peters (n 107) 42.

¹³⁹ 'Chris Smith' (*US Congressman Chris Smith Representing New Jersey's 4th District*) <<https://chrissmith.house.gov/biography/>> accessed 19 June 2021.

¹⁴⁰ Peters (n 107) 44.

¹⁴¹ 'Paul D. Wellstone' <<https://www.congress.gov/member/paul-wellstone/W000288>> accessed 19 June 2021.

¹⁴² 'Paul Wellstone on the Issues' <https://www.ontheissues.org/Senate/Paul_Wellstone.htm> accessed 19 June 2021.

change his stance on this issue. He was strongly supported by liberal and civil liberties organizations such as Americans for Democratic Action, the Sierra Club, and the American Civil Liberties Union (ACLU). Wellstone had become interested on the issue of trafficking after meeting with victims and advocates while abroad with his wife who then encouraged him to do something about the problem¹⁴³. Senator Brownback had previously been elected to the House of Representatives before successfully running for the Senate in 1996¹⁴⁴. Brownback has supported traditionally conservative issues such as the US presence in Iraq, pro-business policies and the apposition of abortion, LGBTQ rights, and health care reform¹⁴⁵[¹⁴⁶]. Brownback has openly stated that his devout Christian beliefs have influence his policies, this has at times influenced his support for liberal policies such as the opposition of the death penalty and supporting immigration and refugee protection¹⁴⁷. Brownback became interested in the issue of trafficking through his work with slavery and religious freedom in the Sudan, he along with Wellstone came to view trafficking through the lens of slavery, viewing trafficking as being forced or coerced into any form of labor¹⁴⁸[¹⁴⁹]. Prior to any introduction of trafficking legislation various groups representatives met with these members of congress to inform them on trafficking, these groups tended to share the policymaker's political view, liberal or conservative¹⁵⁰. For example, Rep. Smith and his staff met with conservative groups such as, Family Research Council, Equality Now, Protection Project, and the National Association of Evangelicals. He also met with prominent anti

¹⁴³ Stolz (n 106) 415.

¹⁴⁴ 'BROWNBACK, Sam Dale | US House of Representatives: History, Art & Archives' <[https://history.house.gov/People/Listing/B/BROWNBACK,-Sam-Dale-\(B000953\)/](https://history.house.gov/People/Listing/B/BROWNBACK,-Sam-Dale-(B000953)/)> accessed 19 June 2021.

¹⁴⁵ Sam Brownback, 'Sam Brownback' <<https://www.congress.gov/member/sam-brownback/B000953>> accessed 19 June 2021.

¹⁴⁶ 'Sam Brownback on the Issues' <https://www.ontheissues.org/senate/sam_brownback.htm> accessed 19 June 2021.

¹⁴⁷ Michael Luo, 'On the Road: A Week With "Values" Voters' (*The Caucus*, 28 October 2007) <<https://thecaucus.blogs.nytimes.com/2007/10/28/on-the-road-a-week-with-values-voters/>> accessed 19 June 2021.

¹⁴⁸ Peters (n 107) 44.

¹⁴⁹ Stolz (n 106) 415.

¹⁵⁰ *ibid.*

prostitution feminists such as Gloria Steinem. Senator Brownback also spoke with many of the same groups as Smith.

3.1.3 Trafficking Committee Hearings

Several congressional committees, both in the House and Senate, held hearings on human trafficking between 1999 and 2000. Starting in June 1999 the Commission on Security and Cooperation in Europe (CSCE) Chaired by Rep. Smith, held its first hearing focusing on sex trafficking in Europe and the US¹⁵¹[¹⁵²]. The hearing featured representatives from the PICW, GSN, Protection Project among others. Their testimonies and discussion focused on the complexities of trafficking and the absence of protection for victims. In September of that year Smith held more hearings as the chair of the House International Relations Committee's Subcommittee on international Operations and Human Rights, many of the same representatives from the previous hearing were also present along with a trafficking victim¹⁵³[¹⁵⁴]. During this hearing the PICW presented its proposed three P's anti trafficking strategy, which was generally agreed upon by all. The Protection Project highlighted their view that sex and labor trafficking were different and thus needed to be dealt with separately, the International Justice Mission supported that notion and further commenting on the distinctiveness of sex trafficking, making comparison to the differences between assault and sexual assault. Later on, in February and April 2000 the Senate began its own trafficking hearings lead by the Committee on Foreign Relations, Subcommittee on Near Eastern and South Asian Affairs chaired by Sen. Brownback and Sen. Wellstone as Ranking Minority Member¹⁵⁵[¹⁵⁶]. The committee heard testimony from the Human Rights Watch, International Justice Mission, Protection Project, Departments of State and Justice, PICW, as well as trafficking victims and advocates. Unlike the House hearings there was a much larger focus on the both sex and labor trafficking in the Senate.

¹⁵¹ Stolz (n 121) 318.

¹⁵² Stolz (n 106) 417.

¹⁵³ Stolz (n 121) 318.

¹⁵⁴ Stolz (n 106) 417.

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

3.2 TVPA Drafting

3.2.1 Early Drafts

Starting in 1999 anti trafficking bills were introduced the House and Senate, the bills reflected the drafters differing prospective on what constituted trafficking, sex or labor trafficking or a combination of both¹⁵⁷[¹⁵⁸][¹⁵⁹]. Each draft was superseded another draft that contained more extensive and comprehensive provisions. On March 25, 1999 Rep. Smith and Rep. Marcy Kaptur (Democrat, Ohio) introduced the first bills into the House, ‘The Freedom from Sexual Trafficking Act of 1999’ (H.R. 1356)¹⁶⁰. The bill limited trafficking to forced sex work,

The taking of a person across an international border for the purpose of a commercial sexual act, if either such taking or such sexual act is effected by fraud, force, or coercion, or if the person has not attained the age of 18 years. - H.R. 1356, Sec. 3(1)

Along with its emphasis on sex trafficking and prostitution it provided for increased criminal penalties. Groups with special concerns regarding sex trafficking, mostly those with conservative and religious focuses had worked closely with Smith during this time¹⁶¹. Later in October 27, 1999 Rep. Sam Gejdenson (Democrat, Connecticut) sponsored the ‘Comprehensive Anti-Trafficking in Persons Act of 1999’ (H.R. 3154)¹⁶². Rep. Gejdenson had become interested in trafficking after it was brought to his attention by Smith. Gejdenson and his staff also met with interest groups, mostly left leaning, and the PICW¹⁶³. The bill which had an identical companion in the Senate supported by Sen.

¹⁵⁷ Kelly E Hyland, ‘Protecting Human Victims of Trafficking: An American Framework’ (2001) 16 *Berkeley Journal of Gender, Law & Justice* 29, 60.

¹⁵⁸ Peters (n 107) 45.

¹⁵⁹ Stolz (n 106) 416.

¹⁶⁰ Chris Smith, ‘Freedom From Sexual Trafficking Act of 1999’ (25 March 1999) <<https://www.congress.gov/bill/106th-congress/house-bill/1356>> accessed 19 June 2021.

¹⁶¹ Stolz (n 106) 416.

¹⁶² Sam Gejdenson, ‘Comprehensive Antitrafficking in Persons Act of 1999’ (16 November 1999) <<https://www.congress.gov/bill/106th-congress/house-bill/3154>> accessed 19 June 2021.

¹⁶³ Stolz (n 106) 416.

Wellstone (S.1842)¹⁶⁴ maintained a broad scope when it came to the definition of trafficking, it addressed both sex and labor trafficking.

The recruiting or abducting, facilitating, transferring, harboring or transporting a person, by the threat or use of force, coercion, fraud or deception, or by the purchase, sale, trade, transfer or receipt of a person, for the purpose of subjecting that person to involuntary servitude, peonage, slavery, slavery-like practices, or forced or bonded labor or services – H.R. 3154, Sec. 3(1)

Bills H.R. 3154 and S 1842 were also officially supported by the Clinton Administration¹⁶⁵. Meanwhile in the Senate, before the introduction of S. 1842, Sen. Wellstone introduced the ‘The International Trafficking of Women and Children Victim Protection Act of 1999’ (S 600) on March 11 1999¹⁶⁶. It had also had a House companion bill H.R. 1238¹⁶⁷. While the bills title emphasized women and children, its trafficking definition was gender neutral and addressed both sex and labor trafficking.

The use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport within or across borders, purchase, sell, transfer, receive, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude, or slavery or slavery-like conditions, or in forced, bonded, or coerced labor – S. 600, Sec. 4(2)

¹⁶⁴ Paul D Wellstone, ‘Comprehensive Antitrafficking in Persons Act of 1999’ (22 February 2000) <<https://www.congress.gov/bill/106th-congress/senate-bill/1842>> accessed 19 June 2021.

¹⁶⁵ Hyland (n 158) 61.

¹⁶⁶ Paul D Wellstone, ‘International Trafficking of Women and Children Victim Protection Act of 1999’ (11 March 1999) <<https://www.congress.gov/bill/106th-congress/senate-bill/600>> accessed 19 June 2021.

¹⁶⁷ Louise McIntosh Slaughter, ‘International Trafficking of Women and Children Victim Protection Act of 1999’ (24 September 1999) <<https://www.congress.gov/bill/106th-congress/house-bill/1238>> accessed 19 June 2021.

3.2.2 Final TVPA Drafts and Negotiations

Finally, on November 8, 1999 Rep. Smith introduced the Victims of Trafficking Protection Act of 1999, (H.R. 3244)¹⁶⁸. The bill was a compromise of the earlier bills, it reflected the differing views held by its sponsors, Smith and Wellstone and it became the model for the Victims of Trafficking Protection Act of 2000. H.R. 3244 was broader than Smith previous bills, it covered both sex and labor trafficking, yet it also singled out trafficking into forced prostitution as separate from others trafficking sectors. It included a definition of sex trafficking that did not require the presence of force, fraud or coercion thus covering any sort of entrance into prostitution. The draft was considered to be the most comprehensive and had bipartisan support from its original cosponsors Representatives Gejdenson, Kaptur, Louise Slaughter (Democrat, New York) Tom Lantos (Democrat, California), Cynthia A. McKinney (Democrat, Georgia), Peter T. King (Republican, New York), Frank R. Wolf (Republican, Virginia), and John Cooksey (Republican, Louisiana), along with support from the White House¹⁶⁹[¹⁷⁰]. On May 9, 2000 H.R. 3244 passed by voice vote in the House, after its passage in the House Wellstone and Brownback revised it¹⁷¹. On July 27, 2000 the revised version renamed the Trafficking Victims Protection Act of 2000 unanimously passed in the Senate. The House and Senate versions then went to committee to be drafted into one bill.

The compromises made during the committee resulted in the loss of private right of action, the inclusion of mandatory sanctions and the elimination of asset forfeiture. The House bill provided for the federal right of private action for victims of trafficking, into voluntary servitude, or slave like conditions and sex trafficking¹⁷². The private right of action allowed for victims to be awarded punitive damages, attorneys fees and other litigation expenses. The TVPA, like the Senate bill, made no such provision for this right,

¹⁶⁸ Christopher H Smith, 'Victims of Trafficking and Violence Protection Act of 2000' (28 October 2000) <<https://www.congress.gov/bill/106th-congress/house-bill/3244>> accessed 19 June 2021.

¹⁶⁹ 'Cosponsors - H.R.3244' (28 October 2000) <<https://www.congress.gov/bill/106th-congress/house-bill/3244/cosponsors>> accessed 19 June 2021.

¹⁷⁰ Hyland (n 158) 61.

¹⁷¹ Christopher H Smith, 'Actions - H.R.3244' (28 October 2000) <<https://www.congress.gov/bill/106th-congress/house-bill/3244/actions>> accessed 19 June 2021.

¹⁷² Hyland (n 158) 68.

by omitting the private right of action it severely limits the financial recovery of victims and eliminates the tool that could have financially damaged traffickers.

The second change was the TVPA's inclusion of the House bills sanctions against states who do not meet minimum anti trafficking standards¹⁷³. While the Senate bill had made it optional, the House version made them mandatory. The Clinton Administration had been strongly opposed mandatory sanctions, arguing that it would undermine US' international cooperative efforts and that it would be an ineffective tool against states who would instead benefit from assistance and support not punishment.

Lastly there was the loss of asset forfeiture, the House bill included asset forfeiture which specified that forfeited assets were to be used to provide monetary recompense for victim's civil judgments against traffickers¹⁷⁴. The remaining assets would be used to fund prevention and reintegration initiatives, expansion of federal victim services the Crime Victims Fund which recompenses victims of crime. On October 5, 2000 the committee released the reconciled House and Senate bill to congress. The bill was received with overwhelming bipartisan support easily passing by a vote of 371 to 1 in the House and by a vote of 95 to 0 in the Senate¹⁷⁵[¹⁷⁶].

On October 28, 2000 President Clinton signed the Victims of Trafficking and Violence Protection Act of 2000 into law. President Clinton hailed the legislation as an exemplary effort of bipartisan work that would help end 'violence against women¹⁷⁷.' In the end while the TVPA gave the federal government more power and tools to address trafficking especially in terms of prosecution the acts final negotiations cut many possible individual protections for victims. Such protections such as the rights to private action and the

¹⁷³ *ibid.*

¹⁷⁴ *ibid* 69.

¹⁷⁵ 'Roll Call 518, Bill Number: H. R. 3244' (*Office of the Clerk, U.S. House of Representatives*, 6 October 2000) <<https://clerk.house.gov/Votes/2000518>> accessed 19 June 2021.

¹⁷⁶ 'U.S. Senate Roll Call Votes 106th Congress - 2nd Session' (*United States Senate*) <https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm?congress=106&session=2&vote=00269> accessed 19 June 2021.

¹⁷⁷ 'Statement on Signing the Victims of Trafficking and Violence Protection Act of 2000' (*The American Presidency Project*) <<https://www.presidency.ucsb.edu/documents/statement-signing-the-victims-trafficking-and-violence-protection-act-2000>> accessed 19 June 2021.

protection of asset forfeiture would have aided in a victim's financial recovery, a crucial component to a victim's rehabilitation.

3.3 Discussions and Debates Surrounding TVPA Negotiations

3.3.1 Special Interest Groups and Lobbying Tactics

Diverse organizations and groups participated in the development stages of trafficking legislation. During the trafficking congressional committees' hearings, various governmental working groups were formed in which various NGOs think tanks and other government agencies with relevant interests targeted their lobbying efforts. Government agencies included the Departments' of State, Labor, and HHS, as well as the PICW, these agencies provided policy makers with educational information regarding trafficking but tended to mainly focus on the details of the new legislation¹⁷⁸[¹⁷⁹]. For example, the State Department heavily focused on what they saw as the necessary provisions regarding sanctions on other states who failed to adequately address trafficking while the Justice Department focused in the new possible criminal provisions. As for NGOs, this included feminist, human rights, migrant and sex work services provider groups along with religious organizations, academics, and journalists¹⁸⁰[¹⁸¹]. These groups focused on raising policymaker's awareness regarding human trafficking, contributing to their conception of trafficking as an issue. Overall these groups were ideologically diverse and tended to view the issue of trafficking through their own area of concern and lens. These groups used several techniques when it came to educating policymakers on human trafficking. This included creating and distributing educational materials, holding conferences that policymakers would then attend, meetings with policymakers and their staff, testimony at congressional hearings, and voicing their concerns in the media. Some notable examples of this was the GSN's trafficking documentary during the 1998 Vital

¹⁷⁸ Stolz (n 106) 420.

¹⁷⁹ Peters (n 107) 46.

¹⁸⁰ *ibid.*

¹⁸¹ Stolz (n 106) 419.

Voices conference in Vienna, NGO's regular meetings with the PICW, and the Protection Project, International Justice Mission, and the GSN testimony at trafficking hearings¹⁸². Such groups also arranged for trafficking victims or victim groups representatives to testify at hearings which had great impact on policymakers by putting a human face to the issue of trafficking. The PICW had an especially unique dual capacity acting as policymakers, meeting regularly with interest groups while also working as interest group itself and meeting with legislative staff and testifying at hearings. Groups also tended to seek out policymakers who held similar political views. For example, religious groups that had worked with Sen. Brownback on the religious freedom legislation also sought out to work with him on trafficking legislation.

3.3.2 *The "Prostitution Debate"*

One of the most prominent debates surrounding the TVPA focused on whether the new legislation should focus on forced prostitution or trafficking in all sectors, as well as the issue of the relevancy of consent. Those involved in the 'prostitution debate' could be divided into two groups, the anti-prostitution groups and the human trafficking groups. The anti-prostitution groups, also referred to as neo abolitionists in other human trafficking literature¹⁸³, primarily focused on trafficking in to sex work, these often comprised of conservative and religious organizations as well abolitionist feminists¹⁸⁴. These groups believed that sex trafficking was the most serious form of trafficking, and tended to group prostitution and trafficking into one which often led them to seek the abolishment of commercial sex. The 'human trafficking' groups on the other hand advocated to define trafficking in a way that included all sectors, sex and labor with the presence of force and coercion¹⁸⁵. The disagreement between forced commercial sex and trafficking into all sectors was also often split among political party lines. While Democrats fought for legislation that covered all trafficking sectors, Republicans on the

¹⁸² *ibid.*

¹⁸³ Janie A Chuang, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' 158 *University of Pennsylvania Law Review* 74, 1664.

¹⁸⁴ Peters (n 107) 50.

¹⁸⁵ Stolz (n 121) 319.

other hand tended to favor the focus on sex trafficking, with the noted exception of Rep. Brownback who had supported Senate legislation which addressed all trafficking sectors.

Throughout the trafficking legislation process some argued that the specific distinction of “sex trafficking” took away from the intended purpose of anti-trafficking legislation while others, such as Rep. Smith, believed that it should be the main or even sole concern¹⁸⁶. During review of the ‘Freedom from Sexual Trafficking Act of 1999’ Representative Cynthia McKinney (Democrat, Georgia) argued sexual trafficking was ‘only one reason why people sell other people’ and highlighted the common elements in all forms of trafficking. In response, Smith once again reiterated the ‘uniquely vile, uniquely brutal’ characteristics of sex trafficking. Later on, during the hearing on Trafficking of Women and Children in the International Sex Trade, witnesses presented varying notions of trafficking. Some presented the idea that force, fraud, and coercion were central to trafficking into any sector, and others presented one in which both coerced and non-coerced commercial sex was singled out as a unique form of exploitation. The director of PICW Theresa Loar stated that sex trafficking was ‘merely one component of trafficking’, while the witness from the Protection Project, Laura Lederer agreed with Smith notion that sex and labor trafficking were not ‘the same and can’t be equated’ and that ‘they need to be separated.’ During the Senate Foreign Relations Committee hearings some witnesses, such as the Executive Director of the Women’s Rights Division of Human Rights Watch Regan Ralph, brought up that instead of the type of work that was being performed the conditions of the work is what was at the core of trafficking. The Clinton administration shared this sentiment¹⁸⁷, during his testimony Harold Koh, the Assistant Secretary of State for Democracy, Human Rights, and Labor, stated that trafficking was ‘not the act itself’, it was the ‘act of the use of force, or fraud.’ When asked about prostitution specifically Kohl, responded referencing the U.N. Trafficking Protocol that was also under negotiation ‘trafficking is described therein as basically trafficking across borders by reason of force or deception or coercion, and does not include voluntary acts.’ Due to this support the Clinton administration received backlash

¹⁸⁶ Peters (n 107) 47.

¹⁸⁷ Stolz (n 106) 419.

from members of the anti-prostitution sphere. On January 10, 2000 an opinion piece in the *Wall Street Journal* titled ‘The Clintons Shrug at Sex Trafficking,’ conservatives William Bennett and Chuck Colson denounced the Clinton Administration for distinguishing between forced and voluntary sex work¹⁸⁸. The article labeled the administration’s actions as a contradiction to ‘common sense and decency.’ Legislation that attempted to define trafficking broadly also received similar criticisms. Sen. Wellstone received a letter by a feminist anti prostitution coalition that urged the senator to reconsider his position in S. 600 and instead suggested that the definitions for sex and labor trafficking be separated with the need for force and coercion to applied only to labor¹⁸⁹.

3.3.3 *Overlapping U.N. Trafficking Protocol Debates*

While negotiations were being made on trafficking legislation, the Clinton administration was also heavily involved with negotiations for what would become the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational, Organized Crime¹⁹⁰[¹⁹¹]. The establishment of the protocol heavily paralleled the discussions around TVPA negotiations, especially its own ‘prostitution debates.’ Drafts heavily debated what role force, fraud and coercion should play in commercial sex. The prostitution debates centered around two aspects, first whether to include an explicit requirement for force, fraud and coercion and second, whether voluntary prostitution should be included as one of the end goals of trafficking. The protocol was negotiated under the U.N. Office of Drugs and Crime which at the time concerned human rights advocates who worried that border security and crime control would lead negotiations¹⁹².

¹⁸⁸ William Bennett and Charles Colson, ‘The Clintons Shrug At Sex Trafficking’ *Wall Street Journal* (10 January 2000) <<https://www.wsj.com/articles/SB947439830524262160>> accessed 19 June 2021.

¹⁸⁹ ‘International Trafficking of Women and Children Victim Protection Act of 1999 (s.600) Analysis of Protection Act by Dorchen Leidholdt’ <<http://www.bayswan.org/traffick/antiwellstone.html>> accessed 19 June 2021.

¹⁹⁰ Chuang (n 184) 1662.

¹⁹¹ Stolz (n 106) 413.

¹⁹² Janie A Chuang, ‘EXPLOITATION CREEP AND THE UNMAKING OF HUMAN TRAFFICKING LAW’ (2014) 108 *The American Journal of International Law* 609, 615.

The Office of the United Nations High Commissioner for Human Rights and the International Labour Organization came to the negotiations with the goal of maintaining a legal differentiation between trafficking and non-coerced prostitution. Yet while these U.N. agencies did not seek to join the two, they also did not seek further rights for those in commercial sex during negotiations. Despite this, their refusal to take on an anti-prostitution stance quickly earned them the label of being “pro prostitution” by neo abolitionists¹⁹³. The Clinton administration had also led the efforts to require force, fraud and coercion in the definition of trafficking, despite pressure from neo abolitionists groups many of which were US based¹⁹⁴. In the same 2000 Wall Street Journal Article Conservatives, including William Bennett and Chuck Colson condemned First Lady Hillary for being ‘pro-prostitution¹⁹⁵,’ also using this issue to attack the Clinton Administration and democratic party during that election-year. Other conservatives also voiced their concerns and penned a letter to the first lady regarding the protocol that included signatories from organizations such as the Ethics and Religious Liberty Commission, Campus Crusade for Christ, Heritage Foundation Institute on Religion and Democracy, and conservative Harvard University law professor Mary Ann Glendon. Feminist groups, such as the Coalition Against Trafficking in Women (CATW) and Equality Now, while also opposed to the legalization of prostitution, requested that the administration rethink their position and also emphasized the need for more services and assistance for women¹⁹⁶. Similarly, the presidents of the National Organization for Women (NOW), Planned Parenthood Federation of America, Gloria Steinem, also sent a letter to the Clinton administration regarding their concerns¹⁹⁷[¹⁹⁸]. On the other side there were organizations that viewed trafficking as a matter of unpaid labor and thus focused on all forms of trafficking. These groups included organizations and individuals that supported the legalization of prostitution and those that did not. They viewed that there

¹⁹³ Chuang (n 184) 1673.

¹⁹⁴ *ibid* 1677.

¹⁹⁵ Bennett and Colson (n 189).

¹⁹⁶ Stolz (n 106) 418.

¹⁹⁷ *ibid*.

¹⁹⁸ Stolz (n 121) 319.

was a need for the inclusion of ‘force, fraud, and coercion’ in order to distinguish between trafficking and prostitution¹⁹⁹[²⁰⁰].

In conclusion, the prostitution debate centered around two aspects, first whether to include an explicit requirement for force, fraud and coercion, and second whether voluntary prostitution should have been included as one of the goals of trafficking. Ultimately, the largely US based neo abolitionists did not achieve their goal of a treaty-based prohibition of prostitution yet they praised the final decision to make the issue of consent irrelevant. While the US efforts for stronger prohibitions of prostitution were unsuccessful, they dominated a substantial amount of time during negotiations on this issue at the expense of stronger protections and obligations from states for victims. Rather than making the support and protection of victims an obligation, the Trafficking Protocol simply suggested that states consider such measures ‘In appropriate cases and to the extent possible under its domestic law.’²⁰¹

¹⁹⁹ Chuang (n 184) 1673.

²⁰⁰ Stolz (n 106) 418.

²⁰¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS Article 6.

4. The TVPA in Practice

The TVPA begins by laying out its “purpose and findings”²⁰² in which the act outlines its mission and an overview of the nature of human trafficking as a crime, followed by definitions of trafficking as used in the text of the act²⁰³. The rest of the bill then follows a layout in accordance to the ‘three p’s’ strategy developed during the acts drafting, with provisions regarding ‘Prevention’ ‘Protection’ and ‘Prosecution.’ This chapter will review the content of the act and how victim services providers are affected by and interact with the definitions and provisions laid out.

4.1 Trafficking Definitions

As discussed in chapter 2.1.1 the TVPA establishes a two-tier system of trafficking. The first tier, ‘severe forms of trafficking’, is that which has conditions of ‘force, fraud, or coercion’ except for underage victims of ‘sex trafficking,’²⁰⁴

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

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

It is also important to note that the TVPA automatic protections of underage victims only extend to sex trafficking, leaving the treatment of the trafficking of minors in other sectors to be unclear. In terms of victim services and underage labor trafficking victims, the circumstances varied. While SH and the WJC both worked with labor trafficking cases only the SH partner had encountered an individual who was underage when first brought

²⁰² 22 USC § 7101 102.

²⁰³ 22 USC § 7102 103.

²⁰⁴ 22 USC § 7102 103(8).

into a trafficking situation but were of legal age when the trafficking was reported. The WJC partner had dealt with minors only in relation to their parents who were in a trafficking situation, in those instances any protections given to the parent would also apply to the child. The second tier of trafficking, ‘sex trafficking’ is defined as, ‘the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.’²⁰⁵ It notably makes no mention for the need of fraud, force or coercion in this second tier meaning this definition also encompasses noncoerced migrant prostitution. As mentioned in section 2.3.1 the inclusion of non-coerced migration for the purposes of sex work has been criticized as they are not a category eligible for protection but yet are included in trafficking statistics and discussions.

The TVPA takes the same two-tier approach in defining trafficking victims, with ‘victim of a severe form of trafficking’ and ‘victim of trafficking.’ Victims of a severe form of trafficking are defined as those are victimized under ‘severe forms of trafficking’ in sec.103(8A) and (8B). Victims of trafficking are defined as those who are victimized under ‘severe forms of trafficking’ (sec. 103(8)) or ‘sex trafficking’ (sec. 103(9)). In order to receive the benefits and services provided by the TVPA, victims must meet the definition of ‘victim of a severe form of trafficking.’ Implicit in these definitions are three ideas that are meant to frame the issue of trafficking. First, the TVPA identifies trafficking as an issue of both labor and sex trafficking and as gender neutral in its definitions of trafficking. Second the Acts inclusion of ‘force, fraud or coercion’ into its definition is broad enough to include what is seen by many as the most “traditional” scenario in trafficking in which individuals are tricked or forced into a type of labor. On the other hand, in its application it is commonly interpreted as not covering situations in which an individual consents to the work and is at a later point deceived when it comes to the labor’s conditions²⁰⁶. Lastly the act makes a distinction between smuggling and trafficking through its definitions, trafficking is stated as going beyond harboring and transporting and including the use of slavery like practices. This clarification was especially important since the typical response to individuals smuggled into the country

²⁰⁵ 22 USC § 7102 103(9).

²⁰⁶ Refer to interview quotes regarding biases against trafficking victims in section 4.1 and 4.4.

would be deportation but trafficking victims require protection, including protection from automatic deportation.

While the act is gender neutral in its definition of trafficking, it frequently mentions women and children, especially female children, throughout the text of the legislation. Starting at the beginning of the act, the TVPA states that its mission is to combat trafficking whose victims are ‘predominantly women and children.’²⁰⁷ Throughout this ‘Purpose and Findings’ section women and girls are mentioned repeatedly. The TVPA itself was also coupled with the reauthorization of the ‘Violence Against Women Act,’²⁰⁸ further pinning it as a woman centered issue. Several partners explained that this has left men and other special groups such as the LGBTQ community with less resources, such as the SH partner,

the LGBTQ community also has suffered a lot of human trafficking and services for them is also very few and between...they put a lot of focus into commercial sex work...there are men forced into commercial sex work, they still don't see that either, so if we're talking about labor trafficking for male trafficking survivors then yes, it's very tough, it's really tough.²⁰⁹

Both partners from VOH and NLNF explained that they felt this often also came about due to higher proportion of female trafficking clients that most organizations do tend to see, with the NLNF partner expressing that this was a fairly accurate representation,

I kind of get into that myself sometimes when I'm doing presentations in the community...that's a you know easy habit to get into and I can see why male victims could feel that that's the situation...it's hard you know kind of to make that transition of pronouns...I don't really feel like it's anybody's trying to exclude

²⁰⁷ 22 USC § 7102 102(4).

²⁰⁸ Constance A Morella, H.R.1248 - Violence Against Women Act of 2000 2000.

²⁰⁹ Interview with Safe Horizon (28 June 2021).

anybody on purpose I think it's just the fact that we see more females and work with more females²¹⁰

Most people who are reporting incidents of human trafficking do identify as women, we know that there are plenty of people who don't identify as women and are victims of trafficking but the majority are women...I'm sure that I'm biased because what I see is women but I do think like there is a sense of accuracy to that, that women are exploited and probably at a higher percentage than men or the discrepancy between maybe women are reporting it [more than men].²¹¹

The view that men are often the perpetrators at a higher rate as opposed to women was also expressed by the AJP interview partner. They explained that due to this, providing service for both men and women could be difficult,

Currently it's majority women...I'm not opposed to helping men and we have provided a couple times resources over the phone or like 'hey let's get a gift card' or assistance mostly it's referral to other agencies there's not a whole lot of resources out there for men and within our population there is a large majority of LGBTQ but they identify as women, so it really hasn't been an issue for us...it's hard because a lot of these women have been so traumatized by men, we can't be co-ed, it has to be separate if we were to open up and start doing services for men we would need to open up a different home and a different center because it takes a while for some women to really get to a trusting relationship with men because of the abuse they've gone through.²¹²

Some interview partners also mentioned that they felt this issue was also compounded by societies views regarding men and masculinity,

There's a little bit more embarrassment and humiliation...male victims are less likely to report anything because they're embarrassed or humiliated they're afraid

²¹⁰ Interview with Voice of Hope (25 June 2021).

²¹¹ Interview with New Friends New Life (6 July 2021).

²¹² Interview with the Alabaster Jar Project (19 July 2021).

people won't believe them and for male victims I think a lot of it is they question their sexuality so if you have a male victim that doesn't identify as bisexual or homosexual...they're afraid that you know that that people will identify them as being gay and I think that's a lot of um a big obstacle for male victims to report any kind of sexual violence.²¹³

With the men, this kind of shame that is very different, generally you can start to have a conversation with women survivors and they will almost always acknowledge that they feel shame...but the men are much more guarded and much more likely to withhold sexual abuse..[and be] very resistant to therapy or any sort of emotional support which is difficult because oftentimes we in a criminal investigation, or with a T visa, that's how we generally show that someone has suffered trauma from the abusive situation.²¹⁴

I believe one that it's still very much taboo for a man...we know that it's happening we know that there are male survivors but there currently are very few programs that help men. It's two-sided coin here because it's hard for men to come forward and say that this is something that's been happening to them and then on the other side once they do there's no services for them.²¹⁵

As with the topic of gender, a similar issue can be seen regarding sex and labor trafficking. While in definition the TVPA recognizes both sex and labor trafficking, sex trafficking is the only one that is specifically used and defined by name²¹⁶. The WJC Partner explained that their choice to only work with labor trafficking cases was due to the need for a focus on labor and lack of understanding from officials on the issue,

[the] definition of labor is challenging both in criminal investigations but also with courts with judges with other attorneys, trafficking doesn't mean someone is tied

²¹³ Interview with Voice of Hope (n 8).

²¹⁴ Interview with the Workers Justice Center (25 June 2021).

²¹⁵ Interview with the Alabaster Jar Project (n 212).

²¹⁶ 22 U.S.C § 7102 103(9).

to a wall...they still don't understand that and it's really challenging because you can extrapolate everything from case law to the statute and lay it out so clearly as far as like this is a violation of this law as it's written and as labor's defined and people will still ask some of the most ridiculous questions and these are you know judges and lawyers...even people in the Department of State [say] like 'well you know, but they could leave right?...so i would say that that's like the focus of my job is trying to educate people on what labor trafficking is because it is so misunderstood...for example oftentimes we'll have labor trafficking mixed with sexual abuse and people separate those two things as opposed to seeing the forced sexual acts as labor or a service of labor.²¹⁷

The partner from SH has been involved with the issue of human trafficking since the initial passing of the TVPA, since then they felt that even though the TVPA has helped bring attention and resources to the issue, they agreed that it was still widely misunderstood,

[at the time of the passing of the TVPA] it became the trendy thing helping survivors of human trafficking, so the money started kind of coming in...it became the population that the federal government was very interested in providing services to...[yet] it was very difficult to really get law enforcement engagement in it because they believed, and i think you know currently that kind of still the case, they believe that commercial sex work trafficking survivors were the majority of people suffering this crime and during the course of our work in the program we have found out that our case load is more labor trafficking than commercial sex work.²¹⁸

The partner from VOH echoed a similar sentiment regarding law enforcement but were much more optimistic about their work and outreach with Texas,

²¹⁷ Interview with the Workers Justice Center (n 214).

²¹⁸ Interview with Safe Horizon (n 209).

it's a slow process for that transition of seeing what traditionally they [law enforcement] would see as criminals and making that switch to seeing them as victims...but through the process over the years of educating law enforcement on what it looks like...what sex trafficking looks like here in our community that mindset is changing.²¹⁹

In their experience, VOH has been very successful in their attempts to work with law enforcement and have been very receptive to the trainings regarding sex trafficking. They have also received great support from state legislature which has made it easier for them to provide services, 'in Texas our legislature has really recognized that it's a problem [sex trafficking] here...and has dedicated funding you know to help combat sex trafficking in Texas so we're fortunate.' The VOH has taken a stance on sex trafficking in line with the TVPA, pushing for more restrictions on prostitution. Other organizations such as the WJC have expressed that their refusal to take on an anti-prostitution stance, has had negative financial impacts on their work, limiting what issues they decide to work with. The WJC focuses their efforts on labor trafficking as opposed to sex trafficking, in part due to these political implications of handling sex trafficking,

as an organization we have taken the position that we won't take sex trafficking cases...it really comes down to capacity for us, we're a fairly small organization...and under the former administration we were I think much like a lot of other new York nonprofits that people labeled as liberal or democratic...we lost significant funding um and if you looked at the list of organizations that lost funding you know a lot of them had new york in the name and there was this kind of divisive back and forth between our then president and the governor of our state, that really impacted a lot of organizations...so it comes down to capacity we do believe that sex work is labor...but we have to kind of pick and choose what we can take on.²²⁰

²¹⁹ Interview with Voice of Hope (n 8).

²²⁰ Interview with the Workers Justice Center (n 214).

They further elaborated on how they felt current politics may get in the way of progress in human trafficking work especially when views differ,

Recently with the Freedom Network conference²²¹, there was a bunch of us that were involved with talking with lawmakers about the reauthorization that's coming up for the TVPA and we're making suggestions that we have for them...and again, we're in a very divisive climate right now as a country, you have half of the people that we talk to who are like 'oh that's so interesting' and asking questions....Then the polar opposite of that where we had people who literally put us on mute [as to say] 'we don't care, we don't care about this law we don't care about what you're saying'...there was this kind of like digging your heels in like 'I'm pretty sure you're a liberal so I'm just not going to talk to you' thing²²²

The AJP interview partner while having opposing ideas regarding sex work also expressed how ideological differences impacted NGO's progress in victim services,

'It's very challenging and it feels like you're like fighting against yourself if that makes sense, it does feel like the anti-trafficking movement and those that would be against exploitation against sex work as viable work that they're the underdogs for the minority and that there's a larger population that believes that sex work is viable work...I don't know what needs to change if its policy, if that's laws if there's some way to unite [NGOs]²²³

These definitions set in the beginning of the TVPA have a direct influence on legislation as they have an operational meaning that is used to carry out the TVPA's three P strategy of, Prevention, Protection and Prosecution.

²²¹ 'Freedom Network USA' (*Freedom Network USA*) <<https://freedomnetworkusa.org/>> accessed 28 June 2021.

²²² Interview with the Workers Justice Center (n 214).

²²³ Interview with the Alabaster Jar Project (n 212).

4.2 Prevention Provisions

Provisions regarding prevention are found in sections 106, 108 and 109 of the TVPA. Section 106 requires the US president to establish and implement prevention programs outside of the US²²⁴. Its split into three provisions, economic ‘alternatives to prevent and deter trafficking’, ‘public awareness and information’, and a ‘consultation requirement.’ The ‘economic alternatives’ focus on providing economic opportunities through ‘microcredit lending programs, training in business development, skills training, and job counseling.’ It also calls for programs geared towards women and children, specifically female children, groups that are often seen as the main victims. It suggests the establishment of women’s programs designed to promote their participation in ‘economic decision making’, also suggests grants be awarded to NGOs that promote women’s ‘political, economic, social, and educational roles and capacities...in their countries.’ As for children, programs designed to keep children, ‘especially girls’, in school are suggested as well as trafficking education programs in schools. The second point ‘public awareness and Information’ requires the president to establish public awareness programs about the dangers of trafficking through the Secretaries of Labor, HHS, and State, as well as the Attorney General. While these programs are aimed for the public it makes a point to emphasize the importance of targeting ‘potential victims’ whose definition it does not provide. Lastly the ‘consultation requirement’ calls for the president to consult ‘with the appropriate’ NGOs for the management of the first and second points. Later on, Sec. 108 outlines the ‘minimum standards’ which foreign states need to comply with, in which governments are asked to should ‘prohibit severe forms of trafficking in persons’ and ‘make serious and sustained efforts’ to eliminate trafficking²²⁵. It outlines that governments should make ‘serious and sustained efforts to eliminate severe forms of trafficking.’ The criteria include protecting and encouraging the assistance of victims in investigations and prosecutions, adopting measures to prevent trafficking, cooperating with other governments in the investigation, extradition and prosecutions of those charged with trafficking, monitoring immigration and emigration patterns, and investigating and

²²⁴ 22 USC § 7105 106.

²²⁵ 22 USC § 7106 108.

prosecuting ‘public officials who participate in or facilitate’ trafficking. Throughout this the Act refers to only cases involving ‘severe forms of trafficking.’ In section 109 the President is authorized to help nations meet minimum standards either ‘directly, or through nongovernmental and multilateral organizations, for programs, projects, and activities²²⁶.’ The president may aid in drafting new laws, in investigating and prosecuting traffickers, and creating programs, projects, facilities and activities that protect victims.

As discussed in section 2.1 trafficking prevention and awareness initiatives in the US have been heavily criticized for its emphasis on individual actors instead of the larger systemic problems that can lead individuals to be vulnerable to exploitation. Several partners spoke on common socioeconomic factors among their clients that are often overlooked when talking about prevention, such as the NLNF who explained how abuse and neglect was one of the main factors that drove young girls into exploitation,

most of the girls that we serve we know that their childhood or their home life is so disturbing and so horrific for them that they would rather run away or leave, the alternative is a better option for them...that’s what happens for most women who have a history of sexual exploitation or trafficking they run away when they’re really little 12, 13 ..all of these things that make these children at risk are the same things that make our adults at risk.²²⁷

While the NLNF partner acknowledged the socioeconomic factors involved in trafficking they also argued that prevention rested on combating the ‘supply and demand’ of trafficking,

human trafficking is about supply and demand and until we get rid of the demand we can't get rid of human trafficking and the demand [for sex trafficking] is primarily not always but primarily from what the research shows through men,

²²⁶ 22 USC § 7106 109.

²²⁷ Interview with New Friends New Life (n 211).

through porn or whatever all these different kinds of realms that men use to um solicit for sex.²²⁸

Similarly, to NLNF, VOH worked on addressing the issue of ‘supply and demand’ with programs aimed at men and boys,

it has to start really early so our prevention program is aimed at middle, starting in middle school and again it's long-term work, research shows you really have to change the community and the way that they think about sexual violence before you know you can teach skills to individuals and things like that...our prevention program is designed to stop first-time perpetration...we talk about objectification of women things like that and not seeing women as something as a product that that you can buy...and talking about common respect for other human beings and community building.²²⁹

4.3 Protection Provisions

In the protection provisions of the TVPA, section 107 outlines seven provisions ‘assistance for victims in foreign countries’, ‘victims in the United states’, ‘trafficking victim regulations’, ‘construction’, ‘protection from removal for certain crime victims’, ‘adjustment for permanent resident status’ and ‘annual reports²³⁰.’ The first requires the Secretary of State and the US Agency for International Development to establish reintegration programs for victims and they children overseas with the assistance of NGOs.

The second provision addresses victims in the US. The first clauses in the provision establishes that all ‘victims of severe forms of trafficking’ are eligible for protection and assistance under the TVPA ‘without regard to the immigration status of such victims’. This is one of the most crucial aspects of the TVPA. It goes on to require for the HHS to

²²⁸ *ibid.*

²²⁹ Interview with Voice of Hope (n 8).

²³⁰ 22 USC § 7105 107.

create and publish a report ‘on the number of persons who received benefits or other services’ and present it to certain committees in congress. The next clauses go on to talk about Certification in which allows adult foreign national victims to be eligible to receive benefits and services under any Federal or state program or activity to the same extent as a refugee. Last clause in the second provision speak on grants for ‘States, Indian tribes, units of local government, and nonprofit, nongovernmental victims’ service organizations’ for the use of service programs for trafficking victims. Important to note that this last clause states that the Attorney General ‘may’ create grants meaning this grant program is discretionary, rather than mandatory.

The third provision ‘trafficking victim regulations’ starts off by stating that the Attorney General and the Secretary of State should begin enforcing regulations within 180 days of the TVPA’s enactment. This provision listed protections for victims in custody such as that agencies and departments, ‘to the extent practicable,’ must require that trafficking victims not be held in facilities ‘inappropriate to their status as crime victims.’ The Act continued by saying that agencies and departments should try to provide ‘necessary medical care and other assistance’, and ‘information about their rights, and translation services.’ It also calls for the names of trafficking victims and their family members to be kept confidential and provide victims and family members with physical protection if at risk of harm. One of the last clauses of the third provision states that victims that are foreign nationals may stay in the country only if after ‘assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking’, also meaning that a victim who is not a potential witness could be deported. The next two provisions ‘protection from removal for certain crime victims’ and ‘adjustment to permanent resident status’ makes amendments to the Immigration and Nationality Act that would protect trafficking victims from deportation by granting them nonimmigrant classification through being issued a T visa²³¹. To qualify a victim would have to have ‘been a victim of a severe form of trafficking in persons,’ ‘complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, ‘and would be suffering ‘extreme hardship involving unusual and severe harm

²³¹ More on nonimmigrant statuses in section 4.3.3.

upon removal.’ The provisions also state that victims who are granted the T visa may apply for permanent resident status after three years if they meet certain other requirements such as have ‘been a person of good moral character’ throughout the three-year period. Lastly the final provision ‘annual reports’ requires the Attorney General to submit a report detailing the number of otherwise eligible applicants who did not receive visas due to a limitation imposed by provision 2(n)(1)(2).

4.3.1 Federal Benefits and Services

Along with the help of NGOs the HHS and the Attorney General are required under the TVPA to establish federal programs to assist trafficking victims²³². Programs require victims to be US nationals, foreign nationals must have legal residency or have Certification²³³. Below are some of the agencies programs as outlined in their respective reports²³⁴[²³⁵].

Federal Agency	Federal Programs
<i>A. Department of Health and Human Services</i>	<p><i>Temporary Assistance for Needy Families (TANF), Office of Family Assistance (OFA), Administration for Children and Families (ACF):</i> funds State programs that aid with families with children when the parents or other caretaker relatives are unable to provide for family’s basic needs.</p> <p><i>Medicaid, Centers for Medicare & Medicaid Services (CMS):</i> Provides health coverage for low-income pregnant</p>

²³² ‘2018 Attorney General’s Trafficking in Persons Report’ (Office of the Attorney General 2020) 5 <<https://www.justice.gov/humantrafficking/page/file/1276166/download>> accessed 1 February 2021.

²³³ More on Certification in section 4.3.2 (B).

²³⁴ ‘Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers’ (US Department of Health and Human Services) <https://www.acf.hhs.gov/sites/default/files/documents/orr/traffickingservices_0.pdf>.

²³⁵ ‘2018 Attorney General’s Trafficking in Persons Report’ (n 230).

	<p>women, children, parents, adults, and those with disabilities who may have no insurance or inadequate medical insurance.</p> <p><i>Children’s Health Insurance Program (CHIP):</i> Provides health coverage for minors who do not qualify for Medicaid and do not have private insurance.</p> <p><i>Health Resources and Services Administration (HRSA):</i> Offers health care and support to uninsured, underserved, and special needs populations.</p> <p><i>Substance Abuse and Mental Health Services Administration (SAMHSA):</i> Funds services for individuals who have or are at risk for mental and substance abuse.</p> <p><i>Refugee Cash Assistance (RCA), Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF):</i> Provides monetary assistance for trafficking victims who are ineligible for TANF or Supplemental Security Income (SSI).</p>
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	<p><i>Refugee Medical Assistance (RMA):</i> Provides medical assistance for trafficking victims who are ineligible for Medicaid or CHIP.</p> <p><i>Refugee Social Services and Targeted Assistance, ORR, ACF, HHS:</i> Programs support services for employment and integration such employment services, assessment, training, English-language training, vocational training, social adjustment services, interpretation and translation services, day care for children, and citizenship and naturalization services.</p>
<p><i>B. Department of Justice</i></p>	<p><i>Victim of Crime Act (VOCA) Emergency Funds, Criminal Section, Civil Rights Division:</i> VOCA emergency funds, assist victims with emergency needs when other resources are unavailable, include crisis intervention, shelter/temporary housing, food, clothing, legal assistance, transportation costs, forensic medical examinations, emergency child care, and interpreters.</p> <p><i>Emergency Witness Assistance Program (EWAP):</i> Provides emergency funds to assist witnesses and potential witnesses to ensure their well-being and availability</p>

	<p>for court proceedings or other activities related to ongoing cases.</p> <p><i>Witness Security Program:</i> Program provides protection and assistance to witnesses and their immediate family members before, during and after a trial.</p> <p><i>Services for Trafficking Victims Discretionary Grant, Office of Victims of Crime (OVC):</i> Funds services for trafficking victims prior to HHS granting a Certification Letter to the victim.</p>
<i>C. Department of Labor</i>	<p><i>One-Stop Career Centers:</i> Provide a network of businesses and job seekers in communities.</p> <p><i>Job Corps Program:</i> Help eligible economically disadvantaged youth between the ages of 16 and 24 gain employment, earn a high school diploma and/or learn a vocational trade.</p>
<i>D. Social Security Administration</i>	<p><i>Supplemental Security Income (SSI):</i> Provides monthly income to adults or minors who are disabled, or to low-income adults age 65 and older.</p>
<i>E. Department of Housing and Urban Development</i>	<p><i>Public Housing Program:</i> Provides safe and affordable rental housing for low-income or disabled families and individuals.</p>

	<p><i>Tenant-Based Vouchers:</i> Low-income housing agencies issue Housing Choice Vouchers to very low-income individuals and families, in order to lease safe and affordable privately-owned rental housing.</p>
<p><i>F. Department of Agriculture</i></p>	<p><i>Supplemental Nutrition Assistance Program (SNAP), Food and Nutrition Service:</i> Aids low-income individuals and families to buy the food needed.</p> <p><i>Special Supplemental Nutrition Program for Women, Infants and Children (WIC), Food and Nutrition Service:</i> Provides supplemental food packages for nutritionally at-risk, low-income pregnant, breastfeeding, and postpartum women, babies, and children up to five years of age.</p>

When speaking about general services for trafficking victims, all of the interview partners mentioned that housing was a very big issue for victims. Federal housing opportunities were very limited and all of the NGOs struggled to keep up with the need:

We have programs you know for a safe house and long-term housing [but] emergency housing is an issue you know when we meet someone and they really want to get out of that life but they have nowhere to go - that's an issue and the safe houses around Texas that we that we work with are full you know so

definitely having more emergency housing and programs...if we don't have a place for them here we try to find it and we've gone out of state as well.²³⁶

Making sure that our women can get into safe housing can be quite tedious oftentimes, we will try to get them linked into shelter so mostly domestic violence shelters and as far as safe um safe group homes for human trafficking survivors there aren't that many ...we just kind of have a handful of human trafficking specific shelter resources maybe like two um most of the shelter resources and the housing resources we provide are specific to women who have the domestic violence history which again most of our women can qualify for but that can make it really hard if you are trying to get a client out of you know danger right in the moment and there's no bed availability...a lot of our members will try to get into the Dallas housing authority for housing and that process takes forever so if you are a person that is trying to get government housing you can anticipate that you'll have to wait for quite some time...housing is a pretty big barrier for our clients even if they are ready to leave the life.²³⁷

Some interview partners expressed that the lack of housing was even more severe for men and the LGTBQ community, while other factors such as the large number of religiously affiliated housing programs alienated some victims as well,

I mentioned men right, both in the labor and the commercial sex work that don't have enough places to live right, the housing that we have in New York city is very, very small...as far as I know it's only three places, two in New York city and one in another county just a few miles away from here that do house [any kind of] trafficking survivors but that is not enough...for men and the LGBTQ community there is not enough housing.²³⁸

Also a lot of the housing resources that we have that's specific for women who have been trafficked is a very religious, they're Christian-based organizations...so

²³⁶ Interview with Voice of Hope (n 8).

²³⁷ Interview with New Friends New Life (n 211).

²³⁸ Interview with Safe Horizon (n 209).

oftentimes we will notice that maybe our clients that are in the need of a place don't want to go there and that's totally understandable because it might not be as trauma informed because it's more faith-based in that sense, so some of those things can be really triggering and exacerbate some of the trauma.²³⁹

The NLNF interview partner expressed this frustration with the housing situation as they viewed housing as basic component for victim rehabilitation,

it [housing] feels so necessary like when we think about trauma and like where our women are we're actually not able to impact all of these things that we want to impact if they don't know where they're going to live...we can't work on the trauma we can't move the needle of change with all these other higher-level thinking things if they do not have a sense of stability where they're at²⁴⁰

even just like the food insecurity that these women have job the job market things like that like we can't get you a job if you don't have the clothing to wear to a job interview we can't make impact on your trauma processing or all of the stuff that's left behind once you leave the life if we can't get you to stable housing²⁴¹

When speaking on possible funding for housing the AJP interview partner explained that a large part of the problem regarding housing had to do with the limitations on what could be done with federal grants,

There's a lot that's required from the federal grant programs...we actually hired an independent contractor to assist us...it was a team of myself and one volunteer an independent contractor and one other employee that were working on this OVC grant, it took a lot of our time and attention to getting all the requirements...what we first understood was that it was a grant to help with housing, for the cost to providing housing to victims of trafficking, we've been renting our long-term

²³⁹ Interview with New Friends New Life(n 211).

²⁴⁰ *ibid.*

²⁴¹ *ibid.*

property...so we thought well this is our opportunity we could write this grant to help us cover the mortgage because the total grant was upwards of 600 000...three weeks before we were supposed to submit this application our volunteer attended a webinar for this grant and my volunteer is a retired contract lawyer...we had gone over and read all of the writing in this and nothing had said 'you can't use it for capital purchases' which was then said on the webinar...we've already done all this work writing the narratives and everything as to why it was important for us to purchase a property and then we're told 'no you can't use it for purchasing a property you have to use it for its program expenses.'²⁴²

As shown from the interviews, while there are a number of federal programs in which trafficking victims can seek benefits from in reality most victims struggle in acquiring basic services such as housing. Foreign victims also arguably face an even bigger obstacle as they have to be granted permission to receive federal benefits.

4.3.2 Requirements for Foreign Nationals

Along with meeting the initial requirement of being a 'victim of a severe form of trafficking', foreign nationals must qualify for 'Continued Presence' and 'Certification'²⁴³. US nationals and foreign nationals with legal residency in the US are exempted from this process. Foreign children who have been deemed as victims of a 'severe form of trafficking' are automatically approved for these processes.

A. Continued Presence

Continued Presence allows eligible foreign national human trafficking victims to remain in the US initially for two years with the possibility of extension, during the ongoing investigation and prosecution of the traffickers (sec. 107(c)(3)). This process usually begins with the law enforcement agency involved in the case decides that it is necessary

²⁴² Interview with the Alabaster Jar Project (n 212).

²⁴³ 22 USC § 7105 107.

to ask for Continued Presence for a trafficking victim²⁴⁴. This is usually by federal agencies, such as primarily from ICE and the FBI and federal prosecutors from US Attorney's Offices, although state agencies also have the authority to do so²⁴⁵. Eligibility is determined by a law enforcement official who deems that an individual meets the definition of a 'victim of a severe form of trafficking' and could be a potential witness. Requests are submitted to the ICE Law Enforcement Parole Branch which also has the sole authority to approve or deny the requests. If approved, the request is sent to the HHS; the HHS then issues a letter authorizing the victim to receive federal and state benefits and allowed them to work. Continued Presence does not change a victim's immigration status, meaning they can still face deportation once investigation and prosecution process is over. Also, important to note that while Continued Presence emphasized victim's participation in trafficking investigations in its language, it is not a requirement for it to be granted²⁴⁶. While participation is not meant to be the definitive qualifying factor for Continued Presence it often plays a large role in law enforcement decision on whether or not to apply, the SH partner shared their experience regarding this,

in the past, yes, it was some, some clients did cooperate, they provide information...and law enforcement decided that client didn't meet the criteria to receive continued presence...[and still] they continue with the case...one case example many years ago...the young person came and there was a raid within a week prior so she was not in the trafficking situation too long...she provided information to them but then in the end they decided 'oh she's been here for a week, she's not eligible for continued presence.'²⁴⁷

²⁴⁴ 'Continued Presence: Temporary Immigration Status for Victims of Human Trafficking' (US Immigration and Customs Enforcement) <<https://www.dhs.gov/xlibrary/assets/ht-uscis-continued-presence.pdf>> accessed 20 March 2021.

²⁴⁵ Joycelyn Pollock and Valerie Hollier, 'T Visas: Prosecution Tool or Humanitarian Response?' (2010) 20 *Women & Criminal Justice* 127, 135.

²⁴⁶ 'Continued Presence: Temporary Immigration Status for Victims of Human Trafficking' (n 241).

²⁴⁷ Interview with Safe Horizon

In the most recent Attorney Generals trafficking report, reporting on the 2018 fiscal year, only 121 new Continued Presence statuses were granted along with 31 extensions²⁴⁸. The report gives no information on the total amount of Continued Presence requests made. The WJC partner also expressed their frustration with the Continued Presence process in regards to the wait times. In order to apply WJC attorneys must go through federal law enforcement which makes the process very lengthy as opposed to local and in state agencies with which the WJC already has an established relationship with. When speaking with federal agents in the past the partner explained that the agents themselves admitted that many simply did not know how to complete the process. These processing times and lack of understanding from the agents would in turn make situations worse for victims due to the authorization time,

cp [Continued Presence] or work authorization is fairly short so someone could have an open investigation get cp, investigation closes cp expires and they're still waiting on their T visa so then they are in another vulnerable position where they could be like trafficked or in an exploited like labor situation while they wait for their t visa because they're just desperate for work.²⁴⁹

B. Certification

Under the TVPA the HHS is charged with certifying adult foreign nationals (sec. 107 (b)(1)(E)). The Certification process does not change or affect a victim's immigration status it simply allows for them to apply and obtain 'federally funded services and benefits to the same extent as refugees, such as...housing or shelter, food, cash assistance, job training, English language training, health care and mental health services'²⁵⁰. Once a victim has come to the attention of authorities they can be 'pre-certified', this allows victims to be immediately able to receive benefits for up to 8 months. This does not however entitle their dependents to assistance as well. The victim can then apply to be

²⁴⁸ '2018 Attorney General's Trafficking in Persons Report' (n 230) 20.

²⁴⁹ Interview with the Workers Justice Center (n 214).

²⁵⁰ 'Study of HHS Programs Serving Human Trafficking Victims' (US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation 2009) 5
<<https://aspe.hhs.gov/system/files/pdf/75966/index.pdf>> accessed 5 February 2021.

certified, to receive Certification, victims of trafficking must be a ‘victim of a severe form of trafficking’, willing to assist with the investigation and prosecution of trafficking cases, and have completed a ‘bona fide’ application for a T visa or have received Continued Presence status from US Customs and Immigration. Once they have met the requirements, victims will receive an official letter of Certification from the HHS and the HHS’ Office of Refugee Resettlement (ORR)²⁵¹. They will then be allowed the full range of benefits usually connects victims to a benefits provider, usually a refugee aid organization, and this organization can provide services that may include benefits, shelter, food, legal assistance, translation services, and restitution. In the year 2018 the HHS reported a total of 412 adult victim Certifications and 466 for children²⁵², the report did not specify how many of had been victims of labor as opposed sex trafficking.

4.3.3 U and T Visa’s

Under the TVPA the U and T nonimmigrant statuses, often called ‘U- and T-visas’, were created. The ‘U-visa’ was created for foreign nationals who have suffered substantial physical or mental abuse as a result of a qualifying crime such as trafficking (sec. 1513 (b)(3))²⁵³[²⁵⁴]. U-visa holders are authorized to work and apply for permanent residency in the US yet they are not automatically entitled to public benefits. Along with being a victim of ‘qualifying criminal activities’ to qualify for U status victims must possess information about the criminal activity involved, is being, or is likely to be helpful in the investigation and prosecution of trafficking, and the criminal activity violated the laws of the US. U status is generally valid for 4 years. It can be extended beyond the 4 years only if ‘the alien’s presence in the United States continues to be necessary to assist in the investigation or prosecution of the qualifying criminal activity.’ The U-visa allows victims to remain and work in the US but does not qualify victims for federal benefits to

²⁵¹ ‘Certification for Victims of Trafficking Fact Sheet’ (Department of Health and Human Services) <<https://www.criminaljustice.ny.gov/ops/training/bepo/certvictims.pdf>> accessed 6 April 2021.

²⁵² ‘2018 Attorney General’s Trafficking in Persons Report’ (n 230) 6.

²⁵³ 8 USC § 107

²⁵⁴ Abigail F Kolker and Kristin Finklea, ‘Immigration Relief for Victims of Trafficking’ (Congressional Research Service 2020) 8 <<https://fas.org/sgp/crs/homesecc/R46584.pdf>> accessed 8 April 2021.

the same extent as refugees such as the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, Supplemental Security Income, Medicaid, and public housing²⁵⁵. U visa holders may be eligible for assistance through other programs by the Department of Justice.

The T-visa allows foreign nationals to remain and work in the US but unlike the U-visa it provides them with federal benefits as well²⁵⁶[²⁵⁷][²⁵⁸]. To qualify for the T-visa victims must, be a ‘victim of a severe form of trafficking’, have complied with any ‘reasonable request for assistance to law enforcement’ in the investigation and prosecution of trafficking, and be likely to ‘suffer extreme hardship involving unusual and severe harm upon removal’ from the US. Like the U visa the T visa is valid for 4 years and may be extended if a government or law official determines that the victim’s presence in the US is necessary to assist in the investigation or prosecution.

Both the U and T-visa are eligible for permanent US resident status after 3 years²⁵⁹[²⁶⁰]. The U visa requires the non-participation in ‘Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing’, to have ‘not unreasonably refused to provide assistance to an official or law enforcement...in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status’, and have established that the victims presence ‘is justified on humanitarian grounds, to ensure family unity, or is in the public interest.’ There is also no limit on the number of victims with U status who can apply for permanent status per year while T-visa is limited to 5000 status adjustments per year. The T-visa requires that the victims be ‘admissible’ meaning that they do not have criminal history involving terrorism, and being a security risk to the US, have been a ‘person of good moral character’, have complied with ‘reasonable requests of assistance’ in the investigation or prosecution of trafficking, and/or that they

²⁵⁵ ‘Government Benefits’ (*USAGov*) <<https://www.usa.gov/benefits>> accessed 2 July 2021.

²⁵⁶ Pollock and Hollier (n 242) 139.

²⁵⁷ 22 USC § 7105 107(e).

²⁵⁸ Kolker and Finklea (n 251) 4.

²⁵⁹ *ibid* 7.

²⁶⁰ *ibid* 10.

would ‘suffer extreme hardship upon removal from the United States’. Individuals are free to apply to either nonimmigrant status depending on which they feel most qualified for and have a higher chance of receiving²⁶¹.

A. Applying and Costs

To apply for a U nonimmigrant status victim’s must submit form I-918 (Petition for U Nonimmigrant Status) along with a personal statement explaining in their own words how they were a victim of trafficking²⁶². They must also submit form I-918 Supplement B (U Nonimmigrant Status Certification). Not to be confused with the HHS Certification letter, U visa Certification must be signed by an ‘authorized official of the certifying law enforcement agency’, this may include authorities responsible for the ‘detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity²⁶³.’ The Certification confirms that a victim was ‘helpful’ in the investigation or prosecution of case. If they have qualifying family members they may also submit form I-918 Supplement (Petition for Qualifying Family Member of U-1 Recipient), qualifying family members include spouses and children. For those who were deemed inadmissible they must also file form I-192 (Application for Advance Permission to Enter as Nonimmigrant). Lastly, they must submit ‘evidence’ that they meet all other eligibility requirements but US Citizenship and Immigration Services (USCIS) give no further information regarding this.

Similarly, to the U visa, to apply for T nonimmigrant status victims must submit form I-914 (Application for T Nonimmigrant Status) along with a personal statement explaining in their ow words how they were a victim of trafficking²⁶⁴. If they have qualifying family

²⁶¹ More on this in section 4.3.3 (A).

²⁶² ‘Victims of Criminal Activity: U Nonimmigrant Status’ (*US Citizenship and Immigration Services*) <<https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status>> accessed 3 July 2021.

²⁶³ ‘U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies’ (US Department of Homeland Security) 6 <https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf> accessed 5 April 2021.

members they may also submit form I-914 Supplement A (Application for Immediate Family Member of T-1 Recipient). They must also prove that they have complied with “reasonable requests from law enforcement,” they may do this by submitting form I-914 Supplement B, (Declaration of Law Enforcement Officer for Victim of Trafficking in Persons). Supplement B is filled out by law enforcement certifying that a victim has complied with their requests. Just as with the U visa, those who were deemed inadmissible must also submit form I-192. Lastly, they must submit ‘evidence’ that they meet all other eligibility requirements but as with the U visa the USCIS give no further information regarding this.

Apart from a \$160 processing fee²⁶⁵, there are no fees for applying for the U and T visas but there are other costs attached to related forms²⁶⁶[²⁶⁷]. The two most significant are the I-192 and I-485 (Application to Register Permanent Residence or Adjust Status). As explained in section 4.3.3 U and T visa applicants must be deemed admissible in order to apply and be granted a nonimmigrant status. Those who are found inadmissible must submit form I-192, as of December 2019 the filing fee was \$930 US dollars²⁶⁸, a fee waiver may be possible to obtain for form I-192. Applicants must submit I-912 (Request for Fee Waiver) and they must be able to demonstrate that they are unable to pay the fees as outlined in I-192²⁶⁹. If the waiver is denied by USCIS the application for I-192 will also be denied as well unless the fee is paid. Form I-485 allows applicants who were granted a nonimmigrant status to apply for permanent US residence after the mandated time, as of April 2021 the filing cost was \$1,140 US dollars²⁷⁰. Unlike I-192, the fees for I-485 cannot be waived, placing a large financial burden on victims and making it possible

²⁶⁵ ‘Fees for Visa Services’ (*US Department of State*) <<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/fees-visa-services.html>> accessed 3 July 2021.

²⁶⁶ ‘Victims of Criminal Activity: U Nonimmigrant Status’ (n 258).

²⁶⁷ ‘Victims of Human Trafficking: T Nonimmigrant Status’ (*US Citizenship and Immigration Services*) <<https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status>> accessed 3 July 2021.

²⁶⁸ ‘Instructions for Application for Advance Permission to Enter as a Nonimmigrant’ <<https://www.uscis.gov/sites/default/files/document/forms/i-192instr.pdf>> accessed 3 June 2021.

²⁶⁹ ‘Instructions for Request for Fee Waiver’ <<https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf>> accessed 5 April 2021.

²⁷⁰ ‘Application to Register Permanent Residence or Adjust Status’ (*US Citizenship and Immigration Services*, 23 April 2021) <<https://www.uscis.gov/i-485>> accessed 3 June 2021.

for their deportation even after having successfully applied for nonimmigrant status and cooperating with law enforcement on the investigation and prosecution of trafficking.

In theory trafficking victims are able to apply for nonimmigrant status themselves as all the needed application forms available for download on the USCIS website, however there are several obstacles that can make the process incredibly confusing and difficult for victims. First victims must be aware that such assistance even exists and where to look for them. While trafficking victims are free to apply for either the U or T visa they vary considerably terms of benefits and how many are allotted per year²⁷¹. Victims must then decide which one would be more beneficial to them and which they would be likely to be approved for. If they are able to acquire all the forms needed, they must have them filled out by themselves and the required legal and government officials along with any other evidence required. If there is a mistake while filing these documents it can lead to the entire application being thrown out.²⁷²[²⁷³][²⁷⁴]. Due to these issues the majority of victims are strongly advised that they seek legal assistance, specifically on behalf of immigration lawyers.²⁷⁵[²⁷⁶]

Victims also put themselves at great risk trying to complete this process. Similarly, as with the issue regarding Continued Presence, a victim may cooperate with law enforcement and take the steps needed to apply and be denied. In November 2018 this became an even greater issue when the Trump administration announced that trafficking

²⁷¹ More on this in section 4.3.3 (B).

²⁷² 'Instructions for Application for Advance Permission to Enter as a Nonimmigrant' (*US Citizenship and Immigration Services*) 16 <<https://www.uscis.gov/sites/default/files/document/forms/i-192instr.pdf>> accessed 3 June 2021.

²⁷³ 'Instructions for Application for T Nonimmigrant Status' (*US Citizenship and Immigration Services*) 12 <<https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf>> accessed 3 June 2021.

²⁷⁴ 'Instructions for Petition for U Nonimmigrant Status and Supplement A, Petition for Qualifying Family Member of U-1 Recipient' (*US Citizenship and Immigration Services*) 15 <<https://www.uscis.gov/sites/default/files/document/forms/i-918instr.pdf>> accessed 3 June 2021.

²⁷⁵ 'The Legal Rights and Needs of Victims of Human Trafficking in the United States' (*US Department of Justice*, December 2015) <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/HT_Legal_Rights_Needs_fact_sheet-508.pdf> accessed 3 July 2021.

²⁷⁶ 'Immigration: Applying for a T Visa' (*WomensLaw.org*) <<https://www.womenslaw.org/laws/federal/immigration/t-visa-laws-trafficking-victims/applying-t-visa>> accessed 3 July 2021.

victims who had been denied nonimmigrant statuses and those who were denied extensions and/or change of status could be subject to notices to appear in immigration court, possibly beginning deportation proceedings²⁷⁷. The WJC commented on this apparent imbalance in terms of the low quality of services and support in comparison to the high demands and risks placed on victims in order to be granted access to them,

I probably don't even have enough time to tell you how i feel that survivors are let down...we have a lot of survivors who cooperate fully with law enforcement...they're putting themselves at risk they're putting their families at risk and then [if] something happens [they're] like 'oh if you're ever threatened or you feel unsafe let us know, call us we'll help you we'll protect you'...you know it's kind of like here's a phone number and that's kind of like, the response doesn't match the promise that they made to this person...so it makes us as service providers, question if we want to be recommending that our clients cooperate with law enforcement at the same time they need to be cooperating with law enforcement right for the TVPA [benefits].²⁷⁸

B. Yearly Caps and Wait Times

The TVPA also created a yearly cap for these nonimmigrant statuses, 10,000 U-visas and 5,000 T-visa, in 2019 only 500 T-visas and 10,010 U-visas were granted²⁷⁹[²⁸⁰]. While the cap of 10,000 has been reached every year since 2010 USCIS continues to accept and process new applications and issues conditional approval for victims who are found eligible. It takes an average of 4 years to vet applicants for eligibility before placing them on the waiting list and approving them. As of March 2020, it can take more than 15 years to receive U status due to the backlog²⁸¹. As for the T-visa, the annual cap has never been

²⁷⁷ 'Notice to Appear Policy Memorandum' (*US Citizenship and Immigration Services*) <<https://www.uscis.gov/laws-and-policy/other-resources/notice-to-appear-policy-memorandum>> accessed 3 July 2021.

²⁷⁸ Interview with the Workers Justice Center (n 214).

²⁷⁹ Kolker and Finklea (n 251) 9.

²⁸⁰ *ibid* 5.

²⁸¹ *ibid* 9.

met in addition, the processing times for T status determinations have increased in the last five years, from approximately 8 months in 2016 to 16.4 months in 2020²⁸². When speaking with the WJC partner regarding these gaps during wait times they expressed their frustration and confusion regarding the federal governments lack of a formalized system in dealing with these situations,

it's a limbo, it's very much like a don't ask don't tell. I've asked federal investigators this question, like what do we do if so and so who is your prime witness...gets pulled over and detained? what happens then? and they're basically like 'call us, just call us we'll take care of it' what does that mean!? I don't know what that means, and [they'll say] 'well there's protections for witnesses and people who cooperate with law enforcement' and I'm like well can't we formalize that?!'²⁸³

As mentioned in section 4.3.3 A, this can be especially difficult for non-English speakers thus victims often require the help of attorneys and NGOs to go through this process. Yet others argue that fees can be waived and that the process is no more burdensome than other migration applications to which critics point out that unlike regular migration visas, nonimmigrant requirements such as the extreme hardship threshold makes them much more difficult²⁸⁴. In terms of cap limits, some of the government's own reports have called for a closer look at the factors that may be responsible for the 'underutilization' of nonimmigrant statuses such as the T visa²⁸⁵. They recommend an examination of how law enforcement deals with cases with potential eligible foreign nationals and to look at what elements in the application process may be impeding victims from applying or from meeting the requirements.

²⁸² *ibid* 6.

²⁸³ Interview with the Workers Justice Center (n 214).

²⁸⁴ Pollock and Hollier (n 242) 141.

²⁸⁵ Kolker and Finklea (n 251) 12.

4.4 Prosecution Provisions

The prosecution provisions begin with section 110 of the TVPA which focuses on international sanctions taken on foreign states who fail to meet the TVPA minimum standards, following section 112 which outlines domestic criminal charges for individuals charged with trafficking. Section 110 states that the US would not provide aid to government that do 'not comply with minimum standards for the elimination of trafficking' and 'is not making significant efforts to bring itself into compliance'²⁸⁶. It goes on to create the three tiers, tier 1 being those who 'whose governments fully comply,' tier 2 are those 'whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance' and then tier 3 are those 'whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.' The next section, section 112, doubles the sentence for holding people in involuntary servitude from ten to twenty years²⁸⁷. Also states that they sentence may be 'for any term of years or life, or both' if the crime leads to death, kidnapping, aggravated sexual abuse, or attempted murder. The section goes on to create two new crimes '1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor' and '1591. Sex trafficking of children or by force, fraud or coercion.' Under both of these the coercion is defined, as 'threats of serious harm to or physical restraint against any person,' and, as '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.' This extended definition of coercion can then also be used for the prosecution of psychological coercion. Statute 1591 also criminalizes benefiting financially from sex trafficking that involved 'force, fraud, or coercion' or if the person is a minor. The act also makes distinctions in prison terms length depending in the age of the victims. If a sex trafficking victim is under the age of 14 there can be a term of 'imprisonment for any term of years or for life, or both', if they are over 14 but under 18 the term can be 'not more than 20 years.' The last statutes, 1592

²⁸⁶ 22 USC § 7107 110.

²⁸⁷ 22 USC § 7109 112.

and 1593 create a new crime of document seizure to address the confiscation of passports or other identification documents typically done in order to trap victims and makes trafficking a crime for which the perpetrators are subject to mandatory restitution.

As discussed in section 2.4.3, the amount of trafficking cases that are prosecuted per year are very low but those that are, have very high conviction rate. A major roadblock for the prosecution of trafficking victim's cases is the difficulty for victims to acquire proper legal representation. Interview partners attributed this to two main issues, both attorneys and officials lack of legal understanding of trafficking as a crime and misconceptions about trafficking victims. The WJC partner explained the difficulties their clients faced when trying to acquire legal representation. They explained that many trafficking victims, especially labor trafficking victims, found it difficult to find attorneys who would be able to properly handle the case,

There are different standards, you're looking at something different to see if someone's eligible for a t visa and then a different thing if you're looking to bring claims under the TVPA and then a different claim if you're looking to bring something under the New York penal code...people don't bring these cases because they don't know how to, they haven't done it...we had a very clear trafficking case in the southern district and it was brought in as a visa fraud case and I think that's because they know visa fraud they've done it before they know what it looks like, they think they can get a conviction...you [can] bring the fair labor standards act claims with the TVPA claims because very often juries will see it as unpaid labor and they'll give you that they'll be like oh yeah this person wants a wage yes but they won't give you the TVPA because they don't get it and it doesn't make sense to them²⁸⁸

They explained that oftentimes issues regarding accessibility was also a large problem for victims trying to acquire representation,

²⁸⁸ Interview with the Workers Justice Center (n 214).

we try and take cases that no one else will take...sometimes I think it has to do with language access...so we have a service that helps us with translation, there are a lot of attorneys and organizations that I talk to [that say] ‘we just can't, we don't have the money for that’ or ‘we don't know how we would do that’ or they just don't want to deal with the administrative task.²⁸⁹

In cases in which victims did manage to acquire legal representation both the WJC and SH partners felt that attorneys also faced push back from federal officials. Their consensus being that federal officials focus on winning cases outweighed their desire to seek justice for victims:

From my interactions with prosecutors they're uncomfortable with these charges because they don't understand them and they've never brought them, they want to win, they want a conviction, they want a very good record...they don't want to take that gamble so they won't take it²⁹⁰

I will interview or take an assessment of clients and they would say well you know it's just me but he knows x y and z and then in more than a few occasions when i would reach out to law enforcement and said you know i have this client and she would like to meet with you and they would say ‘oh it's only one person we are not interested’ but behind that person was more people [involved]...it would be great if they see everything not just you know their own benefit...they only see one client and say okay you know we don't consider your case you know strong enough to be investigated.²⁹¹

In determining what made a strong case, it often came down to investigators perceptions of the victim instead of the facts of the cases, ‘some cases go to prosecution and other

²⁸⁹ *ibid.*

²⁹⁰ *ibid.*

²⁹¹ Interview with Safe Horizon (n 209).

cases just go to the investigation phase, some cases they say ‘oh we know its trafficking but were not going to investigate’...so it's all that the criteria or the person who meets with the survivor²⁹² explained the SH partner. Both the WJC and NFNL partners commented on officials’ biases when it came to victim trauma,

I’ve also had prosecutors interview one of my clients for like six hours and then say ‘they didn't really just seem that upset about it’...this is like a male survivor who is just meeting you for the first time and there's a whole other slew of cultural things that you are discounting...this is a person who is indigenous to parts of South America...he was explaining that when horrible things happen...they would laugh they would tell jokes and that's how they got through it so oftentimes for our culture he was laughing or smiling in inappropriate times right for Americans...they want someone who's going to be crying and a ball on the floor and this doesn't match with what they see as a victim and I’ve seen that a number of times...if it doesn't match for them they're like ‘I can't sell this’ [as a case]²⁹³

the amount of trauma our women have been through their presentation is misleading if you are not informed of trauma and what it looks like so even if our women are making outcries of abuse towards their human traffickers which we know is pretty uncommon...but let's say that people are making out cries of abuse towards their trafficker our women because of their trauma they have fragmented memory so they might not be the what law enforcement considers the best witness right or the most credible witness ...because at the end of the day we're working with two different systems [social care and legal] and the legal system tells us what a credible witness looks like...the ways in which a law enforcement maybe interacts with our clients is very different than the ways that we interact with them.²⁹⁴

²⁹² *ibid.*

²⁹³ Interview with the Workers Justice Center (n 214).

²⁹⁴ Interview with New Friends New Life (n 211).

The NFNL partner further spoke about having trying to work within these two systems,

if a client wants to make a um police report on a trafficker or something like that there have been times where they will kind of create a neutral ground because as you can imagine most of our clients don't have wonderful experiences with PD [police] and we kind of want to help bridge that gap a little bit in the sense of making sure that if they want to make a police report we want them to be you know in a place where they feel safe and hurt and feel like they can make that if they want to um so sometimes we'll bridge the gap.²⁹⁵

4.5 Conclusion

The TVPA's definition and language heavily phrase trafficking as an issue of sexual exploitation of women. When it came to the interviews reactions were split. While some interview partners agreed with the sentiment that trafficking heavily targeted women especially when it came to sexual exploitation, others disagreed and argued that women tended to me more often represented as victims of exploitation and thus also more women came forward. Yet all interview partners agreed that societal expectations and views of men had a big impact on how many men came forward especially when they were victims of sexual exploitation. Some interview partners also discussed how the overemphasis on sex trafficking shaped their work with some NGOs deciding all together to focus exclusively on labor due to the need for labor trafficking services and ideological differences regarding sex work. In terms of prevention, several NGOs, especially those who worked with sex trafficking, focused on the need to end the "supply and demand" or services. The majority of interview partners also acknowledged the need for more focus on behalf of law enforcement and federal officials on the socioeconomic factors that contribute to trafficking both for domestic and foreign victims. When it came to services, while victims of trafficking were eligible to apply to a variety of federally funded programs very few of the programs specialized in trafficking work meaning victims rarely

²⁹⁵ *ibid.*

received adequate services. Federal programs also failed to meet other more general needs of trafficking victims the most important being housing. Lastly, when it came to legal protections for trafficking victims, the interview partners expressed frustration with the number of challenges victims face. Foreign nationals must figure out where and how to apply for protection and are faced with high financial costs during application. They must also be granted permission to receive social benefits and remain in the country but they face possible automatic deportation if they are denied. Foreign victims may likewise be granted permission to stay and cooperate fully during investigation but yet still be deported once their case concludes. Both US and foreign victims have a difficult time acquiring the proper legal representation. Victims also face the low probability of their cases being prosecuted due to federal officials focus on building and selecting cases based on their perceived chance of successful conviction. The TVPA's focus on sexual exploitation has also impacted prosecution with officials having several biases in terms of who trafficking victims are and how they should present themselves and the prioritization of combatting sexual exploitation over labor.

5. Conclusion and Recommendations for Policy and Future Research

In conclusion to the question of, *how does the TVPA's definitions of trafficking affect the enjoyment of human rights of trafficking victims in terms of victim protection and rehabilitation?* it can be gathered through the literature and legislative research, and interview partner inputs that the TVPA while instrumental in the fight against human trafficking has also greatly shaped official's view on trafficking. These perceptions have had indirect and direct effects on victim services and protections, the view that officials form regarding trafficking and its victims shapes their opinions on who they consider a victim, how victims should present themselves and what gets deemed as a human rights problem that requires attention and government resources to combat it.

At the time of its passing, the TVPA was lauded as a major breakthrough in the fight against human trafficking and while the TVPA has helped bring the issue of trafficking to the larger public and create legal protections for victims, those protections rely on a victim's ability to be legible as a victim to government officials. The TVPA outlines a specific range of trafficking victims which it extends its protections to both through its definitional distinctions between victims of "trafficking" and victims of "severe trafficking," and its language which heavily evokes images of women and children in sexual exploitation. This is in contrast to the U.N. Trafficking protocol which aims to provide protection for all victims who fall under its definition. From the TVPA's beginning, the issue of human trafficking was heavily framed as a women's issue and as mainly an issue of sexual exploitation with many feminist and abolitionist groups heavily involved in its drafting in coordination with mostly conservative members of congress. This was reflected in the TVPA's final definitions, in which women and sexual exploitation are expressly referred to throughout. When it came to victim services the same pattern could be seen with the NGOs that focused on sexual exploitation with all of them working almost exclusively with women. The AJP and NLNF offered their services exclusively to women due to their belief of women being the main targets of sexual

exploitation, VOH while offering their services to both women and men saw a much higher percentage of women which they also attributed to there being a higher rate of women in sexual exploitation. NGOs that also focused on labor trafficking, such as SH and the WJC, agreed that while more women did come forward in cases regarding sexual exploitation, this was more likely due to men not being recognized as victims of sexual exploitation. Meanwhile, all of the interview partners agreed that there were major gaps in services when it came to male victims.

On the issue of the prevalence of sex and labor trafficking, the SH and WJC partners specifically, spoke on the need for more attention to labor trafficking. While interview partners' views varied regarding the ways the TVPA's definitions influenced both the general public and government officials they agreed that the issue of human trafficking was still widely misunderstood by both and it had direct impact on their work as the understanding of human trafficking directly affects the amount of protection and services put into place, as the WJC partner explained,

'I also think that there needs to be more experts within government and I say that because one of our human trafficking specialists and myself were giving a presentation at the Freedom Network Conference²⁹⁶...we were doing this in partnership with someone from the US Department of Labor and we were giving them statistics and he was challenging us on almost all of it...he was saying things like 'it used to be an issue and now it's not because the government fixed it' ...he thought that we were making certain statistics up so we had to show him the actual studies that we were basing our presentation on, I think it was like the difference between labor trafficking and sex trafficking, and even then he was like 'well I would really want to talk to the people who wrote that to see like what they're basing those statements on'it's sort of like well, if not even the people in government that are supposed to be enforcing these laws and the people who are

²⁹⁶ Freedom Network USA' (*Freedom Network USA*) <<https://freedomnetworkusa.org/>> accessed 28 June 2021.

making the laws don't really understand it then why are we then surprised when people don't know how to apply the law to the facts..'297

Along with shaping the perception of human trafficking, the TVPA also has direct influence on victims' services as these factors also play a role in how victims of human trafficking are identified. As explained in chapter 4 the TVPA outlines two tiers of victims of human trafficking, 'victims of trafficking,' and 'victims of severe forms of trafficking,' of which only the latter is eligible for protection under the TVPA. Once a victim has been identified by law enforcement as a victim of a 'severe form of trafficking' they must pass through several other hurdles in order to receive services and protection. Victims who are foreign nationals must complete the Certification and Continued Presence processes in order to be allowed to remain in the US and qualify for federally funded victims' services. US nationals do not need a Certification process to qualify for these services, yet for many of these services they would have qualified for regardless of being a victim of trafficking, if they were low income as most victims of trafficking tends to be. Apart from NGOs that are dedicated to working with trafficking victims, there are actually few federally funded services that specialize in trafficking work despite the variety of federal programs from which victims could seek benefits from²⁹⁸. This results in foreign and US victims of trafficking rarely receiving adequate federal services that would be suited for the unique type of trauma trafficking victims experience.

The TVPA offered a way to enforce the right to an effective remedy for victims of trafficking through codifying human trafficking as a specific crime within the US legal system, yet the amount of cases that are brought to the prosecution stage are very low but those that are, have very high conviction rates. When speaking to interview partners regarding this issue they all expressed frustration with what they perceive as the prosecutors' focus on building cases based on how easily an individual can be presented as a victim and their chance of winning the case despite them acknowledging that an individual is a victim of trafficking.

²⁹⁷ Interview with the Workers Justice Center (n 214).

²⁹⁸ As seen in table of Federal Services in section 4.3.1.

Victims also face high risks in coming forward, as they face possible retaliation from their traffickers and/or can be denied protection from authorities despite having cooperated. This risk can be said to be even higher for foreign victims of trafficking. As discussed, foreign nationals must be granted permission to receive services and remain in the country, while their cooperation in criminal investigations is not needed to be granted these protections, more often than not officials base their decision based off of how useful a victim can be in a case. Some foreign victims may cooperate fully and be granted the right to stay yet still be deported once the investigation has concluded. Under the recent Trump administration, the decision to come forward and cooperate became an even greater risk for foreign nationals as those who were denied were automatically placed under possible deportation by ICE.²⁹⁹ Lastly, interview partners also expressed frustration with the lack of proper procedure for foreign victims while they are in between or awaiting nonimmigrant status, as they are still eligible for deportation and in risk of further exploitation.

Future recommendations would be first, policy level changes to the TVPA that would decrease the risk for victims in coming forward, particularly for foreign victims. Eliminating the risk for automatic deportation for those who are denied assistance under the TVPA and creating a uniform procedure for those who are awaiting or in between nonimmigrant statuses would create more secure environments for victims to come forward. Second, at the administrative level there was an overall consensus in the interviews that both law enforcement and even federal officials working on trafficking issues still did not understand it. Interview partners stressed the need for the involvement of more human trafficking experts with law enforcement and government officials, especially on the subject of biases regarding who trafficking victims are and how they act. Lastly, there needs to be further studies on the needs of human trafficking NGOs. The NGOs involved in the interviews were located in different parts of the US, had varying focuses, and ideologies regarding human trafficking, yet they all presented the exact same

²⁹⁹ ‘Notice to Appear Policy Memorandum’ (*US Citizenship and Immigration Services*)
<<https://www.uscis.gov/laws-and-policy/other-resources/notice-to-appear-policy-memorandum>>
accessed 3 July 2021.

needs, such as the lack of funding and the overwhelming lack of housing for victims. While trafficking is a complex issue, addressing the basic needs of NGOs would be an achievable step that would greatly impact their influence.

Annex

List of Interview Partners:

Alabaster Jar Project (San Diego, California)³⁰⁰

The Alabaster Jar Project (AJP) began as a ministry of The Church at Rancho Bernardo in 2013. Their mission is to provide housing and resources for women who have survived human trafficking and sexual exploitation in the San Diego county. They do not offer emergency services but instead offer long term support for female victims of exploitation so that they may integrate back in to society independently. Their staff is also made up of over 50% survivors of sexual exploitation. Its programs include, Grace House which is a long-term residential program, a drop-in Resource Center that provides clothing and toiletries, and a Peer Support Group.

New Friends New Life (Dallas, Texas)³⁰¹

Founded in 1997, New Friends New Life (NFNL) works with trafficked and sexually exploited girls and women through access to education, job training, interim financial assistance, mental health, and spiritual support. Their programs include individual and group counseling, case management, and economic tools such assistance with employment through business partnerships throughout out the community. They are also active in anti-trafficking advocacy through community education, some of their programs include the Men's Advocacy Group³⁰² which mobilizes local men to promote awareness and work against the sex trafficking and exploitation of women and girls, the manKINDness™ Project³⁰³, a workshop for adolescent boys aiming to create open

³⁰⁰ 'Alabaster Jar Project' (*Alabaster Jar Project*) <<https://www.alabasterjarproject.org>> accessed 23 July 2021.

³⁰¹ 'New Friends New Life' (*New Friends New Life*) <<https://www.newfriendsnewlife.org>> accessed 7 July 2021.

³⁰² 'Men's Advocacy Group' (*New Friends New Life*) <<https://www.newfriendsnewlife.org/mens-advocacy-group>> accessed 7 July 2021.

³⁰³ 'The ManKINDness Project™' (*New Friends New Life*) <<https://www.newfriendsnewlife.org/mankindness>> accessed 7 July 2021.

dialogues on valuing and respecting girls and create healthier behaviors towards girls and each other. Lastly, they also offer ‘Sex Trafficking Awareness Excursions’, in which they visit sites of real trafficking cases worked by Dallas Law enforcement in order to educate on the reality of sex trafficking conditions. For the interview I was able to speak with a staff member of their Clinical therapy program.

Safe Horizon (Brooklyn, New York)

Established in 1978 as the Victim Services Agency, Safe Horizon (SH) is the largest victim services NGO in the US, providing services to victims of abuse and violent crimes throughout New York city. It aims to “provide support, prevent violence and promote justice for victims of crime and abuse, their families, and communities.” They provide programs for victims of domestic violence, child abuse, sexual assault, youth homelessness, stalking, and human trafficking. Their anti-trafficking program provides victims with legal and case management services such as counseling, assistance with basic needs, legal assistance and advocacy, help with access to public benefits, shelter and housing options, and referrals to other services and NGOs. They also offer consultations and trainings to educate professionals and organizations about human trafficking. For the interview I was able to speak with an SH social worker.

Voice of Hope (Lubbock, Texas)³⁰⁴

Voice of Hope (VOH) was first established as the Lubbock Rape Crisis Center in 1975. They offer crisis intervention assistance for victims of rape and sex trafficking when they arrive in hospital emergency rooms. During their encounters with rape victims in the ER, VOH social workers began to see patterns related to trafficking among certain victims that prompted them to start addressing the issue of sex trafficking starting in 2011. Since then, VOH has grown to offer their services to trafficking victims in over 20 counties in the west Texas area. They offer 24-hour crisis intervention services such as a hotline,

³⁰⁴ ‘Voice of Hope | Lubbock’ (*Voice of Hope | Texas*) <<https://voiceofhopetexas.org/>> accessed 29 June 2021.

medical accompaniment and sexual assault medical examinations. Their other services include, counseling, referrals to other NGOs, victim accompaniment during law enforcement interviews and in court, and community education regarding sex trafficking to both law enforcement and the general public. For the interview I was able to speak with a member of their Prevention Program.

Workers Justice Center (Kingston, New York)

The Workers Justice Center (WJC) is a nonprofit labor rights NGO, its works to pursue ‘justice for those denied human rights with a focus on agricultural and other low wage workers, through legal representation, community empowerment and advocacy for institutional change³⁰⁵.’ The WJC was established in 2011 through the merger of the then ‘Farmworker Legal Services of New York’, which had been in operation since 1981, with the ‘Hudson Valley-based Workers’ Rights Law Center.’ While based in Brooklyn their programs offer services to farmworkers and other low wage workers in Upstate New York, with offices in the Westchester, Kingston and Rochester areas. Their services and programs include legal representation for exploited and abused workers, outreach and education for workers regarding their legal rights, advocacy for the advancement of public policy for workers right, and anti-trafficking training for service providers and law enforcement as well as legal representation for victims. For the interview I was able to speak with one of the labor law and employment attorneys in their Kingston office.

³⁰⁵ ‘Worker Justice Center of New York’ (*Worker Justice Center of New York*) <<https://www.wjcny.org/>> accessed 28 June 2021.

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Violence Against Women Act of 2000 42 USC §§13701-14042 (2000).

Conducted Interviews

Workers Justice Center, Interview, Zoom, 25 June 2021.

Voice of Hope, Interview, Zoom, 25 June 2021.

Safe Horizon, Interview, Zoom, 28 June 2021.

New Friends New Life, Interview, Zoom, 6 July 2021.

The Alabaster Jar Project, Interview, Zoom, 19 July 2021.

Abstract

On October 28, 2000 the United States passed the ‘Victims of Trafficking and Protection act of 2000’ (TVPA). The TVPA has been seen as the cornerstone of anti-human trafficking legislation in the US, defining trafficking, its victims, and laying out its protections and punishments. Yet, it has faced severe scrutiny due to criticisms regarding trafficking definitions, data, and allegations of anti sex work and immigration incentives being the driving force behind anti-trafficking legislation. The research analyzed the effects and shortcomings of the TVPA by looking at victim services and protections in terms of quality and accessibility and how they are influenced by the definitions set out in the TVPA. Research was conducted in three parts. Part one consisted of a literature review regarding the criticisms around human trafficking in the US and the TVPA. Part two consisted of a background analysis of the TVPA. Part three consisted of a content analysis reviewing the TVPA and the conduction of five semi-structured interviews with actors from NGO and legal sectors regarding their views on victim services in the US. Final findings concluded the TVPA has shaped officials’s view on trafficking victims. Victims experienced difficulties qualifying for federal assistance and protection and faced high risks in coming forward. Recommendations included policy changes decreasing risk for victims, more training for officials and law enforcement regarding trafficking and victim trauma, and lastly further studies on the needs of trafficking NGOs.

Keywords: *human trafficking, TVPA, Victims of Trafficking and Protection act of 2000*

Abstract

Am 28. Oktober 2000 verabschiedeten die Vereinigten Staaten den ‚Victims of Trafficking and Protection Act of 2000‘ (TVPA). Der TVPA gilt als Eckpfeiler der Anti-Menschenhandels-Gesetzgebung in den USA, definiert den Menschenhandel sowie Opfer und legt den Rahmen bezüglich Schutz und Strafen fest. Jedoch wurde er stark kritisiert aufgrund festgelegter Definitionen, unzuverlässiger Daten sowie Behauptungen, dass Anti-Sex-Arbeit- und Einwanderungsagenden die treibende Kraft hinter dem Gesetz seien. In dieser Arbeit wurden die Wirkung und Mängel des TVPA analysiert, indem Dienstleistungen und Schutz für Opfer bezogen auf Qualität und Zugänglichkeit untersucht wurden und geprüft wurde wie diese von den festgelegten Definitionen des TVPA beeinflusst werden. Die Studie umfasste drei Teile. Teil eins bestand aus einer Literaturrecherche bezüglich Kritik am Menschenhandel in den USA und am TVPA. Teil zwei bestand aus einer Hintergrundanalyse des TVPA. Der dritte Teil bestand aus einer Inhaltsanalyse des TVPA und der Durchführung von fünf halbstrukturierten Interviews mit Akteuren aus NGOs und Rechtssektoren bezüglich ihrer Ansichten zu Opfer-Services in den USA. Die Studie kam zu dem Schluss, dass der TVPA die Sichtweise von Beamten bezüglich Menschenhandelsopfern stark geprägt hat. Opfern fiel es schwer, Unterstützung und Schutz durch den Staat zu bekommen, da bereits die Meldung als Opfer mit Risiken verbunden ist. Zu den Empfehlungen der NGO- und Rechtsakteuren zählten politische Reform zur Verringerung des Risikos für Opfer, mehr Schulungen für Beamte und Strafverfolgungsbehörden in Bezug auf Menschenhandel und Opfertraumata und der Durchführung weiterer Studien zu den Bedürfnissen von NGOs im Bereich des Menschenhandels.

Schlüsselwörter: *Menschenhandel, TVPA, Victims of Trafficking and Protection act of 2000*