

ANTI-HUMAN TRAFFICKING LEGISLATION IN TANZANIA  
AND 6 COUNTRIES AROUND THE WORLD

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## Acronyms

ATPA	-	Anti-Trafficking in Persons Act
BJA	-	Bureau of Justice Assistance (United States)
BJS	-	Bureau of Justice Statistics (United States)
DOD	-	Department of Defense (United States)
DOJ	-	Department of Justice (United States)
DOS	-	Department of State (United States)
DSS	-	Diplomatic Security Service (United States)
FBI	-	Federal Bureau of Investigation (United States)
GCLMS	-	Ghana Child Labor Monitoring System
HHS	-	Department of Health and Human Services (United States)
HTA	-	Human Trafficking Act (Ghana)
ICE HIS	-	Immigration and Customs Enforcement Homeland Security Investigation (United States)
ILO	-	International Labour Organization
IOM	-	International Organization for Migration
NACP	-	National AIDS Control Program (Tanzania)
NAPTIP	-	National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (Nigeria)
NCJRS	-	National Criminal Justice Reference Service (United States)
ORR	-	Office of Refugee Resettlement (United States)
SENAF	-	Secretariat for Childhood Adolescence and Family (Argentina)
TVPA	-	Trafficking Victims Protection Act (United States)
TPF	-	Tanzania Police Force
UNODC	-	United Nations Office on Drugs and Crime

## I. Introduction

### *Overview*

According to the International Labour Organization (ILO), there are around 20.9 million victims of human trafficking around the world.<sup>1</sup> Human trafficking generates an estimated \$32 billion annually and is “tied with arms dealing as the world’s second-largest criminal enterprise, behind only drugs.”<sup>2</sup> Although many countries have enacted laws to combat the problem, dozens of countries still have no anti-trafficking legislation.<sup>3</sup> In 2008, Tanzania adopted the Anti-Trafficking in Persons Act (ATPA) to combat human trafficking, mandate stricter investigation and prosecution, and afford protection to victims of trafficking.<sup>4</sup> The second part of this report will explain and evaluate the ATPA, including the effectiveness of its implementation since its enactment in 2008. In part three, the report will describe similar acts around the world, including an evaluation of those laws’ implementation and effectiveness. Part four contains specific recommendations for Tanzania to enhance the effectiveness of its anti-trafficking law.

### *Evaluation Metrics*

In 2009, the United Nations Office on Drugs and Crime (UNODC) began releasing an annual report on human trafficking.<sup>5</sup> Its 2012 report is based on information collected from 132 countries and offers an extensive overview of trafficking around the world.<sup>6</sup> In addition to the

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<sup>1</sup> UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS - 2012, 1 (2012), *available at* [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

<sup>2</sup> Chuck Neubauer, *Sex Trafficking in the U.S. Called ‘Epidemic,’* THE WASHINGTON TIMES, (Apr. 23, 2011), *available at* <http://www.washingtontimes.com/news/2011/apr/23/sex-trafficking-us-called-epidemic/?page=all>.

<sup>3</sup> International Anti-Trafficking Legislation, THE PROTECTION PROJECT, (accessed June 8, 2013), *available at* <http://www.protectionproject.org/resources/law-library/international-anti-trafficking/>.

<sup>4</sup> Anti-Trafficking in Persons Act – 2008 (Tanzania), *available at* [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_125592.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125592.pdf).

<sup>5</sup> UNODC, *UNODC Report on Human Trafficking Exposes Modern Form of Slavery* (2009) (accessed July 13, 2013), *available at* <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

<sup>6</sup> The report details the type of trafficking experienced by 6,800 victims in 30 Asian countries, 6,300 victims of trafficking in 36 African and Middle Eastern countries, including Tanzania, 3,700 victims in 17 South and North American countries, 22,000 victims in Western and Central European countries, 4,000 victims in Eastern European and Central Asian countries. UNODC, *supra* note 1, at 53, 61, 69, 74, (2012). UNODC notes, however, that its data

UNODC report, the U.S. State Department publishes an annual Trafficking in Persons Report that offers a broad and detailed review of trafficking and anti-trafficking legislation in 170 countries.<sup>7</sup> The U.S. State Department bases its evaluation not on international standards, but instead on the individual country's compliance with the minimum standards of the United States' Trafficking Victims Protection Act (TVPA).<sup>8</sup> The "minimum standards" of the Act, which apply to all countries, include the prohibition and "stringent" punishment of "severe forms of trafficking in persons," including the "knowing commission of any act of sex trafficking involving force, fraud, coercion."<sup>9</sup> The TVPA is not legally binding on other countries, but the United States will sanction governments that do not comply with the Act's minimum standards, or make significant efforts to do so, by discontinuing all "nonhumanitarian, nontrade-related foreign assistance."<sup>10</sup> If a country fully complies with the minimum standards of the TVPA, it is rated "Tier 1" on the U.S. State Department's trafficking scale.<sup>11</sup> Countries are rated "Tier 2" if they do not fully comply with those minimum standards, but "are making significant efforts to bring themselves into compliance with those standards."<sup>12</sup> Those Tier 2 countries may be further placed on the "Tier 2 Watch List" if:

- a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

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collection for Asia, Africa and the Middle East was "relatively weak," as "[c]ountries did not necessarily provide information for all indicators." *Id.* at 53, 69, 74

<sup>7</sup> U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT 2008 (statement by Condoleezza Rice), *available at* <http://www.state.gov/documents/organization/105501.pdf>.

<sup>8</sup> 22 U.S.C. Chapter 78 – Trafficking Victims Protection, *available at* <http://www.law.cornell.edu/uscode/text/22/chapter-78>.

<sup>9</sup> Trafficking Victims Protection Act (U.S.), Sec. 108(a)(1)-(2), *available at* <http://www.state.gov/j/tip/laws/61124.htm>. Additional criteria for evaluating whether a country is making "serious and sustained efforts to eliminate severe forms of trafficking in persons" include: "Whether the government . . . vigorously investigates and prosecutes" severe forms of trafficking, "[w]hether the government . . . protects victims of severe forms of such trafficking," and "[w]hether the government of the country has adopted measures to prevent severe forms of trafficking in persons . . . ." *Id.* at Sec. 108(b)(1)-(3).

<sup>10</sup> Trafficking Victims Protection Act (U.S.), Sec. 110(a)(1)-(2)

<sup>11</sup> U.S. Department of State, Tier Placements, *at* <http://www.state.gov/j/tip/rls/tiprpt/2013/210548.htm> (accessed July 13, 2013).

<sup>12</sup> *Id.*

- b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
- c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.<sup>13</sup>

Countries are rated “Tier 3” if they “do not fully comply with the minimum standards and are not making significant efforts to do so.”<sup>14</sup> This report utilizes information and evaluations from both the UNODC and the U.S. State Department reports.

## II. Tanzania’s Trafficking in Persons Act

### A. Background

#### *Human Trafficking in Tanzania*

A study published in 2009 by the National AIDS Control Program (NACP) estimated that 8 in every 1000 people in Tanzania was a victim of trafficking.<sup>15</sup> Nearly one third of the 799 households participating in a household survey conducted by the NACP reported “at least one member in their families to be a victim of [human trafficking].”<sup>16</sup> Individuals interviewed as part of this study noted that the number of house girls, barmaids, female sex workers, and young men working in “petty businesses” was rapidly increasing in their communities.<sup>17</sup> Most often the victims were “[w]omen, girls, and young males,”<sup>18</sup> with young women and girls aged 10 to 26 being the most targeted group.<sup>19</sup> Nevertheless, trafficking remains underreported, partially due to a low level of awareness among Tanzanians of what constitutes trafficking.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> S. R. Kamazima, HUMAN TRAFFICKING BASELINE ASSESSMENT IN TANZANIA: FINDINGS FROM SELECTED REGIONS, NATIONAL AIDS CONTROL PROGRAM 18 (2009), available at <http://www.nacp.go.tz/documents/humantrafficking.pdf>.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *Id.* at 17

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 20

The rise in trafficking has been fueled by an “increased demand [for] cheap labor in urban areas – [in the] domestic sector, agriculture, mining, construction industry – and for sexual exploitation . . . .”<sup>20</sup> Sometimes parents struggling to support themselves and their children in rural towns misguidedly send their children to work in urban areas in exchange for “money or material goods” from a trafficker.<sup>21</sup> 81.9% of the victims evaluated by the NACP had been sent “outside [their] region of residence.”<sup>22</sup> A trafficked youth might then be ordered to return home wearing nice clothing and other material goods to lure more victims.<sup>23</sup> The vulnerability of children to trafficking is especially troubling because nearly half of the population is under 15 years of age.<sup>24</sup>

In a 2008 study by the International Organization for Migration (IOM), only 56% of Tanzanians surveyed believed that members of their community knew what human trafficking is.<sup>25</sup> The NACP survey found that some Tanzanians did not consider “recruitment of girls and boys for ‘employment’ in urban areas” to be a possible form of human trafficking.<sup>26</sup> Survey participants living in rural areas in Tanzania admitted that they were aware of “young people’s migration to distance destinations,” but did not believe it resulted in any human rights violations.<sup>27</sup> Respondents in urban and semi-urban areas seemed to be more aware of the extent of trafficking, particularly the fact that it has been “increasing in magnitude and complexity.”<sup>28</sup>

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<sup>20</sup> *Id.* at 40

<sup>21</sup> *Id.* at 25

<sup>22</sup> Kamazima, *supra* note 15, at 19

<sup>23</sup> *Id.* at 25-6

<sup>24</sup> Int’l Org. for Migration, Tanzania – Facts and Figures (accessed July 17, 2013), *available at* <http://www.iom.int/cms/en/sites/iom/home/where-we-work/africa-and-the-middle-east/east-africa/tanzania.html>.

<sup>25</sup> INT’L ORG. FOR MIGRATION, HUMAN TRAFFICKING IN EASTERN AFRICA: RESEARCH ASSESSMENT AND BASELINE INFORMATION IN TANZANIA, KENYA, UGANDA, AND BURUNDI 2 (2008), *available at* [http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&cPath=1&products\\_id=726%5C](http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=1&products_id=726%5C).

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.* at 4

<sup>28</sup> *Id.*

The rise in human trafficking is correlated with mounting poverty and lower levels of education in the so-called “source communities.”<sup>29</sup>

In the NACP survey, trafficking victims most frequently cited “increased poverty among family members” as one of the reasons they were subjected to some form of trafficking.<sup>30</sup> 29.5% of victims cited “poor social support,” and 23.1% cited having “want[ed] to get a better life somewhere.”<sup>31</sup> The IOM study found that low income levels in a community often lead to migration by some members and then exposure to trafficking.<sup>32</sup> The IOM study found that almost all trafficking victims were lured by false promises,<sup>33</sup> the most common of which were assurances of a job with a good salary and an education.<sup>34</sup> Correspondingly, “[a] higher percentage of trafficked girls and women . . . had [attained] lower levels of education” in their home communities.<sup>35</sup>

In every community surveyed by the NACP, there were reports of trafficking victims dying of AIDS, living with HIV/AIDS, or “having children to unknown fathers . . . .”<sup>36</sup> Trafficking victims also showed a higher rate of substance abuse.<sup>37</sup> House girls are often forced to work extremely long hours, sometimes reportedly from 5:00 am to midnight or later.<sup>38</sup> Furthermore, many are “not paid regularly, lack freedom and time to relax, some are sexually abused . . . some get unwanted/unexpected pregnancies and [are] then expelled . . . and in some cases they get killed by their ‘bosses.’”<sup>39</sup> Girls working in brothels are sometimes not paid at

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<sup>29</sup> INT’L ORG. FOR MIGRATION, *supra* note 25, 1

<sup>30</sup> Kamazima, *supra* note 15, at 5

<sup>31</sup> *Id.*

<sup>32</sup> INT’L ORG. FOR MIGRATION, *supra* note 25, at 2

<sup>33</sup> *Id.* at 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Kamazima, *supra* note 15, at 33

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 31

<sup>39</sup> *Id.*

all.<sup>40</sup> Perpetrators of trafficking often use a position of authority or familiarity to obtain their victims.

The NACP study found that the majority of reported traffickers are older than their victims, and, perhaps surprisingly, equal numbers of men and women perpetrate or facilitate trafficking.<sup>41</sup> In 84.5% of cases the trafficker is known, formally or informally, by the victim, and nearly half of the trafficking reported is perpetrated by relatives of the victims.<sup>42</sup> Some traffickers have even coordinated to form “informal and semi-organized agencies that recruit boys and girls from rural areas to semi-urban and urban centers.”<sup>43</sup> These agencies may send “fake company agents” to lure victims from their home communities.<sup>44</sup> In order to combat the mounting problem of human trafficking, Tanzania has ratified the U.N. Anti-Trafficking Protocol, voluntarily binding itself to fulfill the treaty’s mandate. The government passed its first anti-human trafficking law in 2008.

#### *The U.N. Anti-Trafficking Protocol*

In December of 2000, Tanzania signed the U.N. Anti-Trafficking Protocol,<sup>45</sup> a legally binding international treaty that calls on States Parties to enact “measures to prevent trafficking, to punish the traffickers and to protect the victims of such trafficking . . . .”<sup>46</sup> The Protocol went into effect on December 25, 2003 and Tanzania ratified it without reservations on May 24, 2006.<sup>47</sup> Article 3 of the Protocol defines trafficking as the “recruitment, transportation, transfer,

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<sup>40</sup> *Id.* at 29

<sup>41</sup> *Id.* at 23

<sup>42</sup> *Id.* at 23-4

<sup>43</sup> *Id.* at 27

<sup>44</sup> *Id.*

<sup>45</sup> Lwando Mufune, *An Analysis of Human Trafficking in Southern Africa* (2010) (Unpublished Thesis), available at <http://www.wisis.unam.na/theses/mufune2010.pdf>.

<sup>46</sup> PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATION CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, Preamble, p. 1, (2000) [hereinafter PROTOCOL], available at [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-12-a&chapter=18&lang=en).

<sup>47</sup> Mufune, *supra* note 45.

harbouring or receipt of persons” by various enumerated means, including “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability . . . .”<sup>48</sup> Under Article 5, States Parties are required to adopt anti-trafficking legislation that criminalizes not only the forms of trafficking enumerated in Article 3,<sup>49</sup> but also “participating as an accomplice” to a trafficking offense or “organizing or directing another person to commit” a trafficking offense.<sup>50</sup> UNODC has clarified that a single offense of trafficking must be comprised of three elements:

“(i) an act (recruitment, transportation, transfer, harbouring, trading, or receipt of persons); (ii) means (the use of threats, force, [etc.]); and (iii) purpose (for the purpose of exploitation).”<sup>51</sup>

Exploitation includes, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>52</sup>

Article 6 of the Protocol lays out protective measures that States Parties “shall ensure [their] domestic legal or administrative system” provides to victims “in appropriate cases.”<sup>53</sup> The protective measures include informing victims of “relevant court and administrative proceedings” and assisting victims at various stages of the judicial process.<sup>54</sup> States Parties shall also “consider implementing measures to provide for the physical, psychological and social recovery of victims,” specifically the provision of housing, counseling, “[m]edical, psychological

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<sup>48</sup> PROTOCOL Art. 3(a)

<sup>49</sup> *Id.* at Art. 5(1)

<sup>50</sup> *Id.* at Art. 5 (2)(a)-(b)

<sup>51</sup> PROTOCOL at Art. 3. *See also* Manda Sertich & Marijn Heemskerke, *Ghana’s Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation*, 4 (2011), available at [http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1779&context=hrbrief&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fas\\_ylo%3D2009%26q%3Dtanzania%2Bhuman%2Btrafficking%26hl%3Den%26as\\_sdt%3D0%2C33#search=%22tanzania%20human%20trafficking%22](http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1779&context=hrbrief&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fas_ylo%3D2009%26q%3Dtanzania%2Bhuman%2Btrafficking%26hl%3Den%26as_sdt%3D0%2C33#search=%22tanzania%20human%20trafficking%22).

<sup>52</sup> PROTOCOL Art. 3.

<sup>53</sup> *Id.* at Art. 6(2)

<sup>54</sup> *Id.* at Art. 6(2)(a)-(b)

and material assistance,” and “employment, educational and training opportunities.”<sup>55</sup> Article 7 calls on States Parties to consider enacting laws or taking measures to permit trafficking victims to “remain in [the State’s] territory, temporarily or permanently, in appropriate cases.”<sup>56</sup> In 2008, Tanzania passed its Anti-Trafficking in Persons Act (ATPA), a law that mirrors much of the U.N. Protocol, but contains a broader definition of trafficking and more specific protective measures for victims. Prior to the enactment of the ATPA, Tanzania had no laws specifically criminalizing human trafficking.<sup>57</sup>

## **B. Tanzania’s Anti-Trafficking in Persons Act**

### *Prohibitions*

Tanzania’s 2008 Anti-Trafficking in Persons Act criminalizes all forms of trafficking and calls for one or both of the following: a prison sentence of one to 20 years’ imprisonment or a fine of five million to one hundred and fifty million shillings, depending on the particular trafficking offense.<sup>58</sup> The first section of the act prohibits coercing, recruiting, or transporting a person by any means “for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage.”<sup>59</sup> A person may also be guilty of a trafficking offense if he or she “promotes, procures or facilitates the commission of trafficking in persons,”<sup>60</sup> which includes creating or distributing “unissued, tampered or fake certificates, registration or stickers of any government agency” or leasing or subleasing any “house, building

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<sup>55</sup> *Id.* at Art. 6(3)(a)-(d)

<sup>56</sup> *Id.* at Art. 7(1)

<sup>57</sup> Sauda Mjasiri, *Combating Human Trafficking in Tanzania*, 1 JOURNAL OF TANZANIAN WOMEN JUDGES 39, 40 (July, 2012), available at [http://www.tawjatjz.org/publication/journal-of-the-tanzania-women-judges-association-tawja/wppa\\_open/](http://www.tawjatjz.org/publication/journal-of-the-tanzania-women-judges-association-tawja/wppa_open/).

<sup>58</sup> Anti-Trafficking in Persons Act, 2008 § 4(3) (Tanzania), available at [http://www.ilo.org/wcmsp5/groups/public/-ed\\_protect/-protrav/-ilo\\_aids/documents/legaldocument/wcms\\_125592.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-ilo_aids/documents/legaldocument/wcms_125592.pdf)

<sup>59</sup> *Id.* at § 4(1)(f)

<sup>60</sup> *Id.* at § 5(1)

or establishment for the purpose of trafficking in persons.”<sup>61</sup> Additionally, the Act enumerates “severe trafficking” offenses: trafficking involving children or disabled victims, adoption for sexual or labor exploitation, and offenses committed by crime syndicates, groups of two or more persons, religious leaders, or other authority figures.<sup>62</sup> Anyone who “buys or engages the services of trafficked persons for prostitution” must either pay a fine of one to thirty million shillings or serve a prison term of twelve months to seven years, or both.<sup>63</sup> The Act allows judges to impose heavier penalties for second-time or multiple trafficking offenders.<sup>64</sup>

*Provisions for Investigation, Prosecution, and Conviction*

The ATPA requires victims of trafficking to report any information known about “any person committing an offence of trafficking in persons elsewhere.”<sup>65</sup> A police officer who discovers a victim of trafficking must “assist the victim to obtain medical and psychological treatment,” get the victim to a safe place if necessary, and “inform the victim of his rights and any basic support which may be available . . . .”<sup>66</sup> A police officer may arrest a suspected trafficker without a warrant if the trafficking offense is committed “in the presence of that police officer,” if the police officer “is obstructed by the suspect from conducting investigation,” or if “a person is about to commit an offence of trafficking in persons and there is no other way to prevent commission of the offence.”<sup>67</sup> A convicted trafficker “shall be ordered by the court to pay compensation to the injured person.”<sup>68</sup> If the trafficker has insufficient assets to pay the victim, the “balance shall be made good from the proceeds of the confiscated and forfeited

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<sup>61</sup> *Id.* at § 5(2)

<sup>62</sup> *Id.* at § 6(2)

<sup>63</sup> *Id.* at § 8

<sup>64</sup> *Id.* at § 13

<sup>65</sup> *Id.* at § 10

<sup>66</sup> *Id.* at § 11(2)(a)-(c)

<sup>67</sup> *Id.* at § 12(2)(a)-(c)

<sup>68</sup> *Id.* at § 15(1)-(3)

properties.”<sup>69</sup> If properties obtained through trafficking have been destroyed, changed in value, or somehow rendered worthless, the convicted trafficker “shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offence.”<sup>70</sup> Beyond these provisions to effectively police and punish trafficking, the ATPA establishes protective measures for victims of trafficking.

### *Protection*

Under the ATPA, the Government is required to “establish, implement and coordinate preventive, protective and rehabilitative” programs for trafficked persons.<sup>71</sup> These measures include making the resources of the “Ministry responsible for foreign affairs”<sup>72</sup> available to trafficked persons, establishing a “pre-marriage, on-site and pre-departure counseling programme on intermarriages,”<sup>73</sup> and providing “rehabilitative and protective programmes,”<sup>74</sup> as well as “counseling and temporary shelter” for trafficked persons through the “Ministry responsible for social welfare.”<sup>75</sup> The “Ministry responsible for labour and employment” must monitor and “ensure strict implementation and compliance” with employment rules and guidelines, and report trafficking incidents involving employers.<sup>76</sup> The “Ministry responsible for legal affairs”<sup>77</sup> must “ensure the prompt prosecution” of traffickers and “establish a mechanism for free legal assistance for victims of trafficking in persons.”<sup>78</sup> The activities required under the Act are to be supported in part by an “Anti-Trafficking Fund” and the “Anti-Trafficking

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<sup>69</sup> *Id.* at § 14(2)

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Anti-Trafficking in Persons Act, 2008 (Tanzania), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_125592.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125592.pdf)

Committee” created by the Act.<sup>79</sup> The nineteen-member Anti-Trafficking Committee is comprised of government representatives, at least one lawyer, and several members of non-governmental organizations.<sup>80</sup> The Act provides that a trafficked person shall not be prosecuted for crimes he or she committed while being trafficked.<sup>81</sup> Although ATPA prescribes sufficiently stringent punishment for trafficking and calls for thorough protective measures for victims, in reality the Act has not been implemented effectively.

### **C. Inadequate Implementation of the ATPA**

#### *Police Investigation*

In spite of the detailed police directives in the ATPA, police investigation of trafficking offenders in Tanzania remains inadequate. A 2009 report by the Institute for Security Studies found that there was only one police officer in the Tanzania Police Force (TPF) for every 1,183 citizens, and that those officers were underpaid.<sup>82</sup> The “resulting low morale” on the TPF has caused widespread corruption, often taking the form of “abuse of powers” and even the “fabrication of cases against the innocent.”<sup>83</sup> Furthermore, there are frequently “extreme delays in investigations and an inappropriate attitude towards gender and sexual violence.”<sup>84</sup> Training for the TPF is only six months,<sup>85</sup> and the 2013 U.S. State Department report notes that the government has discontinued funding “to provide specialized anti-trafficking training to officials.”<sup>86</sup> The people’s militia, *Sungusungu*, also has the power to arrest civilians, but

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Simon Robins, *Addressing the Challenges of Law Enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia*, INSTITUTE FOR SECURITY STUDIES 2 (Oct. 2009), available at <http://dspace.cigilibrary.org/jspui/bitstream/123456789/30885/1/NO16OCT09.pdf?1>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> U.S. DEP’T OF STATE, 2012 TRAFFICKING IN PERSONS REPORT 357 (June 19, 2012) available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> [hereinafter U.S. DEP’T OF STATE, TIPS REPORT].

unfortunately it lacks adequate training, and has “in the past both violated the rights of those it has targeted and has sometime[s] sunk itself into criminality.”<sup>87</sup> As a result of these problems, the public generally does not trust or put much faith in the police force.<sup>88</sup> The problem of inadequate and underfunded law enforcement is compounded by a “lack of effective [criminal] recordkeeping” that has hampered crime prevention efforts.<sup>89</sup> In its 2013 trafficking report, the U.S. State Department reports that Tanzania continues to rely on the International Organization for Migration’s “partial data for statistics about human trafficking,” instead of compiling its own comprehensive “trafficking-specific law enforcement and victim protection” data.<sup>90</sup> Meanwhile, the problem of human trafficking in Tanzania has continued to escalate.

In September 2012, President Jakaya Kiwete declared human trafficking to be a “serious crime” after 83 trafficked Ethiopian migrants were found abandoned in the Dodoma region in June of that year; 43 more had died of asphyxiation while locked in the trafficker’s vehicle.<sup>91</sup> Under Tanzanian law, a “serious crime” carries a mandatory sentence of “30 years to life in prison,” and offenders are not eligible for bail.<sup>92</sup> Following on the heels of this legal change, Tanzania’s Ministry of Home Affairs announced that it would create an anti-trafficking and illegal immigration regional taskforce to “engage representatives from neighboring countries” to work together to eliminate trafficking.<sup>93</sup> According to the Acting Commissioner of Immigration Services Department, the government has also planned to form a “special committee . . . to deal with human trafficking.”<sup>94</sup> At the time of the drafting of this report, however, there is no

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<sup>87</sup> Robins, *supra* note 82, at 2.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 357.

<sup>91</sup> Deodatus Balile, *Human Trafficking Elevated to Serious Crime in Tanzania*, SABAHI, Sept. 20, 2012, available at [http://sabahionline.com/en\\_GB/articles/hoa/articles/features/2012/09/20/feature-02](http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/09/20/feature-02).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

evidence that either this “regional taskforce” or the “special committee” have been created. The government has, however, “improve[d] the tools of the Immigration Services Department” to fight human trafficking” along the borders by purchasing three new speed boats, 37 cars, and 100 motorcycles for patrolling in 2012.<sup>95</sup> Surprisingly, the Assistant Commissioner of Police and the head of its human trafficking unit reported a dramatic decrease in the number of weekly arrests for trafficking in 2012, from about 175 to only 20 arrests that year.<sup>96</sup> The 2013 U.S. State Department report presents an even more dramatic decrease, and Tanzanian authorities reported having investigated just four trafficking cases under the ATPA in 2012.<sup>97</sup> Anti-trafficking efforts appear to have increased in 2013.

In April 2013, the Tanzanian government began investigating a major trafficking case involving 14 businessmen with Tanzanian and Somalian citizenship suspected of facilitating the trafficking of “hundreds of Somalis using forged documents.”<sup>98</sup> The investigation is claimed to be part of a larger effort to scrutinize “politicians, businessmen and senior government officials who may be tied to the scheme of sending Somalis to South African countries and Europe in exchange for millions of dollars.”<sup>99</sup>

### *Prosecution*

Perhaps because of inadequate investigation, “very few trafficking in persons cases ever reach the courts,”<sup>100</sup> and a very small number of traffickers are ever convicted. Between 2007 and 2011, only eight human trafficking cases, affecting “48 [victims] including 14 Somali

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<sup>95</sup> Balile, *supra* note 91.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Tanzania Investigates 14 Somali Businessmen for Human Trafficking*, SABAHI, April 29, 2013, available at [http://sabahionline.com/en\\_GB/articles/hoa/articles/newsbriefs/2013/04/29/newsbrief-02](http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2013/04/29/newsbrief-02).

<sup>99</sup> *Id.*

<sup>100</sup> Millenium Development Goal 3 Program (MDG 3) – Tanzania: 2009 to 2011, TANZANIA WOMEN JUDGES ASSOC., available at [http://www.iawj.org/Tanzania\\_Country\\_Report.pdf](http://www.iawj.org/Tanzania_Country_Report.pdf).

nationals, one Kenyan and 33 Tanzanians,” were tried in courts of law.<sup>101</sup> According to the 2013 U.S. State Department report, the government prosecuted only two new trafficking cases in 2012 while it continued the prosecution of five cases from 2011.<sup>102</sup> Three of those prosecutions were withdrawn due to “lack of victims’ testimony,” and all four traffickers who were convicted in 2012 “received fines *without* jail time.”[italics added]<sup>103</sup> The U.S. State Department cites a “lack of understanding” among judicial officials and law enforcements as a major reason why “trafficking occur[s] with impunity” and continues, in spite of the President’s actions, to be “classified as a minor offense.”<sup>104</sup> Further complicating efforts to prosecute and convict trafficking offenders is the problem of overcrowding in Tanzanian prisons. According to the Home Affairs Minister, Dr. Emmanuel Nchimbi, there are currently at least 34,355 prisoners in Tanzania, substantially more than the prisons’ combined capacities.<sup>105</sup>

### *Protection*

The 2013 U.S. State Department report notes that Tanzania has not implemented the trafficking victims support fund mandated by the Anti-Trafficking in Persons Act, and instead continues to “rely on NGOs to provide care for victims.”<sup>106</sup> Compounding that problem is the fact that most of the NGO-run protection centers are located only in urban areas.<sup>107</sup> There is one government-operated children’s shelter, but it is “often filled to capacity” and it is “unknown whether it accommodated any trafficking victims” in 2012.<sup>108</sup> As for foreigners trafficked into the country, Tanzania’s official policy, coinciding with the mandate of the ATPA, is to grant

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<sup>101</sup> Patrick Kisembo, *Human Trafficking in Tanzania Not Serious Matter, Govt Says*, IPP MEDIA, (Apr. 19, 2012), available at <http://www.ippmedia.com/frontend/index.php?l=40690>.

<sup>102</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 357.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Masato Masato, *Tanzania: Ministry of Home Affairs Versus ‘Ministry of Police,’* TANZANIA DAILY NEWS, (May 11, 2013), available at <http://allafrica.com/stories/201305110100.html>.

<sup>106</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 357.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

citizenship to refugees and asylum seekers.<sup>109</sup> So far it has “provide[d] asylum to about 526,800 refugees,” many of whom have been trafficked into the country.<sup>110</sup> Most of the refugees living in Tanzania are from Somalia, Burundi, and the Democratic Republic of the Congo.<sup>111</sup> Since 2005, 3,000 Somalian refugees have been given Tanzanian citizenship.<sup>112</sup>

### III. Anti-Trafficking in Persons or Similar Acts around the World

#### A. Africa

According to the UNODC report, between 2007 and 2010, 68% of the recorded trafficking victims in Africa and the Middle East were children, although in the Middle East adults were more frequently trafficked than children.<sup>113</sup> In North African and Middle Eastern countries, around 80% of convicted traffickers are men.<sup>114</sup> UNODC notes that this is commensurate with the “generally low participation of women in all forms of crime in this region (rarely above 10 per cent).”<sup>115</sup> In sub-Saharan African countries, UNODC found a “disproportionate presence of foreign nationals among the few convictions” for trafficking between 2008 and 2010.<sup>116</sup> This subsection of the report will cover two countries in Africa: Ghana and Uganda, both of which have had anti-human trafficking legislation in effect for at least four years. Each of the countries has been rated Tier 2 by the U.S. State Department, and each country has reported high levels of human trafficking yet demonstrated relatively low prosecution and conviction rates.

#### 1. Ghana

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS – 2012, 74-5 (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

<sup>114</sup> *Id.* at 75.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

*Human Trafficking in Ghana and the Human Trafficking Act (HTA)*

In Ghana, a “Tier 2” country,<sup>117</sup> the vast majority of trafficking victims are children.<sup>118</sup> It is a long-standing Ghanaian practice for parents to send their children to live with extended relatives “to strengthen familial ties and enhance their children’s education or skills development,” and this has recently become a major source of trafficking.<sup>119</sup> Widespread poverty in Ghana also leads to migration and exposure to trafficking.<sup>120</sup> Children separated from their parents are frequently “exploited for labor, domestic services, or prevented from attending school.”<sup>121</sup> Much of the trafficking is for forced labor, and “thousands of [young boys] between the ages of three and seventeen”<sup>122</sup> have been trafficked to work in the fishing industry in Ghana’s Lake Volta.<sup>123</sup> Young girls are often forced to work as “head porters (street peddlers), or *kayayee*,<sup>124</sup> in metropolitan areas.”<sup>125</sup> There are “tens of thousands” of children currently working in the *kayayo* business.<sup>126</sup> Working conditions can be dangerous, and many children are forced to work “extremely long hours;” the only compensation they receive, as little as \$25-65 in total, has been paid “to their parents in advance for [as long as] five years of service.”<sup>127</sup> To combat the problem, Ghana passed its Human Trafficking Act (HTA) in 2005

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<sup>117</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 178.

<sup>118</sup> UNODC, *supra* note 113, at 74

<sup>119</sup> Sertich & Heemskerke, *supra* note 51, at 2

<sup>120</sup> “An estimated 28.5 percent of Ghanians live off \$1.25 per day, which is below the national poverty line, and a majority of trafficked persons originate from the poorer areas of Ghana. [citations omitted]. *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> UNODC, *supra* note 113, at 77

<sup>122</sup> Sertich & Heemskerke *supra* note 51, at 2

<sup>123</sup> UNODC, *supra* note 113, at 77

<sup>124</sup> The *Kayayee* are female porters. *SWAA-Ghana Inspires Confidence, Self-Esteem in “Kayayee,”* MODERN GHANA, (Feb. 12, 2011), available at <http://www.modernghana.com/news/316160/1/swaa-ghana-inspires-confidence-self-esteem-in-kay.html>.

<sup>125</sup> Sertich & Heemskerke, *supra* note 51, at 2

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 2

and amended it in 2009 to “align its definition of human trafficking with that of the 2000 UN TIP Protocol.”<sup>128</sup>

The HTA criminalizes all forms of trafficking and calls for sentences of five to 20 years.<sup>129</sup> The Ministry of Women and Children’s Affairs (MOWAC) is charged with administering the HTA.<sup>130</sup> According to a 2011 study published in *Human Rights Brief*, there is considerable debate over the definition of trafficking in the Act, particularly Section 1(1), which defines human trafficking as:

The recruitment, transportation, transfer, harbouring, trading or receipt of persons for the purpose of exploitation within and across national borders by

- a) The use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or
- b) Giving or receiving payments and benefits to achieve consent.<sup>131</sup>

The debate concerns the use of the word “or,” specifically whether or not “*any single element*” [emphasis added] described in the law (“recruitment OR transportation OR transfer[,]” etc.), combined with “exploitation and the elements required in subsections (a) or (b)” is alone sufficient to constitute trafficking.<sup>132</sup> Some advocates believe that “each and all of the elements” (recruitment and transportation and transfer, etc.) “must be present to constitute trafficking.”<sup>133</sup> This debate is not simply theoretical. The lack of a consistently applied and circulated definition of human trafficking has both thinned awareness of human trafficking among Ghanaians and prevented law enforcement from being able to “consistently identify cases” of trafficking.<sup>134</sup>

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<sup>128</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

<sup>129</sup> *Id.*

<sup>130</sup> Sertich & Heemskerke, *supra* note 51, at 3

<sup>131</sup> Human Trafficking Act, 2005 Section 1(1)(a)-(b) (Ghana)

<sup>132</sup> Sertich & Heemskerke, *supra* note 51, at 3

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

More pressingly, however, implementation of the law has been hindered by a lack of a legislative instrument, inadequate training for police officers, ambiguity in the wording of the law, and insufficient funding, all of which have resulted in ineffective investigation of cases, low rates of prosecution, and limited protection for victims under the law.

### *Implementation of the HTA*

The U.S. State Department recommends that Ghana adopt a “legislative instrument to implement effectively the 2005 Human Trafficking Act.”<sup>135</sup> In the Ghanaian legal system, a legislative instrument (LI) “details the procedures to be employed under [a particular] law.”<sup>136</sup> Without an LI, implementation of the HTA has suffered from a lack of “standardized procedures and agencies designated to follow them . . . .”<sup>137</sup> MOWAC “is tasked with developing the LI upon recommendation of the [Human Trafficking Management Board],” an agency that was established by the HTA.<sup>138</sup> Although the Board has been “active and functional” since 2006,<sup>139</sup> the LI for the Human Trafficking Act still has not been adopted, although the 2013 U.S. State Department report notes that it is currently “awaiting Ministerial action before moving to Parliament for approval.”<sup>140</sup>

According to the U.S. State Department, the Ghanaian government investigated 75 trafficking incidents in 2012,<sup>141</sup> a “significant decrease” from 2011, when the government investigated 91 trafficking cases.<sup>142</sup> Even with these relatively low numbers, however, anti-trafficking measures have saved hundreds of lives. The U.S. State Department reports that in 2012, Ghana “collaborated with the government of Burkina Faso in an INTERPOL-led operation

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<sup>135</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

<sup>136</sup> Sertich & Heemskerke, *supra* note 51, at 2

<sup>137</sup> *Id.* at 2

<sup>138</sup> *Id.* at 3

<sup>139</sup> *Id.* at 4

<sup>140</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

[that] resulted in the rescue of 387 trafficking victims from various West African nations . . . .”<sup>143</sup>

For its part in the operation, Ghana “sent 16 [police] officers . . . and assisted in 30 arrests.”<sup>144</sup>

That same year, Ghana coordinated with Nigeria’s National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP), rescuing 82 Nigerian and 41 Ghanaian trafficking victims, and arresting 10 Nigerian and six Ghanaian suspected traffickers.<sup>145</sup> Ghana also completed the “pilot phase of the Ghana Child Labor Monitoring System (GCLMS) – a database concerning forced child labor and trafficking at the community level . . . .”<sup>146</sup> The database has been implemented in “60 cocoa-producing communities across six districts,” although so far it has not led to any arrests or prosecutions.<sup>147</sup> The relatively low rate of arrests and prosecutions may have partly resulted from a lack of “specialized anti-trafficking training for government officials” in 2012,<sup>148</sup> as well as a lack of adequate funding “to conduct numerous comprehensive trafficking investigations sufficient to result in successful prosecutions.”<sup>149</sup> Furthermore, the government is reportedly focusing its anti-trafficking efforts on the country’s cocoa industry instead of the fishing industry where trafficking is a “more widespread and serious problem.”<sup>150</sup> These shortcomings – the lack of funding, training, and an

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Sertich & Heemskerke, *supra* note 51, at 6.

<sup>150</sup> Camilla Pontalti, Human Trafficking: My Experience in Human Rights in Ghana, VOICES OF THE WORLD, (accessed July 16, 2013), *available at* <http://www.voices-of-the-world.org/headings/my-experience-in-human-rights-in-ghana/>. Ghana is one of the world’s leading exporters of cocoa. *Cocoa Growing Countries*, WORLD AGROFORESTRY CENTRE 1 (accessed July 16, 2013), *available at* <http://www.worldagroforestry.org/treesandmarkets/inforesta/documents/cocoa%20and%20chocolate/cocoa%20and%20chocolate.pdf>. “As people learn more about the conditions of children working on plantations, they begin to demand chocolate that is free from child labour. In turn, chocolate producers are beginning to demand the cocoa they purchase meet that standard. Since cocoa is the country’s biggest cash crop and Ghana is the second-largest cocoa producer in the world next to Côte d’Ivoire, there is a lot to gain by such effort.” Pontalti, *supra*.

uneven allocation of anti-trafficking resources – have subsequently resulted in low rates of prosecution and conviction of trafficking offenders.

According to UNODC, Ghana convicted only five traffickers between 2007 and 2010.<sup>151</sup> In 2011, the Ghanaian government secured 29 convictions,<sup>152</sup> thanks in large part to the large-scale operation conducted by the Anti-Human Trafficking Unit and INTERPOL in the Lake Volta area.<sup>153</sup> According to the U.S. State Department, however, in 2012 the Ghanaian government convicted only three traffickers, all of whom had committed sex trafficking crimes.<sup>154</sup> Two of those three convicted traffickers received sentences of five years; the other convicted trafficker received a seven-year sentence.<sup>155</sup> Complicating efforts to prosecute and convict trafficking offenders is Ghana’s lack of an official prosecuting authority. The government instead relies on “police prosecutors who are police officers with some training in prosecution, but no formal legal background.”<sup>156</sup> These police prosecutors are often reluctant “to bring dockets for review by the Attorney-General’s Department after arrest,” something they are required to do in order to proceed with prosecution.<sup>157</sup> The absence of a state attorney with legal training could lead to “improperly charged crimes” and then lower sentences for what would otherwise be serious trafficking offenses.<sup>158</sup> Often, in cases involving child victims, “the Children’s Act is used more than the Human Trafficking Act because it [allows for] faster and easier trials.”<sup>159</sup> In May 2011, when the Anti-human Trafficking Unit and INTERPOL rescued 116 children and arrested 28 traffickers at Lake Volta, “the perpetrators were charged under the

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<sup>151</sup> UNODC, *supra* note 113, 76

<sup>152</sup> *Id.*

<sup>153</sup> Pontalti, *supra* note 150.

<sup>154</sup> *Id.*

<sup>155</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

<sup>156</sup> Sertich & Heemskerke, *supra* note 51, at 6

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Pontalti, *supra* note 150.

Children’s Act, causing them to be sentenced to only 16 months in prison.” If the traffickers had instead been charged under the Human Trafficking Act, they would have received a minimum term of five years.<sup>160</sup> Another problem is that under Ghana’s HTA, parents are not held accountable for sending their children away in exchange for money from traffickers.<sup>161</sup>

Although the Act specifically states that “the consent of . . . parents . . . cannot be used as a defense” by a trafficker,<sup>162</sup> the parents themselves may be excused entirely for facilitating or engaging in trafficking. Because police have not been adequately trained under the HTA, there have been instances “where law enforcement officials have not prosecuted because they [mistakenly] believe[d] parental consent invalidates the trafficking charge.”<sup>163</sup> A 2011 study by researchers at American University (AU) could only “uncover[] one case where parents were charged for trafficking their own child, and two cases where charges were dropped against parents who trafficked their children because the parents were unable to pay the high fine mandated by the Act.”<sup>164</sup> Without an adequate deterrent effect against parental trafficking, children are exposed to further harm. The 2011 AU study found that parents sometimes “re-traffic their children after rescue and rehabilitation due to continued poverty.”<sup>165</sup> Furthermore, even when parents are charged and convicted of a crime of or related to trafficking, their sentences are often reduced.<sup>166</sup> The “Special Mitigating Factors” section of the HTA<sup>167</sup> works

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<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Human Trafficking Act, 2005 Section 1(4) (Ghana), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Ghana\\_Human-Trafficking-Act\\_2005.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Ghana_Human-Trafficking-Act_2005.pdf).

<sup>163</sup> Sertich & Heemskerke, *supra* note 51, at 6.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Sertich & Heemskerke, *supra* note 51, at 6.

<sup>167</sup> “Where a court in sentencing a person convicted under section 3 or 4 finds that there are special circumstances related to the offence or the offence or the offender, and that the imposition of the minimum sentence in respect of the offence is harsh, it may sentence the accused to a lesser term of imprisonment in addition to a fine of not less than five hundred penalty units.” Human Trafficking Act, 2005, Section 7 (Ghana)

in conjunction with Section 2 of Ghana’s Children’s Act<sup>168</sup> to mitigate sentences for parents and protect children from being deprived of a primary caregiver.<sup>169</sup> As an alternative, the American University study recommends a “two-step prosecution process of parent traffickers.”<sup>170</sup> First, parent traffickers should be “arrested in every instance” but not imprisoned.<sup>171</sup> Instead, upon a first arrest and subsequent conviction, parents “should be required to enroll in an educational program on trafficking.”<sup>172</sup> If they “subsequently reoffend,” parental custody should not be considered a defense, and the minimum five-year prison sentence mandated in the Act for trafficking offenses “should be enforced without exception.” If the child is left without a “parent guardian,” “the provisions of the Children’s Act relating to the care of children without parents should control.”<sup>173</sup>

The U.S. State Department notes that Ghana decreased its efforts to protect victims of trafficking in 2012.<sup>174</sup> Although 262 victims were identified, only 33 were referred to “government and NGO-run facilities offering protective care.”<sup>175</sup> In 2011, there were only three government-operated shelters for victims of trafficking, and NGOs carried the burden of providing “food, clothing, and other material support.”<sup>176</sup> Furthermore, these shelters “operated in sub-par conditions without the resources to make basic repairs and government officials had to use their own personal funds to assist victims.”<sup>177</sup> The Ghanaian Police Service (GPS) did, however, “maintain a 24-hour hotline for reporting crime, including trafficking,” and the

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<sup>168</sup> This section requires the “best interests of the child” to be given “primary consideration by any court, person, institution, or other body in any matter concerned with a child.” Children’s Act, 1998 Section 2 (Ghana), *available at* [http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/ghana/ghana\\_childrens\\_act.pdf](http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/ghana/ghana_childrens_act.pdf).

<sup>169</sup> Sertich & Heemskerke, *supra* note 51, at 6

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

<sup>175</sup> *Id.*

<sup>176</sup> Sertich & Heemskerke, *supra* note 51, at 5.

<sup>177</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

Department of Social Welfare (DSW) “paid for medical costs associated with caring for identified victims” of trafficking.<sup>178</sup> The AU report notes that although MOWAC is charged under the Act with managing the Human Trafficking Fund and supporting the protective measures mandated by the Act, “the vast majority of victim rescues are performed by NGOs, sometimes with police and DSW involvement.”<sup>179</sup> The same report revealed that in 2011 government victim protection funds were grossly “misallocated” by MOWAC and that the Human Trafficking Fund was rendered “effectively nonoperational.”<sup>180</sup> According to the 2013 U.S. State Department report, government officials admitted that the Fund was still empty in 2012, and it is “unknown how much funding the government dedicated to victim protection and assistance” that year.<sup>181</sup> To remedy this problem, the AU report recommended that the Board “adopt disbursement guidelines” and “make public the Fund accounts and expenditures.” Furthermore, the government “should endeavor to actively acquire Fund moneys by seeking [foreign] government allocations or private donations, as suggested by the Act.”<sup>182</sup> These measures will ensure that trafficking victims “receive the benefits of the Fund to which they are entitled.”<sup>183</sup>

## 2. Uganda

### *Human Trafficking in Uganda and the Prevention of Trafficking in Persons Act*

In June 2013, Ugandan police reported that the frequency of human trafficking was on the rise.<sup>184</sup> Many trafficking offenses involve young Ugandan girls and women being trafficked abroad. In February 2012, the Daily Monitor reported that, according to the honorary consul of

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<sup>178</sup> Sertich & Heemskerke, *supra* note 51, at 5.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 179.

<sup>182</sup> Sertich & Heemskerke, *supra* note 51, at 5.

<sup>183</sup> *Id.*

<sup>184</sup> *Uganda a Major Conduit for Drug & Human Trafficking*, NTV UGANDA (June, 2013) [hereinafter NTV UGANDA], available at <http://ntvuganda.co.ug/top-stories/uganda-a-major-conduit-for-drag-human-trafficking/>.

Uganda in Malaysia, [a]t least 600 Ugandan girls have been forced into Malaysia's sex trade in what has become a human trafficking epidemic."<sup>185</sup> The consul further "indicate[d] [that] 10 girls continue to fall through the cracks of Uganda's immigration and labour systems daily."<sup>186</sup> UNODC notes that almost all of the victims of trafficking in Uganda prior to the enactment of its anti-trafficking legislation were children.<sup>187</sup> In October 2009, Uganda enacted the Prevention of Trafficking in Persons (PTIP) Act, prohibiting any form of human trafficking.<sup>188</sup> It became effective on October 23, 2009.<sup>189</sup>

Punishment under the PTIP is strict, ranging from 15 years to life imprisonment.<sup>190</sup> Under the Act, a person is guilty of trafficking if he or she "recruits, transports, transfers, harbours or receives a person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the person of exploitation."<sup>191</sup> The forms of exploitation include "engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage."<sup>192</sup> If the victim is a child, any act of "recruitment, transportation, transfer, harbouring of [that] child for the purpose of exploitation shall constitute 'trafficking in persons' even if this does not involve any of the

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<sup>185</sup> Philippa Croome, *600 Ugandan Girls Victims of Human Trafficking in Malaysia*, DAILY MONITOR, (Feb. 15, 2012), available at <http://www.monitor.co.ug/News/National/-/688334/1327856/-/b0qlfrz/-/index.html>.

<sup>186</sup> *Id.*

<sup>187</sup> UNODC, *supra* note 113, at 74

<sup>188</sup> U.S. DEP'T OF STATE TIPS REPORT, *supra* note 86, at 372

<sup>189</sup> Prevention of Trafficking in Persons Act, 2009, Section 1 (Uganda), available at <http://ebookbrowse.com/u03-uganda-prevention-of-trafficking-in-persons-act-pdf-d260983685>.

<sup>190</sup> U.S. DEP'T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>191</sup> Prevention of Trafficking in Persons Act, Part II (section) 3(1)(a), (Uganda), available at [http://www.thewayforwardproject.org/file\\_uploads/U03%20Uganda%20Prevention%20of%20Trafficking%20in%20Persons%20Act.pdf](http://www.thewayforwardproject.org/file_uploads/U03%20Uganda%20Prevention%20of%20Trafficking%20in%20Persons%20Act.pdf).

<sup>192</sup> *Id.* at (b)

[aforementioned] means.”<sup>193</sup> Furthermore, the punishment for trafficking a child, an “aggravated” offense, is life imprisonment.<sup>194</sup> In spite of Uganda’s strict anti-trafficking law, the U.S. State Department continues to rate Uganda a “Tier 2” country, partly for failing to implement the Act by prosecuting offenders.<sup>195</sup>

*Implementation of the Prevention of Trafficking in Persons Act*

In early 2009, before the PTIP was enacted, 2,010 “anti-trafficking officers” were trained to “check vehicles and motorcycles,” as well as to “ask children in vehicles [at random] to identify the people they are with . . . .”<sup>196</sup> In 2013, according to Moses Irungu, an Interpol Commissioner, “most of the [Ugandan] law enforcement officials . . . are not aware of [the anti-trafficking law].”<sup>197</sup> Consequently, by mid-2012 there had been only 29 investigations under the PTIP Act.<sup>198</sup> The U.S. State Department reported in 2013 that Uganda has decreased its efforts to train law enforcement officials. In 2011, “[t]he government trained 655 police and immigration officials . . . , but only trained 64 immigration and law enforcement officials in 2012.”<sup>199</sup> Furthermore, “it did not develop or institutionalize trainings for its law enforcement officials on the 2009 PTIP Act,” and the “Ministry of Foreign Affairs (MFA) did not provide training on victim identification to its consular staff.”<sup>200</sup> On a positive note, in May and August 2012, the government coordinated with NGOs to “organize trainings for 40 magistrates and 22

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<sup>193</sup> *Id.* at (3)

<sup>194</sup> *Id.* at 4(a).

<sup>195</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>196</sup> Josephine Maseruka, *Police Issues Measures to Fight Child Sacrifice*, NEWVISION (Jan. 6, 2009), available at <http://www.newvision.co.ug/D/8/12/667107>.

<sup>197</sup> NTV UGANDA, *supra* note 184.

<sup>198</sup> *Stakeholder Meeting Unifies Anti-Human Trafficking Civil Society in Uganda*, AMERICAN BAR ASSOCIATION, (Apr. 2012), available at [http://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/africa/uganda/news/news\\_uganda\\_stakeholder\\_anti\\_human\\_trafficking\\_meeting\\_0412.html](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/uganda/news/news_uganda_stakeholder_anti_human_trafficking_meeting_0412.html).

<sup>199</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>200</sup> *Id.*

law enforcement officials . . . to familiarize them with their roles and responsibilities under the 2009 PTIP Act.”<sup>201</sup>

On March 1, 2011, the first conviction under Uganda’s PTIP Act came after traffickers were found guilty of kidnapping a young boy and harvesting his private organs for “ritual witchcraft practices.”<sup>202</sup> The U.S. State Department continued to rate Uganda a Tier 2 country in 2012.<sup>203</sup> The 2012 report notes that although “[t]he Ugandan government made increased efforts to prevent human trafficking during the year” and “identified five trafficking cases during the year and prosecuted three of those cases,” there were no convictions for either forced labor or sex trafficking.<sup>204</sup>

In 2013, the U.S. State Department continued to classify Uganda as a Tier 2 country, noting that although the government prosecuted more trafficking offenders in 2012,<sup>205</sup> there was still not a single conviction of a “forced labor or sex trafficking offender.”<sup>206</sup> Many pending cases were simply note “move[d] . . . through the judicial process,” and “[a]n additional 58 offenders remained under investigation.”<sup>207</sup> Although the government was able to identify many more victims of trafficking than before and increase its overall targeting of traffickers through “screening of Ugandans traveling abroad,” “quarterly review[ing] of all licensed labor recruitment agencies,” closing unlicensed agencies, launching a “nationwide awareness campaign,” and “drafting a national action plan,” these policies and efforts were “hampered by a

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<sup>201</sup> *Id.*

<sup>202</sup> Press Release, Uganda Trafficking in Persons Act Conviction, REUTERS (Mar. 1, 2011), *available at* <http://www.reuters.com/article/2011/03/01/idUS261039+01-Mar-2011+PRN20110301>.

<sup>203</sup> U.S. DEP’T OF STATE, 2012 TRAFFICKING IN PERSONS REPORT- UGANDA, (June 19, 2012) *available at* <http://www.refworld.org/docid/4fe30c88a.html>.

<sup>204</sup> *Id.* at 371

<sup>205</sup> “The Government of Uganda increased its overall anti-trafficking law enforcement efforts from four prosecutions in 2011 to 28 prosecutions in 2012. U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

lack of financial and human resources.”<sup>208</sup> In June 2012, the Trafficking in Persons office was “operating out of an existing immigration office, with only four permanent staff” and with an indeterminate budget.<sup>209</sup> So, although the PTIP is a substantial step in the right direction, its implementation has been rocky at best.

Protective measures for Ugandan victims of trafficking are in need of improvement, although the 2013 U.S. State Department notes that Uganda made “increased efforts to protect trafficking victims in 2012.”<sup>210</sup> That year, the government identified 417 victims of trafficking, provided “modest assistance to 57 internal [victims],” and coordinated with other organizations that provided further aid to victims.<sup>211</sup> The Ugandan military “assisted in the rescue of at least 42 individuals, including 10 children associated with the [Lord’s Resistance Army],” who had been kidnapped and forced to work as “porters or sex slaves.”<sup>212</sup> In 2013, Uganda reinstated its lapsed policy of providing amnesty to some LRA defectors<sup>213</sup> in an effort to rescue even more victims who were “abducted at a young age and forced to commit atrocities against their own will.”<sup>214</sup> The government failed, however, to “provide protection services or support to victims repatriated following their trafficking abroad.”<sup>215</sup> In spite of the fact that Ugandans are being trafficked to other countries at an increasing rate, government aid for victims trafficked abroad has often been weaker than that for internally trafficked victims. In October of 2011, after police freed 21 Ugandan girls from forced prostitution in Malaysia, “only five of [those girls] . . .

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<sup>208</sup> *Id.* at 371

<sup>209</sup> Uganda: Human Trafficking Drive Needs Rescuing, INTEGRATED REGIONAL INFORMATION NETWORKS, (June 28, 2012), available at <http://www.irinnews.org/report/95759/uganda-human-trafficking-drive-needs-rescuing>.

<sup>210</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> The policy grants amnesty to LRA members “not indicted by the International Criminal Court.” Kasper Agger & Sasha Lezhnev, *Policy Alert: Uganda Reinstates Key Tool to Boost Defections from the Lord’s Resistance Army*, ENOUGH, (June 5, 2013), available at <http://www.enoughproject.org/blogs/policy-alert-uganda-reinstates-key-tool-boost-defections-lords-resistance-army>.

<sup>214</sup> *Id.*

<sup>215</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

returned to Uganda, while the rest [were] held in a Malaysian detention centre.”<sup>216</sup> The government admits that it lacks funding to return all trafficking victims to Uganda, and according to the secretary of the Ministry of Foreign Affairs, “return trips [for many victims] . . . will have to be funded by their families or by the IOM.”<sup>217</sup> In 2012 the IOM “coordinated the return of nine Ugandans from Malaysia, six from China, three from Iraq, and two from Thailand.”<sup>218</sup> The 2013 U.S. State Department report revealed that Uganda has not yet “allocate[d] funding for the implementation of its [the PTIP Act’s] victim protection provisions, or develop[ed] procedures for the systematic identification of victims among high-risk groups.”<sup>219</sup> To remedy these deficiencies, as well as the shortcomings in the area of trafficker identification, prosecution, and conviction, the U.S. State Department made several recommendations for the Ugandan government, including:

. . . increase efforts to prosecute, convict and punish trafficking offenders; institute a unified system of documenting and collecting data on human trafficking cases for use by law enforcement, labor, and social welfare officials; investigate and punish labor recruiters and criminal entities responsible for knowingly sending Ugandans into forced labor or prostitution abroad; ensure use of a definition of trafficking in persons consistent with the 2009 PTIP Act and 2000 UN TIP Protocol . . .<sup>220</sup>

## **B. The Americas**

In North and South America, the vast majority of trafficking victims are adults, although the “northern part of South America as well as Central America [have] detected more children among the victims than adults.”<sup>221</sup> According to UNODC, in the nine countries in the Americas that reported data on the gender of prosecuted traffickers and the thirteen countries that provided

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<sup>216</sup> Philippa Croome, *600 Ugandan Girls Victims of Human Trafficking in Malaysia*, DAILY MONITOR, (Feb. 15, 2012), available at <http://www.monitor.co.ug/News/National/-/6888334/1327856/-/b0qlfrz/-/index.html>.

<sup>217</sup> *Id.*

<sup>218</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>219</sup> Croome, *supra* note 216.

<sup>220</sup> *Id.*

<sup>221</sup> UNODC, *supra* note 1, at 62.

data on the gender of convicted traffickers, “the level of participation of women in human trafficking in the region is higher than the world average: about 50 per cent of persons prosecuted for human trafficking are females.”<sup>222</sup> Women traffickers in the Americas, however, are “less likely than men to be convicted.”<sup>223</sup> While 50 per cent of traffickers prosecuted are women, they represent only 35 per cent of traffickers convicted.<sup>224</sup> UNODC notes that Canada was an exception to this trend, with a very low proportion of women prosecuted for trafficking as compared to the world average.<sup>225</sup> The majority of trafficking in the Americas is for sexual exploitation, and 51 per cent of trafficking victims between 2007 and 2010 reported having been forced to perform sexual acts.<sup>226</sup> UNODC reports, however, that the “share of victims trafficked for forced labor is [still] significant [at 44 percent], indicating that this form of trafficking . . . is proportionately higher in the Americas than in Europe and Central Asia.”<sup>227</sup> Forced labor trafficking accounted for the majority of trafficking in some countries in North America,<sup>228</sup> although in the United States sex trafficking is significantly more common than forced labor.<sup>229</sup> This subsection of the report will cover two countries in the Americas: Argentina and the United States. Both countries have had anti-trafficking legislation in effect for at least six years.

## 1. Argentina

### *Human Trafficking and Anti-Human Trafficking Laws in Argentina*

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<sup>222</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 372.

<sup>223</sup> UNODC, *supra* note 1, at 62

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 63

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Duren Banks & Tracey Kyckelhahn, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010, BUREAU OF JUSTICE STATISTICS 1, (Apr. 2011) [hereinafter BUREAU OF JUSTICE STATISTICS], *available at* <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

In recent years, Argentina has become a “regional trafficking hub” in South America,<sup>230</sup> with human trafficking “growing in scale and repercussions.”<sup>231</sup> The prosecutor in charge of the Argentine Public Ministry’s Anti-Kidnapping, Extortion and Trafficking in Persons Unit (UFASE) has said that “Argentina is a place of frequent capture and transport, as well as a destination for sexually exploited women.”<sup>232</sup> The U.N. Office on Drugs and Crime estimates that around half a million women are caught up in its human trafficking networks.<sup>233</sup> Between April 2008, when the anti-trafficking law was passed, and April 2013, 4,602 trafficking victims were rescued by Argentine officials.<sup>234</sup> Victims and perpetrators include both Argentinians and citizens of its poorer neighboring countries, such as Bolivia and Paraguay.<sup>235</sup> Traffickers are hidden throughout Argentine society; “taxi drivers, street vendors, and even neighbors may target victims for either recruitment or kidnapping.”<sup>236</sup> Often, the traffickers lure their victims by making false promises of employment.<sup>237</sup> Although brothels are prohibited by Argentine law, many traffickers continue to operate under other names, such as “coffee house, night club, cabaret, [or] whiskey bar.”<sup>238</sup> In 2011, Argentine law enforcement officials estimated that “labor trafficking victims outnumbered sex trafficking by three to one . . .”<sup>239</sup> Labor trafficking victims are identified and rescued, however, at a relatively low rate. In 2012, approximately 52.5 percent

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<sup>230</sup> Miriam Wells, *Report Shows Dynamics of Human Trafficking in Argentina*, INSIGHTCRIME, (June 24, 2013), available at <http://www.insightcrime.org/news-briefs/report-breaks-down-dynamics-of-human-trafficking-in-argentina>.

<sup>231</sup> U.N. Expert on Trafficking in Persons Concludes Fact-Finding Mission to Argentina, (accessed July 20, 2013), available at <http://www2.ohchr.org/english/issues/trafficking/docs/PressStatementSRTIPArgentina.doc>.

<sup>232</sup> Eduardo Szklarz, *Sex Trafficking Making Younger Victims in Argentina*, INFOSURHOY, (Dec. 12, 2010), available at [http://infosurhoy.com/cocoon/saii/xhtml/en\\_GB/features/saii/features/main/2010/12/17/feature-01](http://infosurhoy.com/cocoon/saii/xhtml/en_GB/features/saii/features/main/2010/12/17/feature-01).

<sup>233</sup> Victoria Rossi, *Argentina Rescues 700 from Human Traffickers in 7 Months*, INSIGHTCRIME, (Aug. 21, 2012), available at <http://www.insightcrime.org/news-briefs/argentina-rescues-human-traffickers>.

<sup>234</sup> *Argentina: 4,602 Human-Trafficking Victims Rescued Since 2008*, INFOSURHOY, (Apr. 26, 2013), available at [http://infosurhoy.com/cocoon/saii/xhtml/en\\_GB/newsbriefs/saii/newsbriefs/2013/04/26/newsbrief-04](http://infosurhoy.com/cocoon/saii/xhtml/en_GB/newsbriefs/saii/newsbriefs/2013/04/26/newsbrief-04).

<sup>235</sup> Wells, *supra* note 230.

<sup>236</sup> Rossi, *supra* note 233.

<sup>237</sup> Szklarz, *supra* note 232.

<sup>238</sup> *Id.*

<sup>239</sup> Wells, *supra* note 230.

of identified trafficking victims in Argentina were victims of labor trafficking.<sup>240</sup> 43 percent were victims of sex trafficking.<sup>241</sup> The majority of victims (around 80 percent) are adults.<sup>242</sup> Most sex trafficking victims are Argentine citizens, while “the majority of labor trafficking victims [are] Bolivians.”<sup>243</sup> Among female victims, “just over half [are] Argentine,” with one-third being Paraguayan and the rest coming “from the Dominican Republic, Brazil, Chile, Colombia, and Bolivia.”<sup>244</sup> Most foreign victims “enter[] [Argentina] with valid passports and tourist visas,” and cases involving false documentation are rare.<sup>245</sup> Approximately 25 percent of victims are underage, with the majority of child victims being 15 to 17 years old.<sup>246</sup> According to the general coordinator of the Asociación Civil La Casa del Encuentro, “[b]rothel customers are requesting younger and younger girls.”<sup>247</sup> Most of the human trafficking cases in Argentina (around 70 percent) are in some way tied to drug trafficking.<sup>248</sup>

In 2008, Argentina enacted Law No. 23.364 to prohibit trafficking in persons and protect victims.<sup>249</sup> The law criminalizes all forms of trafficking and mandates for punishments of three to 10 years in prison.<sup>250</sup> However, under this law, if any victim over 18 consented to the activities that constituted trafficking, or actions performed while being trafficked, the accused trafficker could use that consent as a complete defense.<sup>251</sup> In December 2012, Argentina enacted a new

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<sup>240</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> Wells, *supra* note 230.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> Szklarz, *supra* note 232.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> U.N. Expert on Trafficking in Persons Concludes Fact-Finding Mission to Argentina, (accessed July 20, 2013), available at <http://www2.ohchr.org/english/issues/trafficking/docs/PressStatementSRTIPArgentina.doc>.

anti-trafficking law that proscribes harsher punishments of four to 15 years in prison and does not include the victim consent “loophole.”<sup>252</sup>

### *Implementation of Anti-Human Trafficking Legislation*

The number of human trafficking investigations increased dramatically after Argentina’s dedicated trafficking unit was created along with the passage of the new anti-trafficking laws.<sup>253</sup> According to the 2013 U.S. State Department report, Argentine authorities investigated 368 human trafficking cases in 2012.<sup>254</sup> It is unclear, however, whether this number reflects the entire number of trafficking-related investigations, as sometimes “trafficking cases were investigated or prosecuted at the local level under other statutes,” rather than at the national level under the anti-trafficking law.<sup>255</sup> According to the U.N. Special Rapporteur on Human Trafficking, labor trafficking in Argentina has proven difficult to investigate because it remains “very hidden,” and “Labour Inspectors appear not to have the necessary capacity for an effective oversight.”<sup>256</sup> In 2013, Argentine police dismantled a labor trafficking ring “estimated to have exploited thousands of Colombians since 2009.”<sup>257</sup> The Argentine operation, conducted through “72 raids in several provinces and involving more than 500 police officers and members of security forces,” resulted in the arrest of 23 Colombians and the rescue of more than 200 Colombian trafficking victims.<sup>258</sup> Once victims have been rescued, the Office for Rescue aids law enforcement by taking “initial victim statements, generally within a week of identification . .

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<sup>252</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>253</sup> Wells, *supra* note 230.

<sup>254</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>255</sup> *Id.*

<sup>256</sup> U.N. Expert on Trafficking in Persons Concludes Fact-Finding Mission to Argentina, (accessed July 20, 2013), available at <http://www2.ohchr.org/english/issues/trafficking/docs/PressStatementSRTIPArgentina.doc>.

<sup>257</sup> U.S. STATE DEP’T, 2013 TRAFFICKING IN PERSONS REPORT 74

<sup>258</sup> Julia Myska, *Argentina Frees More than 200 Colombian Human Trafficking Victims*, COLOMBIA REPORTS, (June 13, 2013), available at <http://colombiareports.com/argentina-frees-over-200-colombian-trafficking-victims/>.

..”<sup>259</sup> In 2012, there were “no specific reports of identified victims being jailed or penalized for unlawful acts committed as a direct result of their being subjected to human trafficking.”<sup>260</sup>

The number of prosecutions for human trafficking decreased between 2011 and 2012.<sup>261</sup> Some prosecuting authorities reportedly used prostitution-related statutes instead of the anti-trafficking law to prosecute sex trafficking crimes, resulting in reduced and “inadequate” penalties.<sup>262</sup> Furthermore, NGOs reported “significant delays caused by confusion over which authorities had jurisdiction, and in some cases testimonies were discarded during this process.”<sup>263</sup> Although the number of investigations for trafficking is relatively high, the number of convictions remains low.<sup>264</sup> In 2012, there were “few convictions for forced labor and *no* reported convictions of public officials complicit in trafficking” [italics added].<sup>265</sup> Only two labor traffickers and 15 sex traffickers were convicted in 2012, a large decrease from the three labor traffickers and 28 sex traffickers convicted in 2011.<sup>266</sup> Their punishments ranged from two to 15 years in prison.<sup>267</sup> Two additional sex traffickers were convicted under non-trafficking-related statutes and were sentenced to 21 and 23 years in prison.<sup>268</sup> Corruption among government officials is a “serious concern” in Argentina,<sup>269</sup> and Transparency International cites Argentina as the most corrupt country in South America in terms of public perception.<sup>270</sup>

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<sup>259</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>260</sup> *Id.* at 75

<sup>261</sup> *Id.* at 74

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Wells, *supra* note 230.

<sup>265</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> Patricia Rey Mallen, *Mexico and Argentina are the Most Corrupt Countries in Latin America, Survey Reveals*, INTERNATIONAL BUSINESS TIMES, (July 10, 2013), available at <http://www.ibtimes.com/mexico-argentina-are-most-corrupt-countries-latin-america-survey-reveals-1340779>.

In 2010, 75 Buenos Aires police officers were accused of complicity in human trafficking, while the “former head of the anti-trafficking police unit [was] accused of running brothels.”<sup>271</sup> In 2012, there were 71 reported cases of “trafficking-related complicity,” including one of a “deputy police commissioner accused of holding four trafficking victims captive.”<sup>272</sup> In December 2012, many Argentinians were shocked after judges acquitted all 13 defendants in a highly publicized sex trafficking case.<sup>273</sup> The decision has been widely cited as evidence of corruption and “alleged complicity between judicial officials and trafficking offenders . . . .”<sup>274</sup>

The Argentine government funds several shelters for trafficking victims and provides gender-specific services for female sex trafficking victims.<sup>275</sup> According to the U.S. State Department, however, government funds have been insufficient to meet the needs of the approximately 1,000 identified trafficking victims in Argentina in 2012, particularly the needs of forced labor victims.<sup>276</sup> This is especially troubling considering the number of rescued victims is relatively low compared to the total number of victims. The general coordinator of the Asociación Civil La Casa del Encuentro reports that many brothel raids occur “at the least busy hours for business,” leading to fewer rescues of victims and fewer arrests of “Johns” and

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<sup>271</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>272</sup> *Id.*

<sup>273</sup> The defendants were accused of kidnapping 23-year-old “Marita” Veron in 2002. After Veron’s disappearance, her mother, Susana Trimarco, began a 10-year-long search for her daughter, posing as a former prostitute to gain access to brothels around the country. Trimarco’s efforts resulted in the rescue of 12 victims of sex trafficking, as well as her nomination for a Nobel Peace Prize. The defendants, who “claimed they ran whiskey bars, not brothels,” faced 25 years in prison if convicted. In spite of testimony from 130 witnesses, however, judges acquitted all 13 defendants, citing a lack of physical evidence to link the defendants to Veron. Because a victim “is typically bought and sold several times before ending up in forced prostitution,” it is often nearly impossible to obtain such evidence. After the unwelcome and surprising verdict, Trimarco’s lawyer told reporters, “it is absolutely clear that this is an act of corruption.” Miriam Wells, *Human Trafficking Verdict Shocks Argentina*, INSIGHTCRIME, (Dec. 12, 2012), available at <http://www.insightcrime.org/news-briefs/human-trafficking-verdict-shocks-argentina>.

<sup>274</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

traffickers.<sup>277</sup> Furthermore, the ability to “identify victims among vulnerable populations,” as well as the quality of victim services provided to them, “varie[s] widely by province.”<sup>278</sup>

The Office for Rescue did provide some services to rescued victims, including “emergency post-rescue care,” but several NGOs gave “mixed assessment of the [O]ffice’s effectiveness.”<sup>279</sup> An unknown number of victims were allowed to stay at an Office for Rescue-operated shelter in Buenos Aires immediately following their identification.<sup>280</sup> The Secretariat for Childhood Adolescence and Family (SENAF) provided additional follow-up assistance for victims, although the U.S. State Department reports that “specialized services and reintegration efforts were limited.”<sup>281</sup> An unknown number of victims were allowed to stay at federally-, provincially-, and municipally-funded shelters for “women and child victims of sex trafficking and abuse.”<sup>282</sup> There are no trafficking-specific shelters for forced labor victims, and it is unknown how many labor trafficking victims were assisted or provided with shelter in 2012.<sup>283</sup> There were “no known cases of victims receiving restitution” in 2012, even though there are specific statutory provisions calling for financial restitution to be paid to trafficking victims.<sup>284</sup> Furthermore, although Argentine immigration policy allows for long-term residency, the U.S. State Department notes that it is unknown whether any foreign victims were actually informed of this option before their prompt repatriation.<sup>285</sup> The Argentine government allegedly has a “*de*

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<sup>277</sup> Szklarz, *supra* note 232.

<sup>278</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 74.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.* at 75.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

*facto* protocol of quickly returning foreign victims to their country or province of origin[, even if not] in the victims’ best interest . . . .”<sup>286</sup>

## 2. The United States

### *Human Trafficking in the United States and the Trafficking Victims Protection Act of 2000*

According to the Bureau of Justice Statistics, approximately 80 percent of the human trafficking in the United States is sex trafficking.<sup>287</sup> In 2011, it was estimated that around 1.6 million children have been “caught up in the [United States’] sex trade.”<sup>288</sup> That year, there were between 100,000 and 300,000 children “sexually exploited in the U.S. or at risk of being exploited . . . .”<sup>289</sup> According to the anti-trafficking organization ECPAT USA,<sup>290</sup> “the average age of entry into street prostitution is between 12 and 14 years old, although there have been cases [involving] girls as young as 9 years old.”<sup>291</sup> In 2011, 94 percent of the sex trafficking victims were females<sup>292</sup> and all victims who were subjected to both sex and labor trafficking were female.<sup>293</sup> The Bureau of Justice Statistics (BJS) notes that only 13 percent of sex trafficking victims are over the age of 25.<sup>294</sup> By contrast, 62 percent of labor trafficking victims between 2008 and 2010 were over the age of 25.<sup>295</sup> During those same years, 84 percent of sex trafficking victims were U.S. citizens, while nearly all labor trafficking victims (96 percent) were

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<sup>286</sup> *Id.*

<sup>287</sup> BUREAU OF JUSTICE STATISTICS *supra* note 229, at 1.

<sup>288</sup> Neubauer, *supra* note 2.

<sup>289</sup> *Id.*

<sup>290</sup> END CHILD PROSTITUTION AND TRAFFICKING – U.S.A.

<sup>291</sup> Tina Frundt, Enslaved in America: Sex Trafficking in the United States, WOMEN’S FUNDING NETWORK, (accessed July 16, 2013), *available at* <http://www.womensfundingnetwork.org/resource/past-articles/enslaved-in-america-sex-trafficking-in-the-united-states>.

<sup>292</sup> BUREAU OF JUSTICE STATISTICS *supra* note 229, at 6

<sup>293</sup> ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS – FISCAL YEAR 2011, DEP’T OF JUSTICE 34 (Jan. 2011) [hereinafter ATTORNEY GENERAL’S ANNUAL REPORT], *available at* <http://www.justice.gov/ag/annualreports/agreporthumantrafficking2011.pdf>.

<sup>294</sup> *Id.* at 1

<sup>295</sup> *Id.*

undocumented aliens (68 percent) or “qualified aliens” (28 percent).<sup>296</sup> According to UNODC, a “large proportion” of trafficking victims in the United States are “Mexicans, Central Americans and people from Caribbean countries.”<sup>297</sup> One widespread type of sex trafficking involves “fake massage businesses” in which women, typically Asian immigrants, are coerced or forced to provide commercial sex to “6 to 10 men a day, 7 days a week.”<sup>298</sup> These women, living and working in a brothel disguised as a massage parlor, often work 16 hours a day; their only source of income is the “unpredictable” tips that so-called “Johns” occasionally pay.<sup>299</sup> There are more than 5,000 brothels masquerading as massage parlors around the nation.<sup>300</sup> Between 2008 and 2010, around 81 percent of reported human trafficking suspects were men.<sup>301</sup> 86 percent were U.S. citizens and 77 percent were “between the ages of 18 and 34.”<sup>302</sup>

Before the enactment of the Trafficking Victims Protection Act (TVPA) of 2000, prosecutors looked to several different federal laws, including “the Mann Act and various involuntary servitude and labor statutes,” to prosecute human trafficking cases.<sup>303</sup> These laws, however, were insufficient to deal with the problem of human trafficking. Although all 50 states “prohibit the prostitution of children under state and local laws,” the “application of these laws continues to result in some trafficked children being treated as criminal offenders.”<sup>304</sup> Only 14 states have enacted “safe harbor” laws to ensure that children are treated as victims and provided

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<sup>296</sup> *Id.* “Nearly 90 victims identified in confirmed human trafficking incidents open for at least a year were described as undocumented or qualified aliens. Of these 87 foreign victims, 21 received T visas, while 46 visa applications were still pending or had unknown status.” *Id.* at 9

<sup>297</sup> UNODC, *supra* note 1, at 64

<sup>298</sup> *Fake Massage Businesses*, POLARIS PROJECT, (accessed July 19, 2013), available at <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/massage-parlors>.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> BUREAU OF JUSTICE STATISTICS, *supra* note 229, at 9.

<sup>302</sup> *Id.* at 7

<sup>303</sup> ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 293, at 2.

<sup>304</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 383.

services rather than being prosecuted for prostitution.”<sup>305</sup> In 2000, the United States enacted the TVPA to combat the growing problem of human trafficking and provide protection to victims. Following suit, every state “and all but one territory have enacted [their own] modern anti-trafficking criminal statutes . . . .”<sup>306</sup>

The TVPA defines human trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person”<sup>307</sup> for either of the following purposes:

- (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<sup>308</sup>
- (B) . . . labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>309</sup>

U.S. law also prohibits the “confiscation or destruction of documents such as passports in connection with trafficking.”<sup>310</sup> The TVPA mandates that the President “establish an Interagency Task Force to Monitor and Combat Trafficking.”<sup>311</sup> The Task Force is chaired by the Secretary of State, includes key government leaders,<sup>312</sup> and carries out numerous duties to monitor and evaluate trafficking and anti-trafficking measures around the world.<sup>313</sup> In furtherance of this objective, the Act “provide[s] for assistance to foreign countries in drafting [anti-trafficking legislation] . . . .”<sup>314</sup> The U.S. government targets its foreign anti-trafficking assistance at Tier 3 countries and then, in decreasing order, Tier 2 Watch List and Tier 2

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<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> 22 U.S.C. section 7102(9)(B)

<sup>308</sup> *Id.* at section 7102(A)

<sup>309</sup> *Id.* at section 7102(9)(B)

<sup>310</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 382.

<sup>311</sup> 22 U.S.C. section 7103(a)

<sup>312</sup> The Task Force “shall include the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of National Intelligence, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Education, and such other officials as may be designated by the President.” *Id.* at section 7103(b)

<sup>313</sup> *Id.* at section 7103(d)

<sup>314</sup> ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 293, at 2.

countries.<sup>315</sup> The U.S. government may also terminate any “grant, contract, or cooperative agreement” if the grantee or any subgrantee engages in any form of trafficking enumerated in section 7102(9), or “has procured a commercial sex act during the period” of the grant, contract, or cooperative agreement.<sup>316</sup> Renewing and expanding the TVPA, the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA, 2005) requires biennial reporting from state and local agencies on the “scope and characteristics” of human trafficking in the U.S.<sup>317</sup> The Act also includes several protective measures for victims.

Under the TVPA, the United State Department of Health and Human Services (HHS) may approve adult and child victims of trafficking to receive “certain federally-funded benefits and services, such as cash assistance, medical care, Supplemental Nutrition Assistance, Program benefits, and housing.”<sup>318</sup> An Unaccompanied Alien Child (UAC)<sup>319</sup> *might* be eligible for assistance from the HHS if there is evidence that the child “may have been subjected to a severe form of TIP.”<sup>320</sup> This “interim assistance [for a UAC] could last up to 120 days,” but the child may also be eligible for long-term assistance.<sup>321</sup> HHS can refer UACs to its “Unaccompanied Refugee Minors (URM) program,” which is operated by ORR.<sup>322</sup> Under this program, “[a] legal

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<sup>315</sup> Holly Crow, Without Renewal Trafficking Victims Protection Act Expires, Services End Sept 30, EXAMINER, (Sep. 27, 2011), *available at* <http://www.examiner.com/article/without-renewal-trafficking-victims-protection-act-expires-services-end-sept-30>.

<sup>316</sup> 22 U.S.C. section 7104(g)

<sup>317</sup> BUREAU OF JUSTICE STATISTICS, *supra* note 229, at 1.

<sup>318</sup> Under Section 107(b)(1)(E) of the amended TVPA, “the Secretary of HHS . . . may certify an adult victim of a severe form of trafficking who: (1) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of TIP, or who is unable to cooperate due to physical or psychological trauma; and (2) has made a bona fide application for a visa under Section 101(a)(15)(T) of the Immigration and Nationality Act that has not been denied; or is a person whose continued presence in the U.S. the Attorney General and the Secretary of Homeland Security are ensuring in order to facilitate prosecutions.” ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 293, at 33 “Although not required to receive HHS certification, a child who is found to be a trafficking victim receives an ‘Eligibility Letter’ from HHS to obtain the same types of benefits and services.” *Id.*

<sup>319</sup> “An unaccompanied alien child is defined in Section 462 of the Homeland Security Act of 2002, Pub. L. 107-296 (6 U.S.C. section 279(g)(2)), as a child who is without lawful immigration status and does not have a parent or legal guardian in the U.S. who is available to provide him or her physical custody and care.” *Id.* at 36

<sup>320</sup> ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 293, at 36.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

authority is designated to act in place of the child’s unavailable parent(s)” and attempts are made to return the child to his or her parents.<sup>323</sup> The TVPA was renewed only three times before dying in committee in 2011,<sup>324</sup> but the expired bill was reauthorized in 2013, after many NGOs petitioned and urged action from Congress.<sup>325</sup>

### *Implementation of the TVPA*

Although anti-trafficking efforts in the United States appear sufficiently stringent compared to that in many other countries in the world, the United States devotes only 0.003 percent of its federal budget to anti-trafficking efforts.<sup>326</sup> Furthermore, as of the writing of this report, funding for the implementation of the Trafficking Victims Protection Reauthorization Act of 2013 has still not been finalized.<sup>327</sup> Nevertheless, since the TVPA’s inception in 2000, government agencies such as DHS and DOS have used their share of the federal budget to spread awareness of human trafficking and the TVPA among the public, law enforcement agencies, prosecutors, and numerous other officials and government bodies.<sup>328</sup> In 2011, the Human Smuggling and Trafficking Center (HSTC) provided training to U.S. law enforcement officials, consular officials, prosecutors, and social service providers.<sup>329</sup> In efforts to “raise law enforcement and public awareness of human trafficking,” DHS distributed materials across the U.S., while DOS distributed materials to foreign officials around the world.<sup>330</sup> DHS also offered a “computer-based training program on human trafficking for law enforcement officers,” and

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<sup>323</sup> *Id.* at 36-37

<sup>324</sup> *US Senate, US House of Representatives: Renew the Trafficking Victims Protection Act & Combat Slavery!*, CHANGE.ORG, (accessed July 19, 2013) [hereinafter CHANGE.ORG], available at <http://www.change.org/petitions/us-senate-us-house-of-representatives-renew-the-trafficking-victims-protection-act-combat-slavery>.

<sup>325</sup> *See, e.g.,* Mary Ellison, *Congress Passes Long-Awaited Anti-Human Trafficking Bill*, POLARIS PROJECT, (Feb. 28, 2013), available at <http://www.polarisproject.org/media-center/news-and-press/press-releases/743-congress-passes-long-awaited-anti-human-trafficking-bill>; *see also* CHANGE.ORG.

<sup>326</sup> *Speaking Out & Advocacy: Child Trafficking and Labor*, WORLDVISION (accessed July 24, 2013), available at <http://www.worldvision.org/content.nsf/learn/globalissues-child-trafficking>.

<sup>327</sup> *Id.*

<sup>328</sup> ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 293, at 7.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

HIS “providing human trafficking training and outreach to nearly 48,000 individuals, including representatives of NGOs, foreign and domestic law enforcement agencies, and the private sector.”<sup>331</sup> DOS and DOJ signed two “one-year Interagency Agreement[s]:” one to implement a human trafficking training course at the Federal Bureau of Investigation (FBI) Training Academy at Quantico, and another with INTERPOL to “enhance the capacity of customs officials, immigrations officials, border security officers, police officers, and prosecutors in countries with shared borders to provide a regional response to human trafficking.”<sup>332</sup> In spite of the fact that the TVPA expired at the end of 2011, government agencies have continued to implement extensive and widespread anti-human trafficking training programs to maintain and strengthen ant-trafficking efforts.

In 2012, DHS, DOJ, the FBI, and DOL coordinated to “create an advanced training program for its [Anti-Trafficking Coordination Teams].”<sup>333</sup> These “ACTeams” were designed to “implement a strategic action plan to combat identified human trafficking threats” and develop “federal criminal human trafficking investigations and prosecutions . . . .”<sup>334</sup> The DOJ Bureau of Justice Assistance (BJA) worked with “law enforcement, judicial, and legal educators” to train state judges and prosecutors.<sup>335</sup> The FBI trained 200 “agents, taskforce officers, and federal, state, and local prosecutors” on “child forensic interviewing and [anti-]child sex trafficking” strategies.<sup>336</sup> DOD “continued to mandate online training for its personnel,” and DHS “produced

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<sup>331</sup> *Id.*

<sup>332</sup> *Id.* at 8

<sup>333</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 383.

<sup>334</sup> *Department of Justice Announces Launch of Human Trafficking Enhanced Enforcement Initiative*, U.S. DEPARTMENT OF JUSTICE, (Feb. 1, 2011), available at <http://www.justice.gov/opa/pr/2011/February/11-ag-140.html>.

<sup>335</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 383.

<sup>336</sup> *Id.*

two ‘roll-call’ videos for state and local law enforcement” to promote immigration relief for victims as a means of benefitting investigations.<sup>337</sup>

According to Human Trafficking Reporting System (HTRS) records,<sup>338</sup> the federally funded human trafficking task forces investigated 2,515 suspected trafficking incidents between 2008 and 2010.<sup>339</sup> In June 2010, the HTRS included details of more than 3,100 suspected human trafficking cases around the country.<sup>340</sup> 82% of those cases were classified as sex trafficking-related, with “more than 1,200 . . . allegations of adult sex trafficking and more than 1,000 incidents with allegations of prostitution or sexual exploitation of a child.”<sup>341</sup> A 2009 National Criminal Justice Reference Service (NCJRS) report notes that some law enforcement agencies have used media coverage of sex trafficking incidents to encourage more victims of sex

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<sup>337</sup> *Id.*

<sup>338</sup> The Human Trafficking Reporting System (HTRS) was designed “to measure the performance of federally-funded task forces,” and is the sole agency in the United States that keeps track of human trafficking investigations performed by state and local law enforcement agencies. BUREAU OF JUSTICE STATISTICS *supra* note 229, at 9. Since 2004, the Bureau of Justice Assistance “has funded a total of 42 Anti-Human Trafficking Task Forces” to investigate human trafficking. ANTI-HUMAN TRAFFICKING TASK FORCE INITIATIVE, BUREAU OF JUSTICE ASSISTANCE, (accessed July 22, 2013) [hereinafter BUREAU OF JUSTICE ASSISTANCE], *available at* [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=51](https://www.bja.gov/ProgramDetails.aspx?Program_ID=51). Each task force designates a single reporter to enter investigation data into the HTRS. *Id.* The task force reporters are supposed to record data on “new human trafficking incidents on a monthly basis, update[e] information for existing records with new activity, and submit[] data automatically through an online portal.” *Id.* The reporters enter information pertaining to human trafficking investigations only if the task force has “spent at least one hour of investigation time” on the case. *Id.* The task-forces themselves are embedded in pre-existing “criminal intelligence, organized crime, [] human trafficking-dedicated,” or “vice units.” *Id.* at 10-11. Additionally, many law enforcement agencies have funded and coordinated their own anti-human trafficking task forces. Robert Moossy, *Sex Trafficking: Identifying Cases and Victims*, NIJ JOURNAL 5 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/nij/225759.pdf>. Unfortunately, BJS has classified only 18 federally-funded task forces as having “high data quality” in their reporting. BUREAU OF JUSTICE ASSISTANCE, *supra* at 10. Task forces with high data quality “regularly entered new cases into the [HTRS] system, provided individual-level information for at least one suspect or victim, and update case information on a regular basis. *Id.* Those task forces were more often “located in criminal intelligence, organized crime, or human trafficking-dedicated units. *Id.* at 10-11. The task forces with low data quality “were typically in vice units.” *Id.* at 11. BJS notes, however, that low data quality was not always the fault of the task force, as some did not have access to “case outcome measures collected through HTRS” or could not provide “individual-level” details from cases because of the “sensitivity of the information.” *Id.* Six of the 42 task forces allowed their federal funding to expire at the end of 2009 and have subsequently ceased to update case information in HTRS. *Id.*

<sup>339</sup> *Id.* at 9

<sup>340</sup> *Id.* at 11

<sup>341</sup> *Id.* at 1

trafficking to come forward and aid investigations.<sup>342</sup> In 2012, after the TVPA expired, U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) reported an increase from 722 to 894 investigations of human trafficking between 2011 and 2012.<sup>343</sup> The FBI, however, reported a decrease from 337 to 306 pending human trafficking investigations between 2011 and 2012.<sup>344</sup> Likewise, 26 the DOJ-funded taskforces reported a decrease in the number of investigations, from 900 investigations involving 1,350 suspects and led by 29 taskforces in 2011 to 753 investigations involving 736 victims and 26 taskforces in 2012.<sup>345</sup> The Diplomatic Security Service (DSS) “had 95 [human trafficking] cases open worldwide [in 2012],” and the Department of Defense (DOD) reported “five investigations that included human trafficking crimes involving military personnel.”<sup>346</sup> HST, aiding and cooperating with Ghanaian law enforcement, was involved in the 2011 INTERPOL-led operation targeting Ghana’s fishing industry that resulted in “the rescue of 116 child victims of forced labor and 28 arrests and convictions.”

Human trafficking cases are prosecuted by the Department of Justice through United States Attorneys’ Offices around the country,<sup>347</sup> as well as through the Civil Rights Divisions’ Human Trafficking Prosecution Unit (HTPU)<sup>348</sup> and the Criminal Division’s Child Exploitation and Obscenity Section (CEOS).<sup>349</sup> According to the 2009 NCJRS report, the majority of cases that reach the DOJ for prosecution were first identified by “line-level police officers who

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<sup>342</sup> Moosy, *supra* note 338.

<sup>343</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 382.

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> There are 93 United States Attorneys located “throughout the 50 states, the District of Columbia, Guam, the Marianas Islands, Puerto Rico, and the U.S. Virgin Islands.” EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, U.S. DEP’T OF JUSTICE, (accessed July 19, 2013), *available at* <http://www.justice.gov/usao/eousa/>.

<sup>348</sup> The HTPU “oversees prosecutions involving labor trafficking and sex trafficking of adults.” U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 382.

<sup>349</sup> *Id.*

encounter[ed] sex traffickers or their victims during normal police operations.”<sup>350</sup> In 2012, the Department of Justice prosecuted 128 human trafficking cases, “charging 200 defendants.”<sup>351</sup> 162 of those defendants were charged “predominately” with sex trafficking offenses, while only 38 were charged with labor trafficking offenses.<sup>352</sup> That same year, the DOJ convicted 138 forced labor and sex trafficking offenders, a decrease from 2011, when DOJ obtained 151 convictions for the same offenses.<sup>353</sup> According to the NCJRS report, in one sex trafficking case, police officers increased the likelihood of conviction by “film[ing] their approach to a basement brothel, their entry through a small door, and the squalid and crowded conditions inside.”<sup>354</sup> The report recommends that officers always use this tactic if possible, but notes that sex trafficking investigations are often problematic, taking months or even years to complete.<sup>355</sup> Victims are notoriously difficult to keep track of, and sometimes “relapse into drug use or commercial sex because they feel they have no other desirable options in their lives.”<sup>356</sup> Of the convictions for human trafficking in 2011, a large majority (105) were for sex trafficking, while 33 were predominantly labor trafficking.<sup>357</sup> According to BJS, the average prison sentence given for federal trafficking in 2012 was nine years, and terms ranged from merely probation to life imprisonment.<sup>358</sup> In four cases in 2012, involving either labor or sex trafficking, the court imposed a life sentence, “including a sentence of life plus 20 years, the longest sentence ever imposed in a labor trafficking case.”<sup>359</sup>

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<sup>350</sup> Moosy, *supra* note 338, at 7.

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> *Id.* at 383

<sup>354</sup> Moosy, *supra* note 338, at 9.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

<sup>357</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 383.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

According to the Attorney General’s 2011 report on human trafficking, the U.S. government’s success in combatting domestic human trafficking “hinges on pursuing a victim-centered approach.”<sup>360</sup> The Department of Justice identified “legal assistance and housing” as two of the most pressing needs for trafficking victims.<sup>361</sup> Unfortunately, because trafficking victims are regularly identified in regions of the country without specialized human trafficking victim support services, many victims struggle to get help.<sup>362</sup> Between 2001 and 2011, the Office of Refugee Resettlement (ORR)<sup>363</sup> issued 405 ‘Eligibility Letters’ for federal benefits to child trafficking victims and 2,776 Certification Letters for federal benefits to adult trafficking victims.<sup>364</sup> In spite of the fact that women and girls account for almost 90% of all trafficking victims,<sup>365</sup> 45 percent of the adult victims who received certification in 2011 were male, a 10 percent decrease from 2010.<sup>366</sup> 75 percent of all adults certified in 2011 were labor trafficking victims, and only 19% were sex trafficking victims.<sup>367</sup> 36 percent of the child victims given Eligibility Letters were female, a 23 percent decline from 2010, and 57 percent were labor trafficking victims.<sup>368</sup> 16% (455) of the adults issued certification letters originated outside the United States in “55 countries in the Americas, Asia, Africa, and Europe.”<sup>369</sup> In 2012, the government increased its protective measures for victims of human trafficking.

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<sup>360</sup> ATTORNEY GENERAL’S ANNUAL REPORT , *supra* note 293, at 32.

<sup>361</sup> FY 2013 PERFORMANCE BUDGET, U.S. DEP’T OF JUSTICE 106, (Feb. 2012), *available at* <http://www.justice.gov/jmd/2013justification/pdf/fy13-ojp-justification.pdf>.

<sup>362</sup> *Id.*

<sup>363</sup> Soon after the TVPA was passed, HHS delegated its authority to certify trafficking victims for federal benefits to the Assistant Secretary for Children and Families, and it was in turn delegated several more times until the Office of Refugee Resettlement (ORR) took over the responsibility. ATTORNEY GENERAL’S ANNUAL REPORT , *supra* note 293, at 34.

<sup>364</sup> *Id.*

<sup>365</sup> BUREAU OF JUSTICE STATISTICS, *supra* note 229, at 9.

<sup>366</sup> ATTORNEY GENERAL’S ANNUAL REPORT , *supra* note 293, at 34.

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

According to the 2013 Department of State human trafficking report, the United States government increased the “scope and availability” of the services it provides to victims, “including access to legal services,” in 2012.<sup>370</sup> It also developed its “first-ever federal strategic action plan to strengthen services for trafficking victims in the United States under the direction of DOJ, HHS, and DHS.” Although funding for victim assistance remained the same between 2011 and 2012, the government continued to provide “case management and referrals, medical care, dental care, mental health treatment, sustenance and shelter, translation and interpretation services, substance abuse treatment, immigration and legal assistance, employment and training services, transportation assistance, and other essential services.”<sup>371</sup> In some cases, federal funds were insufficient to take care of victims awaiting trials against their traffickers, and NGOs had to raise private funds to help them.<sup>372</sup> In previous years, federal funding has also been insufficient to satisfy all foreign aid requests for anti-trafficking assistance.<sup>373</sup> In 2012, HHS issued fewer federal benefit certification letters to foreign national adult victims, issuing 366 that year, compared to 463 in 2011.<sup>374</sup> Eligibility letters to foreign national child victims only slightly increased, from 101 in 2011 to 103 in 2012.<sup>375</sup>

### **C. Europe**

The number of human trafficking victims in Europe increased by 18 percent between 2008 and 2010.<sup>376</sup> This trend was surprisingly correlated with a 13 percent *decrease* in the

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<sup>370</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 383.

<sup>371</sup> *Id.* at 384

<sup>372</sup> *Id.*

<sup>373</sup> In 2011, “[n]early 1000 proposals [for funding] were received . . . , requesting a total funding of 30 times the amount available through the TIP office.” *Craw*.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> EUROSTAT, TRAFFICKING IN HUMAN BEINGS 13 (2013), *available at* [http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FPublications%2FTrafficking+in+Human+beings+-+DGHome-Eurostat\\_EN.pdf&fileName=Trafficking+in+Human+beings+-+DGHome-Eurostat\\_EN.pdf&fileType=pdf](http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FPublications%2FTrafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileName=Trafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileType=pdf).

number of convictions for human trafficking<sup>377</sup> and a 17 percent decrease in the number of recorded suspected traffickers.<sup>378</sup> Some have blamed the freedom of movement within the EU, which “facilitate[s] the transport of girls throughout the territory of the Union.”<sup>379</sup> Sex trafficking is the most common form of trafficking in Europe, and sex traffickers comprised 84 percent of all identified and suspected traffickers between 2008 and 2010.<sup>380</sup> 75 percent of suspected traffickers are male,<sup>381</sup> and more than 75% are citizens of a European Union (EU) Member State.<sup>382</sup> The majority of EU-citizen traffickers are from Bulgaria, Romania, Germany, or France.<sup>383</sup> Most non-EU traffickers come from Albania, China, Morocco, Nigeria, Russia, or Turkey.<sup>384</sup> Although official figures identify only 23,600 trafficking victims between 2008 and 2010, some reports estimate that there are “hundreds of thousands of trafficking victims” in Europe.<sup>385</sup> Women and girls account for between 76 and 78 percent of all trafficking victims.<sup>386</sup> Around 15 percent of the victims are children.<sup>387</sup> Most victims (approximately 61 percent) come from EU Member States, although the percentage of foreign-born victims has been rapidly increasing in recent years.<sup>388</sup> Most of the foreign-born victims come from Nigeria and China, although Brazil, Russia and Algeria are also prominent source countries.<sup>389</sup> The majority of EU-

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<sup>377</sup> Bill Chappell, European Union Report Details Growth of Human Trafficking, NPR, (Apr. 15, 2013), *available at* <http://www.npr.org/blogs/thetwo-way/2013/04/15/177326963/european-union-report-details-growth-of-human-trafficking>.

<sup>378</sup> EUROSTAT, *supra* note 376, at 13

<sup>379</sup> Stanislava Gaydazhleva, *Bulgaria, Romania: Paradise for Human Trafficking*, NEWEUROPE, (July 5, 2012), *available at* <http://www.neurope.eu/article/bulgaria-romania-paradise-traffickers-human-beings>.

<sup>380</sup> *Id.* at 11

<sup>381</sup> *Id.* at 13

<sup>382</sup> *Id.* at 11

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

<sup>385</sup> *See* Chappell, *supra* note 377.

<sup>386</sup> UNODC, *supra* note 1, at 53.

<sup>387</sup> EUROSTAT, *supra* note 376, at 10

<sup>388</sup> The percentage of foreign-born victims increased from “12% in 2008 to 37% in 2010 for male victims, and from 18% to 39% for the female victims.” *Id.*

<sup>389</sup> *Id.*

born victims are from Romania and Bulgaria.<sup>390</sup> According to a 2013 Eurostat report, a total of 5,086 trafficking victims received assistance in 15 different countries that provided data on victim protection.<sup>391</sup> 965 victims were given “reflection period[s]”<sup>392</sup> in 18 Member States that provided data, and 1,196 victims were issued residence permits in the 19 Member States that provided data.<sup>393</sup> On some occasions, “presumed victims” were issued residence permits.<sup>394</sup>

Member States are subject to the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>395</sup> which entered into force on September 3, 1953.<sup>396</sup> Article 4 of the Convention prohibits “slavery and forced labour,” and Article 5 establishes the “[r]ight to liberty and security.”<sup>397</sup> In 2010, the European Court on Human Rights declared in the landmark case *Rantsev v. Cyprus and Russia* that Member States are obligated under the Convention to “investigate alleged trafficking offences”<sup>398</sup> and are “subject to a duty” to cooperate with each other in cross-border trafficking cases.<sup>399</sup> In furtherance of this duty, States are required to attain

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<sup>390</sup> *Id.* at 13

<sup>391</sup> *Id.*

<sup>392</sup> Reflection period (Directive 204/81/EC). In the Netherlands, for example, “victims of trafficking are granted a reflection period of three months ‘at the slightest indication’ that he or she might be a victim of trafficking. The reflection period is meant to allow the (presumed) victim to start recovering and to make an informed decision about cooperation with the authorities.

<sup>393</sup> EUROSTAT, *supra* note 376, at 10

<sup>394</sup> *Id.*

<sup>395</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, *available at*

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

<sup>396</sup> While the Convention entered into force on September 3, 1953 and is binding on all Member States, it has been amended four times as of the writing of this report. The first amendment, Protocol 3, entered into force on September 21, 1970. Protocols 5, 8, and 11 entered into force on December 20, 1971, January 1, 1990, and November 1, 1998, respectively. Council of Europe, Univ. of Minn. Human Rights Library, (accessed July 27, 2013), *available at* <http://www1.umn.edu/humanrts/euro/eurocon-humanrts.html>.

<sup>397</sup> Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>398</sup> The Court further clarified that “[t]he requirement to investigate does not depend on a complaint from the victim or next-of-kin: once the matter has come to the attention of the authorities they must act of their own motion.” *Rantsev v. Cyprus and Russia*, p. 70-71. The duty to investigate arises under “circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited . . . .” *Id.* at 70. Once a credible suspicion arises, “[a] requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency.” *Id.* at 71

<sup>399</sup> *Rantsev v. Cyprus and Russia*, p. 71, European Court of Human Rights, (Jan. 7, 2010), *available at* <http://ec.europa.eu/anti->

investigative means “capable of leading to the identification and punishment of individuals responsible.”<sup>400</sup> In addition to the Convention, the EU has adopted several anti-trafficking measures that apply to all Member States. The Stockholm Programme, adopted by the European Council in 2009,<sup>401</sup> “defines strategic guidelines for legislative and operational planning within the area of freedom, security and justice in accordance with Article 68 [TFEU].”<sup>402</sup>

Unfortunately, there is little available information on the implementation of the Stockholm Programme because the European Commission did not publish the assessment that it “was expected to deliver before the end of 2012.”<sup>403</sup> In 2005, under the mandate of the Hague Programme, the EU Commission and European Council developed the 12-page EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings.<sup>404</sup> The guiding principles of the European Union’s anti-trafficking efforts are perhaps best embodied in the Anti-Trafficking Directive of 2011,<sup>405</sup> which came into force on April 6, 2013.<sup>406</sup> Under the Treaty on the Functioning of the European Union,<sup>407</sup> obligations laid out in EU Directives are binding on all Member States, and nations must “transpose” a Directive in its

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trafficking/download.action?nodePath=%2FLegislation+and+Case+Law%2FCase+Law%2FRantsev+vs+Russia+Cyprus\_en.pdf&fileName=Rantsev+vs+Russia+Cyprus\_en.pdf&fileType=pdf.

<sup>400</sup> *Id.*

<sup>401</sup> Sergio Carrera & Elspeth Guild, *Does the Stockholm Programme Matter? The Struggles over Ownership of AFSJ Multiannual Programming*, THE CENTRE FOR EUROPEAN POLICY STUDIES 1 (Dec. 2012), available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&ved=0CFAQFjAE&url=http%3A%2F%2Fwww.ceps.eu%2Fceps%2Fdld%2F7543%2Fpdf&ei=Jzb0UbqkFqbl4AOZqICwCQ&usg=AFQjCNH0zbLj4ybfBESS55guUrppMulPQ&sig2=o8BC2EawtDFIPltqN3piHg>.

<sup>402</sup> The Stockholm Programme - An open and secure Europe serving and protecting citizens, 2010/C 115/01, European Council, Official Journal of the European Union. Notice IV, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF>.

<sup>403</sup> Carrera & Guild, *supra* note 401, at 9

<sup>404</sup> EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, Official Journal of the European Union, 2005/C 311/01, available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c\\_311/c\\_31120051209en00010012.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_311/c_31120051209en00010012.pdf).

<sup>405</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OFFICIAL JOURNAL OF THE EUROPEAN UNION, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

<sup>406</sup> Understanding the New EU Trafficking Directive, THE AIRE CENTRE, (May 29, 2013), available at <http://www.airecentre.org/pages/understanding-the-new-eu-trafficking-directive-29th-may-2013.html>.

<sup>407</sup> Treaty on the Functioning of the European Union

entirety into national law by the date it enters into force.<sup>408</sup> EU National Rapporteurs, which meet twice a year, are “responsible for monitoring the implementation of anti-trafficking policy at the national level.”<sup>409</sup>

The EU Anti-trafficking Directive defines human trafficking as:

The recruitment, transportation, transfer, harbouring, or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>410</sup>

The phrase “position of vulnerability” is specifically defined in the second paragraph of Article 2 as “a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.”<sup>411</sup> The Directive also criminalizes “inciting, aiding and abetting or attempting to commit” a trafficking offense.<sup>412</sup>

The Directive states that “[p]reventing and combating trafficking in human beings is a priority for the Union and the Member States.”<sup>413</sup> Its “major directives” are for “[m]ore rigorous prevention, prosecution<sup>414</sup> and protection of victims’ rights.”<sup>415</sup> Because human trafficking often

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<sup>408</sup> EU Directives enter into force when they are “published in the Official Journal of the EU. European Directives, EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK, (accessed July 26, 2013), *available at* <https://osha.europa.eu/en/legislation/directives>.

<sup>409</sup> National Rapporteurs, EUROPEAN COMMISSION, (accessed July 27, 2013), *available at* <http://ec.europa.eu/anti-trafficking/section.action;jsessionid=vtslRN6HJ2pvpZvnbqhsQygz4W4LvMn7DYTYfyKCTmyq4h0Q58Hk!1062222535?sectionPath=National+Rapporteurs>.

<sup>410</sup> EU Anti-Trafficking Directive, at Art. 2, ¶ 1

<sup>411</sup> *Id.* at Art. 2, ¶ 2

<sup>412</sup> *Id.* at Art. 3

<sup>413</sup> *Id.* at Art. 1, ¶ 1

<sup>414</sup> The Directive states that in order to enhance the effectiveness of prosecutions involving “criminal groups whose centre of activity is in a Member States and which carry out trafficking in human beings in [countries outside of the EU], jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, [even if] if the offence is committed outside the territory of that Member state.” *Id.* at (paragraph) 16. Jurisdiction “could also be established where the offender is a habitual resident of a Member State, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.” *Id.*

<sup>415</sup> *Id.* at Art. 1, ¶ 7

crosses national borders, Member States should train prosecutors and law enforcement “with a view to enhancing international law enforcement and judicial cooperation.”<sup>416</sup> The Directive calls on Member States to pursue action in countries outside of the European Union, “with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation.”<sup>417</sup> The Directive further states that Member States should continue to share law enforcement data and “best practices” with each other, as well as maintain a “continued open dialogue between the police, judicial and financial authorities of the Member States.”<sup>418</sup> EU members are directed to “work closely with civil society organizations, including recognized and active non-governmental organisations” that work with trafficking victims.<sup>419</sup> Particular focus should be given to “policy-making initiatives, information and awareness-raising campaigns, research and education programmes and . . . training, as well as . . . monitoring and evaluating the impact of anti-trafficking measures.”<sup>420</sup> The Directive also states that the “Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.”<sup>421</sup> Human trafficking data is crucial to evaluating the effectiveness of anti-trafficking legislation, law enforcement efforts, and protective procedures. In addition to these measures, the Directive lays out principles for punishment.

Members States should mandate for more severe punishments if a trafficking offense is committed against a “particularly vulnerable victim,” which includes “at least all children.”<sup>422</sup> Vulnerability should be determined according to multiple factors, including the victim’s “gender,

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<sup>416</sup> *Id.* at Art. 1, ¶ 15

<sup>417</sup> *Id.* at Art. 1, ¶ 2

<sup>418</sup> *Id.* at Art. 1, ¶ 5

<sup>419</sup> *Id.* at Art. 1, ¶ 6

<sup>420</sup> *Id.*

<sup>421</sup> *Id.* at Art. 1, ¶ 28

<sup>422</sup> *Id.* at Art. 1, ¶ 12

pregnancy, state of health and disability.”<sup>423</sup> An offense should be considered “particularly grave” and warrant a “severe penalty” if, for example, “the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence . . . .”<sup>424</sup> Members States should consider sanctioning “users of any service exacted from a victim, with the knowledge that the person has been trafficked.” This criminalization might discourage “buyers of sexual services,” as well as regulate the “behavior of employers of legally staying third-country nationals and Union citizens . . . .”<sup>425</sup> Furthermore, Members States should utilize assets seizure laws such as the United Nations Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.<sup>426</sup> The proceeds from human trafficking should be seized whenever possible and redirected for use in “victims’ assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities . . . .”<sup>427</sup> In addition to combative and punitive measures, the Directive lays out principles of protection for victims of trafficking.

Importantly, the Directive recognizes that trafficking is a “gender-specific phenomenon” and “women and men are often trafficked for different purposes.”<sup>428</sup> For this reason, “assistance and support measures should . . . be gender-specific where appropriate.”<sup>429</sup> The Directive also recognizes that “[c]hildren are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings.”<sup>430</sup> Therefore, the “child’s best interests must

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<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> *Id.* at Art. 1, ¶ 26

<sup>426</sup> Council Framework Decision 2005/2012/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

<sup>427</sup> EU Directive at Art. 1, ¶ 13

<sup>428</sup> *Id.* at Art. 1, ¶ 3

<sup>429</sup> *Id.*

<sup>430</sup> *Id.* at Art. 1, ¶ 8

be a primary consideration,”<sup>431</sup> in accordance with the Charter of Fundamental Rights of the European Union<sup>432</sup> and the 1989 United Nations Convention on the Rights of the Child.<sup>433</sup> The Directive recommends that “access to education” be provided to children in order to aid their reintegration into society.<sup>434</sup> When an unaccompanied child victim is identified, a “guardian and/or a representative” should be appointed and, if the child’s home is outside of the Member State, that Member State is encouraged to facilitate the child’s “return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection statuses or granting of other status in accordance with national law of the Member States.”<sup>435</sup> All victims should be given “protection from prosecution or punishment for [any] criminal activities . . . that they have been compelled to commit as a direct consequence of being subject to trafficking.”<sup>436</sup> Victims who are “third-country nationals” should be issued residence permits according to Directive 2004/81/EC,<sup>437</sup> and assistance provided to any victims should include “at least a minimum set of measures that are necessary to the victim to recover and escape from [his or her] traffickers.”<sup>438</sup> In addition to and complementing the EU Directive, the EU Commission has adopted the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.<sup>439</sup>

The EU Strategy sets out “five priorities” for EU Member States:

A. Identifying, protecting and assisting victims of trafficking

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<sup>431</sup> *Id.*

<sup>432</sup> Charter of Fundamental Rights of the European Union

<sup>433</sup> EU Directive at Art. 1, ¶ 8

<sup>434</sup> *Id.* at Art. 1, ¶ 22

<sup>435</sup> *Id.* at Art. 1, ¶ 23

<sup>436</sup> *Id.* at Art. 1, ¶ 14

<sup>437</sup> Directive 2004/81/EC

<sup>438</sup> EU Directive at Art. 1, ¶ 18

<sup>439</sup> The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, *available at* [http://ec.europa.eu/home-affairs/doc\\_centre/crime/docs/trafficking\\_in\\_human\\_beings\\_eradication-2012\\_2016\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf).

- B. Stepping up the prevention of trafficking in human beings<sup>440</sup>
- C. Increased prosecution of traffickers
- D. Enhanced coordination and cooperation among key actors and policy coherence
- E. Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings<sup>441</sup>

This subsection of the report covers two Member States in the European Union: France and Bulgaria. France is rated Tier 1 by the U.S. State Department, while Bulgaria is rated Tier 2.

### 1. Bulgaria

#### *Human Trafficking in Bulgaria and Criminal Code Article 159*

Bulgaria has been labeled a “paradise for human trafficking” – the “preferred ‘hunting ground’” of traffickers – among EU Member States.<sup>442</sup> Bulgaria ranks “among the top five European countries for the number of victims of human trafficking,” although the precise extent of the trafficking is difficult to estimate.<sup>443</sup> In Bulgaria and other EU Member States, available data on trafficking has been called “unreliable,” although “most victims [of trafficking in the EU] are thought to come from Romania and Bulgaria . . . .”<sup>444</sup> Most victims are “women, children, undocumented migrants or Roma,” and the majority of the trafficking is sex

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<sup>440</sup> Among the initiatives set forth in the EU Strategy under Priority B, Action 2 states that a “European Business Coalition against trafficking in human beings will be established in 2014. The coalition should improve cooperation with businesses and other stakeholders, respond to emerging challenges and discuss measures to prevent trafficking in human beings, in particular in high-risk areas. In 2016, the Commission intends to work together with the Coalition to develop models and guidelines on reducing the demand for services provided by victims of trafficking in human beings, in particular in high-risk areas, including the sex industry, agriculture, construction and tourism.” *Id.* at (section) 2.2(2), p. 8

<sup>441</sup> EU strategy (section) 2, p. 5

<sup>442</sup> Gaydazhleva, *supra* note 379.

<sup>443</sup> *Bulgaria Tops European Human Trafficking Figures*, BALKANINSIGHT, (Aug. 13, 2012), available at <http://www.balkaninsight.com/en/article/bulgaria-tops-european-human-trafficking-figures>.

<sup>444</sup> Nikolaj Nielsen, *EU Countries in the Dark on Human Trafficking*, EUOBSERVER, (Sept. 24, 2012), available at <http://euobserver.com/justice/117645>.

trafficking.<sup>445</sup> Prostitution is not regulated in Bulgaria.<sup>446</sup> Article 159 of the Criminal Code prohibits labor and sex trafficking, and calls for sentences of two to 15 years.<sup>447</sup>

Under Bulgarian Criminal Code Article 159, a person is guilty of trafficking if he or she “recruits, transports, hides or admits individuals or groups of people in view of using them for sexual activities, forceful labour, dispossession of bodily organs or holding them in forceful subjection, regardless of their consent . . . .” The baseline punishment for a trafficking offense is two to eight years’ imprisonment and a fine from “BGN three thousand to twelve thousand.”<sup>448</sup> The punishment is increased to three to ten years’ imprisonment and a fine of “BGH ten thousand to twenty thousand” if the trafficking is committed against “an individual who has not turned eighteen years of age,”<sup>449</sup> or by certain illicit means.<sup>450</sup> If the offense is committed against “a pregnant woman [for] the purpose of selling her child, the punishment shall be deprivation of liberty from three to fifteen years and a fine from BGN twenty thousand do fifty thousand.”<sup>451</sup>

#### *Implementation of Criminal Code Article 159*

In 2012, nine other governments cooperated with Bulgarian law enforcement in “joint human trafficking investigations.”<sup>452</sup> The U.S. State Department reports that the number of trafficking investigations for “allegedly complicit public officials” is low.<sup>453</sup> In 2010, the

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<sup>445</sup> *Id.*

<sup>446</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 108.

<sup>447</sup> *Id.* at 109

<sup>448</sup> Criminal Code Article 159a(1) (Bulgaria), *available at* [http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FNational+Info+Pages%2FBulgaria%2F5.+RESOURCES%2F5.1.+Legislation%2FCriminal+Code+Bulgaria\\_en.pdf&fileName=Criminal+Code+Bulgaria\\_en.pdf&fileType=pdf](http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FNational+Info+Pages%2FBulgaria%2F5.+RESOURCES%2F5.1.+Legislation%2FCriminal+Code+Bulgaria_en.pdf&fileName=Criminal+Code+Bulgaria_en.pdf&fileType=pdf).

<sup>449</sup> *Id.* at (2)

<sup>450</sup>

2. Through the use of coercion or by misleading the individual;
3. through kidnapping or illegal deprivation of liberty;
4. through abuse of a status of dependency;
5. through the abuse of power
6. through promising, giving away or receiving benefits, *Id.*

<sup>451</sup> *Id.* at (3)

<sup>452</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 108.

government investigated 12 police officers for complicity in human trafficking; this number dropped to seven investigations in 2011, and then to five in 2012.<sup>454</sup> The number of human trafficking investigations declined between 2011 and 2012, from 121 to 119 investigations.<sup>455</sup> Complicating and hindering efforts to investigate and prosecute traffickers are “reports alleging corruption on the part of Ministry of Interior officers responsible for investigating trafficking.”<sup>456</sup> Allegedly, information leaks, perhaps intentional ones, have “compromised several anti-trafficking operations.”<sup>457</sup> Furthermore, in 2012, “two districts’ prosecution services terminated investigations of four border police officers and one police officer for border-related corruption.” Unfortunately, the number of prosecutions and convictions for human trafficking, like the number of investigations, also declined slightly in 2012.

Bulgaria prosecuted 91 suspected sex traffickers and two suspected labor traffickers in 2012, a decrease from the 102 sex trafficking and 13 labor trafficking prosecutions in 2011.<sup>458</sup> The government convicted 94 sex traffickers and three labor traffickers in 2012, compared to 95 convictions for sex trafficking and 17 labor trafficking convictions in 2011.<sup>459</sup> Unfortunately, the percentage of traffickers sentenced to prison time in Bulgaria is relatively low. According to the 2013 U.S. State Department report, only “53 of the 110 offenders convicted for trafficking and the separate offense of baby selling were sentenced to time in prison, with 40 defendants sentenced to three to five years, and one defendant sentenced to five to 10 years’ imprisonment.”<sup>460</sup> The one conviction of a public official in 2012 resulted in a sentence of 10

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<sup>453</sup> *Id.*

<sup>454</sup> *Id.* “The alleged criminal acts that were the subject of the 2012 investigations included forcing a woman into prostitution, recruiting victims, and warning traffickers of planned police raids.” *Id.*

<sup>455</sup> *Id.*

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

years for “leading an organized crime group involved in human trafficking.”<sup>461</sup> These figures suggest that the anti-human trafficking training provided to police officers, prosecutors, and judges is inadequate.

The Interior Ministry’s Police Academy, the Foreign Ministry’s Diplomatic Institute, and the National Institute of Justice provide training to judges, prosecutors and investigators on combatting human trafficking. In 2012, the “government sponsored seminars for a total of 180 investigating police officers, prosecutors, and judges on international law enforcement cooperation and best practices in countering both sex and labor trafficking.”<sup>462</sup>

According to the “national prosecution service,” which records the number of victims who assist in trafficking investigations, there were 646 identified victims of trafficking who cooperated with law enforcement in 2012, a dramatic increase from the 512 victims in 2011.<sup>463</sup> Only around 10 percent (65) of those victims were children, down from 13.6% in 2011.<sup>464</sup> The vast majority of victims (89 percent) were victims of sex trafficking.<sup>465</sup> Surprisingly, the government identified only “one foreign victim in 2012, a Czech national who was sexually exploited in Bulgaria.”<sup>466</sup> Victims are encouraged by law enforcement to aid in investigations, and the government offers witness protection programs.<sup>467</sup> Foreign victims “who cooperate[] with law enforcement [are allowed] to stay and work in Bulgaria for the duration of criminal proceedings before mandatory repatriation.”<sup>468</sup> If a foreign victim chooses not to aid in an investigation, he or she is “permitted to remain in Bulgaria for 40 days for recovery before

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<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> *Id.* at 109

<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

<sup>466</sup> *Id.*

<sup>467</sup> *Id.*

<sup>468</sup> *Id.*

mandatory repatriation to [his or her] country of origin.”<sup>469</sup> Foreign child victims are allowed to remain for 70 days.<sup>470</sup> There are two state-run shelters for trafficking victims, and government funding for those shelters more than doubled between 2011 and 2012.

For the only two state-run shelters<sup>471</sup> for trafficking victims in Bulgaria, the government “allocated the equivalent of approximately \$59,300 for victim assistance” in 2012, compared to \$27,000 in 2011.<sup>472</sup> The shelters housed only 24 victims in 2012, and all were females.<sup>473</sup> This was a significant increase from the 9 victims in 2011.<sup>474</sup> “Victims services” in these shelters are provided by NGOs, “including medical and psychiatric services, as well as assistance in reintegration, such as preparation for job interviews.”<sup>475</sup> Unfortunately, male victims “did not have access to any trafficking-specific shelters,” and had “difficulty obtaining legal and reintegration assistance.”<sup>476</sup> Child victims of trafficking were sheltered in 14 crisis centers that provided “shelter and psychological and medical assistance . . . .”<sup>477</sup> The number of child trafficking victims in these shelters has sharply declined, however, with 24 child victims in 2012, “compared to 67 in 2011 and 79 in 2010.”<sup>478</sup> Unfortunately, the “national referral mechanism” for victim assistance is not part of the anti-trafficking legal framework, so first responders are not required to refer victims for specialized trafficking-specific care, and many victims were “unaware of their right to apply for compensation.”<sup>479</sup> Furthermore, some victims are at risk of receiving punishment instead of assistance, as a Bulgarian Penal Code provision that “allows for

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<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

<sup>471</sup> In 2012, “[T]he local governments of Varna and Burgas provided rent-free facilities for these shelters.” *Id.*

<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

up to two years' imprisonment [for] those who profit from immoral activities” could be used against sex trafficking victims.<sup>480</sup>

## 2. France

### *Human Trafficking in France and Criminal Code Article 225-4*

In France, there are between 18,000 and 20,000 people in the commercial sex trade, which is “dominated by women from Bulgaria, Romania, and Nigeria.”<sup>481</sup> The French government estimates that the majority of these people are victims of some form of sex trafficking,<sup>482</sup> and the vast majority of identified sex trafficking victims are females.<sup>483</sup> Perpetrators (mostly Bulgarians, Nigerians, Romanians, and French citizens) “force women into prostitution through debt bondage, physical force, and psychological coercion, including the invocations of voodoo.”<sup>484</sup> Article 225-4 of France’s Criminal Code criminalizes trafficking, although France adopted the EU Directive in 2012.<sup>485</sup>

Article 225-4-1 of France’s Criminal Code defines trafficking as:

. . . the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put him at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanor.<sup>486</sup>

Trafficking offenses are punishable by “seven years’ imprisonment *and* by a fine of €150,000.”<sup>487</sup> The sentence is increased to ten years’ imprisonment and a fine of €1,500,000 if

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<sup>480</sup> *Id.*

<sup>481</sup> *Id.* at 170

<sup>482</sup> *Id.*

<sup>483</sup> *Id.* at 171

<sup>484</sup> *Id.* at 170

<sup>485</sup> *Id.*

<sup>486</sup> This definition is perhaps confusing because of its length and lack of demarcation between elements (act, purpose, etc.). Criminal Code Art. 225-4-1 (France), *available at* [http://www.protectionproject.org/wp-content/uploads/2010/09/France\\_Combined-Penal-Code-and-Criminal-Code-TiP\\_2005.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/France_Combined-Penal-Code-and-Criminal-Code-TiP_2005.pdf).

the trafficking offense is committed against a minor, against two or more people, or against a person “who is outside the territory of the French Republic or upon his arrival on the territory . . . .”<sup>488</sup> The same increase in punishment occurs if the offense is committed by luring the victim through the fraudulent use of a telecommunications network, under circumstances that expose the victim to an “immediate risk or death or of injuries of a nature to cause mutilation or a permanent disability,” by using “threats, constraints, violence or fraudulent behavior,” by a “legitimate, natural or adoptive ascendant of the victim” or “person holding authority over him or who misuses the authority conferred by his position,” or by a “person whose post requires him to participate in the fight against human trafficking or to uphold public order.”<sup>489</sup> The punishment is increased to 20 years’ imprisonment and a fine of €3,000,000 if the trafficking offense is committed by an “organized gang.”<sup>490</sup> Forced or exploitative begging is punished by “three years’ imprisonment and by a fine of €45,000” under Article 225-12-5.<sup>491</sup> France’s Criminal Code also calls for punishing people who do not directly commit a trafficking offense, but are involved in its commission.

Article 225-4-7 criminalizes *attempts* to commit trafficking offenses and mandates for the same punishments as completed trafficking crimes.<sup>492</sup> Under Article 225-4-9, however, a person who is guilty of attempt “is exempted from punishment if, having alerted the judicial or administrative authorities, he has prevented the offence from being carried out, and, where relevant, has enabled the other perpetrators or accomplices to be identified.”<sup>493</sup> Article 225-5 prohibits anyone from helping, assisting, or protecting the prostitution of another person, as well

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<sup>487</sup> *Id.*

<sup>488</sup> *Id.* at Art. 225-4-2(1)-(4)

<sup>489</sup> *Id.* at Art. 225-4-2(5)-(8)

<sup>490</sup> *Id.* at Art. 225-4-3

<sup>491</sup> The offense of “[e]xploitation of begging” includes “profit[ing] from another person’s begging, shar[ing] the proceeds or receiv[ing] income from a person who habitually engages in begging.” *Id.* at Art. 225-12-5

<sup>492</sup> *Id.* at Article 225-4-7

<sup>493</sup> *Id.* at Art. 225-4-9

as profiting from the prostitution of someone else, or “shar[ing] the proceeds of it . . .”<sup>494</sup> These crimes, called “[p]rocurring” are to be “punished by seven years’ imprisonment and a fine of €150,000.”<sup>495</sup> The punishment is increased to ten year’s imprisonment and a fine of €1,500,000 if the procuring is committed against certain vulnerable or protected classes of individuals.<sup>496</sup> Furthermore, if the offender procures another person for illegal purposes by “resorting to torture or acts of barbarity,” the offender is to receive a sentence of a life in prison and a fine of €1,500,000.<sup>497</sup> Importantly, the Criminal Code also establishes minimum working conditions for laborers.

Under Article 225-13, it is illegal to obtain unpaid services or render payment “which clearly bears no relation to the importance of the work” if the “vulnerability or dependence [of the worker] is obvious or known to the offender . . .”<sup>498</sup> Furthermore, that laborer must not be subjected to “working or living conditions incompatible with human dignity,” and doing so is punished by “five years’ imprisonment and by a fine of €150,000.”<sup>499</sup> If either of these offenses

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<sup>494</sup> *Id.*

<sup>495</sup> *Id.* at Art. 225-5

<sup>496</sup> “Procurring is punished by ten years’ imprisonment and a fine of €1,500,000 where it is committed:

- 1) in respect of a minor;
- 2) in respect of a person whose particular vulnerability, due to age, sickness, to a[n] infirmity, a physical or psychological disability or to pregnancy, is apparent or known to the offender;
- 3) in respect of two or more persons;
- 4) in respect of a person who was incited to engage in prostitution either outside the territory of the French Republic, or upon arrive on the territory of the French Republic;
- 5) by a legitimate, natural or adoptive ascendant of the person engaged in prostitution or by a person holding authority over him or who misuses the authority conferred on him by his position;
- 6) by a person called upon to take part, by virtue of his position, in the fight against prostitution, in the protection of health or in the keeping of the public peace;
- 7) by a person bearing a weapon;
- 8) with the use of constraint, violence or fraudulent behavior;
- 9) by two or more acting as offenders or accomplices, although not constituting an organized gang.
- 10) through the use of a communications network for the distribution of messages to a non-specified audience. *Id.* at Art. 225-7

<sup>497</sup> *Id.* at Art. 225-9

<sup>498</sup> This offense is punished by “five years’ imprisonment and by a fine of €150,000.” *Id.* at Art. 225-13

<sup>499</sup> *Id.* at Art. 225-14

is committed against a minor, the punishment is increased to seven years' imprisonment and a fine of €200,000.<sup>500</sup>

*Implementation of Criminal Code Article 225-4*

The French government actively promotes law enforcement cooperation with other Member States and offers training on human trafficking legislation.<sup>501</sup> The Ministry of Justice provides annual training to prosecutors and magistrates on the anti-trafficking laws, and in 2012 the government “sponsored training for police and distributed pocket-sized cards to border police and NGOs on how to identify trafficking victims.”<sup>502</sup> French authorities also “collaborated with several governments in 2012, including authorities in Belgium, Bulgaria, Germany, [and] Romania, to investigate human trafficking cases.”<sup>503</sup>

The 2013 U.S. State Department report notes that France has experienced “difficulty collecting and reporting” anti-trafficking law enforcement data, which hinders its ability to evaluate the state of trafficking and its own anti-trafficking efforts.<sup>504</sup> For example, French authorities “formally questioned 572 individuals suspected of trafficking or pimping offences” in 2012, “but did not specifically report the number of trafficking investigations within that figure.”<sup>505</sup> The State Department report does note, however, that France’s law enforcement efforts continue to focus primarily on sex trafficking, with only “limited attention” devoted to forced labor trafficking.<sup>506</sup> On June 12, 2012, French law enforcement authorities, coordinating

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<sup>500</sup> *Id.* at Art. 225-15

<sup>501</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 171.

<sup>502</sup> *Id.*

<sup>503</sup> *Id.*

<sup>504</sup> *Id.*

<sup>505</sup> *Id.*

<sup>506</sup> *Id.*

with authorities in Bulgaria, Poland, and Belgium, dismantled a crime network that had been engaging in sex trafficking.<sup>507</sup>

Between 2010 and 2011, the most recent year for which France has reported data on trafficking convictions, the number of trafficking convictions decreased.<sup>508</sup> In 2011, France convicted 17 offenders for “aggravated” forms of trafficking,<sup>509</sup> a decrease from the 20 traffickers convicted of those offenses in 2010.<sup>510</sup> The same year, France obtained 16 convictions for child prostitution, a decrease from the 20 child prostitution convictions in 2010.<sup>511</sup> France also convicted 15 traffickers for forced begging, a decrease from the 30 traffickers convicted for forced begging in 2010.<sup>512</sup> The State Department report surmises that some trafficking offenders might have been convicted under France’s aggravated anti-pimping statute, as there were 502 convictions under that statute in 2011.<sup>513</sup> The report estimates that around 15% of cases prosecuted under the anti-pimping statute were actually trafficking offenses.<sup>514</sup> In forced labor cases, French prosecutors “reportedly preferred to use non-trafficking statutes that prescribe less stringent punishment than the human trafficking statute.”<sup>515</sup> In sex trafficking cases, prosecutor tended to use anti-pimping statutes because of their

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<sup>507</sup> Eurojust and Europol funded and arranged a “Joint Investigation Team” between Bulgaria and France and involving Poland and Belgium. The operation began in October 2010 and led to the arrest in 2012 of nine traffickers who had been recruiting women from Bulgaria for sexual exploitation in other European countries. Questions & Answers: Trafficking in Human Beings in the EU Statistical Annexes: Trafficking in Human Beings in the EU, MEMO/13/331, EUROPEAN COMMISSION, (Apr. 15, 2013), *available at* [http://europa.eu/rapid/press-release\\_MEMO-13-331\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-331_en.htm).

<sup>508</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 171.

<sup>509</sup> Criminal Code Article 225-4-2 enumerates aggravated trafficking offenses.

<sup>510</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 171.

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

“familiarity” with those laws.<sup>516</sup> Convicted traffickers received sentences of “up to nine and a half years’ imprisonment, though some offenders received suspended sentences and fines.”<sup>517</sup>

France identified close to 100 more victims of pimping and sex trafficking (751 in total) in 2012 than in 2011.<sup>518</sup> Only 1.2 percent (9 victims) were males.<sup>519</sup> U.S. State Department describes France’s protection efforts for labor trafficking victims as “insufficient,” and implies that France provides a minimum level of protection for sex trafficking victims.<sup>520</sup> Although there were no “specific reports” in 2012 of trafficking victims being “penalized for crimes committed as a direct result of their being trafficking,” some NGOs have alleged that “police often punished victims, including child victims, for soliciting and theft, and when repeatedly caught, imprisoned them.”<sup>521</sup> The State Department report seems to imply that some of this solicitation and theft might actually be forced begging and coerced criminal activity.<sup>522</sup> France also lacks “a formal procedure for identifying victims who [are] French citizens or legal residents.”<sup>523</sup> Victims who are informally determined by law enforcement to not have legal status in the country do not receive assistance unless they “cooperate with law enforcement” and aid investigations.<sup>524</sup> Because the government devotes limited attention to anti-labor trafficking efforts in general, “[l]abor inspectors did not receive training on human trafficking and reportedly did not specifically search for indicators of human trafficking, resulting in authorities

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<sup>516</sup> *Id.*

<sup>517</sup> “In February 2013, a French court sentenced a convicted sex trafficking offender to five years in prison for the trafficking of six women in Paris. In October 2012, a court in Evry convicted five traffickers of aggravated pimping and sentenced them to non-suspended terms of imprisonment of nine and a half years; five years; four and a half years; and three years, for the forced prostitution of Romanian women.” *Id.*

<sup>518</sup> *Id.*

<sup>519</sup> *Id.*

<sup>520</sup> *Id.*

<sup>521</sup> *Id.*

<sup>522</sup> *Id.*

<sup>523</sup> *Id.*

<sup>524</sup> *Id.*

classifying trafficking victims as illegal migrant workers.”<sup>525</sup> On a positive note, local governments “provided French language classes to victims,” and some victims are eligible to receive “subsidized housing and job training programs.”<sup>526</sup> All victims receive “the equivalent of approximately \$450 as an initial stipend from the government, and approximately \$130 per month subsequently.”<sup>527</sup> Some NGOs, however, have criticized this funding as “insufficient to permit victims to rehabilitate successfully.” In 2012, the government continued to provide funding to Ac-Se, an “NGO-managed network of 49 NGO-run shelters that assists vulnerable adult victims of sex and labor trafficking.”<sup>528</sup> These shelters are located around the country, “allowing NGOs to place victims far away from where they were exploited.”<sup>529</sup> There are usually waiting periods to get into the shelters, although the waiting period decreased from 40 to 14 days.<sup>530</sup> Child victims of trafficking were placed in children’s shelters, and the government “continue[s] to operate a hotline for children in abusive situations, including human trafficking.”<sup>531</sup> In 2012, the “central government, municipal governments, and the city of Paris provided at least the equivalent of approximately \$3 million to NGOs for victim assistance in 2012.”<sup>532</sup>

Although French law allows a “30-day reflection period for suspected trafficking victims,” French authorities were “reportedly not familiar with the reflection period and did not offer it.”<sup>533</sup> Victims were only eligible for “temporary residency permits”<sup>534</sup> if they cooperated

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<sup>525</sup> *Id.*

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*

<sup>528</sup> *Id.*

<sup>529</sup> *Id.*

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*

<sup>532</sup> *Id.*

<sup>533</sup> *Id.*

<sup>534</sup> These permits “were typically valid for one year and were renewable every six months. *Id.*

with investigations.<sup>535</sup> The waiting period to receive a permit ranged from 15 days to three months, and victims had to pay “the equivalent of approximately \$390” to receive one.<sup>536</sup> If the victim’s trafficker were convicted, the temporary permit became permanent.<sup>537</sup> If the trafficker were not convicted, “local prefects [still] had the discretion to grant permanent residency cards to victims.”<sup>538</sup> According to some NGOs, however, the issuance of residence permits was “highly inconsistent,” “particularly if the victims had past convictions for prostitution.”<sup>539</sup> Consequently, “[s]ome trafficking victims found it easier to apply for and obtain asylum,” a free process without the expectation of cooperating with an investigation.<sup>540</sup> Although victims are technically “eligible to receive restitution through the Crime Victims Compensation Program” that was created in 1985, only two victims have ever received compensation from the program.<sup>541</sup> The State Department report notes that “[s]everal compensation requests have been pending for many years.”<sup>542</sup>

#### IV. Recommendations for Tanzania

One of the first steps in combatting human trafficking and enhancing the effectiveness of the Anti-Trafficking in Persons Act is to spread awareness of the nature and extent of human trafficking in Tanzania. This is an important measure in promoting increased reporting of suspected and known incidents of trafficking. Sierra Leone, for example, has implemented a “national awareness campaign” for human trafficking and identified more victims of child trafficking than ever before, leading to its being taken off of the U.S. State Department’s “Tier 2

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<sup>535</sup> *Id.*

<sup>536</sup> *Id.*

<sup>537</sup> *Id.*

<sup>538</sup> *Id.*

<sup>539</sup> *Id.*

<sup>540</sup> *Id.*

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*

Watch-List.”<sup>543</sup> Cooperation among Tanzanian law enforcement and neighboring States should be encouraged in order to combat cross-border trafficking. Tanzania could also improve its efforts to combat trafficking by increasing the size of its police force and enhancing its anti-trafficking training. Training for law enforcement and public officials should specifically address the provisions of the ATPA. Niger, for example, has combatted low awareness of its anti-human trafficking law<sup>544</sup> among law enforcement officials by distributing copies of the law to the office of every prosecutor around the country.<sup>545</sup> As mindfulness of the law grows, its enforcement should be monitored. Trafficking offenders should be prosecuted under the ATPA, rather than other statutes that might result in lesser punishments. Furthermore, the government should undertake anti-corruption efforts that target complicity and passivity among law enforcement and public officials. Nigeria, for example, amended its anti-human trafficking law<sup>546</sup> in 2011 to reduce the discretion of judges to allow trafficking offenders to pay fines to avoid prison time.<sup>547</sup> As a result, 68% of the sentences in Nigeria in 2012 were prison time *without* the option of paying a fine.<sup>548</sup> Additionally, the focus of punishing trafficking should be on the traffickers themselves, not on the victims. As mandated by the ATPA, victims should receive immediate assistance when identified; holding them responsible for acts they committed while being trafficked will only discourage reporting. Furthermore, the courts should ensure that victims are compensated by their traffickers. These measures, taken together with the examples

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<sup>543</sup> U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 325.

<sup>544</sup> Order No. 2012-86 on Combating Trafficking in Persons, enacted in 2010, forbids trafficking of any kind, including slavery, and prescribes “punishments of five to 10 years’ imprisonment for committing trafficking offenses against adults and 10 to 30 years’ imprisonment when the victim is a child.” U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 284.

<sup>545</sup> *Id.*

<sup>546</sup> Nigeria’s 2003 Trafficking in Persons Law Enforcement and Administration Act mandates penalties for every form of human trafficking, and calls for “five years’ imprisonment or a fine not to exceed . . . \$645 or both for labor trafficking offenses . . . 10 to 15 years’ imprisonment for sex trafficking offenses and a fine of . . . \$1,250.” U.S. DEP’T OF STATE TIPS REPORT, *supra* note 86, at 285-6.

<sup>547</sup> *Id.* at 286

<sup>548</sup> *Id.* at 285

provided from the six other countries outlined in this report, could help to improve Tanzania's efforts to combat trafficking. It will involve the coordination and dedication of all branches of the government and the support of civil society, but in the long run it could save countless men, women, and children from exploitation and abuse.