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The Rise of Human Trafficking in Central America

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THE RISE OF HUMAN TRAFFICKING IN CENTRAL AMERICA

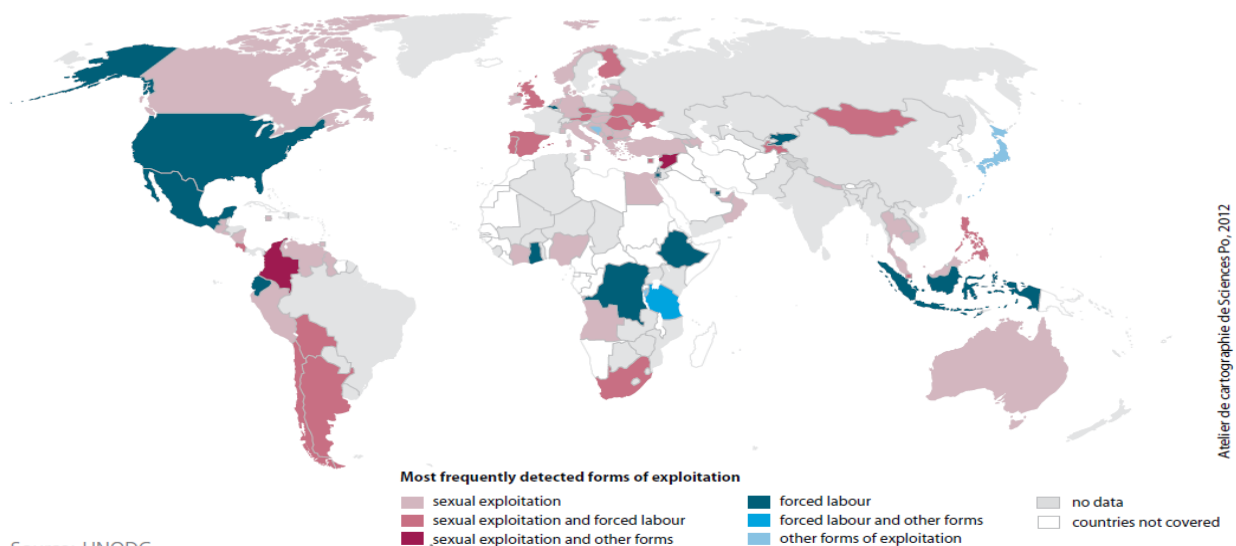
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I. INTRODUCTION

Slavery has been a big problem in the world throughout history. Even though it was legally abolished in the nineteenth century, slavery still exists today. Human trafficking has been referred to as a modern form of slavery.¹ Trafficked persons are often forced, through sexual, physical, and psychological violence, to perform under slavery-like conditions. Human trafficking is currently ranked among the leading criminal enterprises in the world, following trafficking of narcotics and weapons.² Human trafficking exists in nearly all countries in the world.³ The International Labor Organization estimates that about 20.9 million people are victims of human trafficking for labor and sexual exploitation.⁴

MAP 4: Main forms of exploitation, by proportion of detected victims, by country, 2007-2010



¹ For the purpose of this paper modern slavery will refer to human trafficking.

² VENLA ROTH, *DEFINING HUMAN TRAFFICKING AND IDENTIFYING ITS VICTIMS: A STUDY ON THE IMPACT AND FUTURE CHALLENGES OF INTERNATIONAL, EUROPEAN AND FINNISH LEGAL RESPONSES TO PROSTITUTION-RELATED TRAFFICKING IN HUMAN BEINGS 1* (VENLA ROTH, MARTINUS NIJHOFF PUBLISHERS, 2012).

³ U.N. OF OFFICE ON DRUGS AND CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 2012*, at 68, U.N. Sales No. E.13.IV.1(2012), available at http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf.

⁴ *Id* at 68.

⁵ *Id* at 36.

During its 1928 global study, the League of Nations concluded that “Latin America is the traffic market of the world.”⁶ Currently Latin America has been assessed to be the third highest source of human trafficking.⁷ With that finding in mind, this paper will argue that human trafficking continues to be a growing problem in the Central American region. In particular it will focus on the human trafficking issues that affect the country of El Salvador.

This paper is divided into 6 sections. Each section will discuss the general issues concerning human trafficking that are affecting the region of Central America. There will be a greater specific focus on the country of El Salvador. **Section II** will provide a general overview of the international legal instruments that are presently being used to regulate human trafficking around the world. **Section III** discusses the historical events that have caused Central America to be more prone to human trafficking. **Section IV** focuses on the participants and their methods to accomplish the trafficking both regionally and specific to El Salvador. **Section V** debates the factors that are the driving forces behind human trafficking in Central America and especially in El Salvador. **Section VI** proposes recommendations that can be taken to confront human trafficking in Central America. It chronicles efforts that El Salvador has taken and future planning it should consider when combating the problem.

II. LEGAL FRAMEWORK

A. Emergence of International Norms

1. International Framework

⁶ LEONARD TERRITO, INTERNATIONAL SEX TRAFFICKING OF WOMEN & CHILDREN: UNDERSTANDING THE GLOBAL EPIDEMIC 57 (Looseleaf Law Publications, 2010)

⁷ *Id* at 69.

Even though the Transatlantic slave trade was made illegal in the 19th century, there was the understanding that slavery still existed.⁸ The League of Nations adopted the *Slavery Convention of 1926*, which was designed to advance the “suppression of slavery and the slave trade”.⁹ This international treaty gives the following definition for slavery:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.¹⁰

According to Jean Allain, this definition has been accepted and is binding as international law and has achieved a consensus among jurists and international organizations.¹¹ It required the signatories to deal with slavery “in all its forms”¹² A few years after the United Nations was established as the successor of the League of Nations, the 1956 UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* expanded the 1926 Convention’s definition of slavery.¹³ Through this supplement, practices similar to slavery would now include; debt bondage, serfdom, servile marriage and child trafficking.¹⁴ Nations were to address the economic and social factors that supported the existence of these additional slave-like activities. These conventions led to worldwide efforts to enforce the eradication of all forms of slavery.¹⁵

⁸ Kevin Bales, *Slavery in its Contemporary Manifestation*, in THE LEGAL UNDERSTANDING OF SLAVERY: FROM THE HISTORICAL TO THE CONTEMPORARY 218 (Jean Allain ed., Oxford University Press, 2012)

⁹ Jean Allain, *The Legal Definition of Slavery into the Twenty-First Century*, in THE LEGAL UNDERSTANDING OF SLAVERY: FROM THE HISTORICAL TO THE CONTEMPORARY 214 (Jean Allain ed., Oxford University Press, 2012).

¹⁰ Slavery Convention 1926, Article 1, available at

http://portal.unesco.org/culture/en/files/38440/12815475701Slavery_Convention_%281926%29.pdf/Slavery%2BCovention%2B%281926%29.pdf

¹¹ Allain, *supra* 9, at 212.

¹² *Id* at 214.

¹³ *Id* at 214.

¹⁴ *Id* at 215.

¹⁵ ANNE T. GALLAGHE, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 177 (Cambridge University Press, 2010)

When the term “slavery” was developed it traditionally referred to chattel slavery.¹⁶ However, the concept of slavery has evolved to include human trafficking.¹⁷ In the late twentieth century, judicial opinions¹⁸ related to ‘slavery’ and ‘practices similar to slavery’ required the review of the definition of slavery to determine if certain modern practices were essentially slavery or forms of slavery.¹⁹ For instance, the case *Prosecutor v. Kunarac*, before the International Criminal Tribunal for the Former Yugoslavia, involved an enslavement charge where the court explicitly recognized that the core 1926 definition of slavery applied.²⁰ Similarly, the 1999 ILO Convention on the Worst Forms of Child Labor lists trafficking as a form of slavery.²¹ Legal developments such as these gave the need to address what slave-type acts would be considered “slavery” in modern times.²²

In 2000, the United Nations adopted the Convention against Transnational Organized Crime.²³ This document was then supplemented by two protocols, entitled the Protocol against the Smuggling of Migrants and the Protocol to Prevent, Suppress and Punish Trafficking in Persons.²⁴ With the Trafficking Protocol, according to Allain, the UN set out to establish a first-ever definition of trafficking and brought together the various types of human exploitation practices.²⁵ The purpose of the Trafficking Protocol was to provide countries with policies to help them combat human trafficking, assist the victims and promote cooperation among countries.²⁶ The Palermo Protocols are international law signed by 147 countries.²⁷ The majority

¹⁶ *Id* at 177.

¹⁷ *Id* at 177.

¹⁸ Allain, *supra* 9, at 215.

¹⁹ Gallaghe, *supra* 15, at 185.

²⁰ *Id* at 185.

²¹ *Id* at 186.

²² *Id* at 190.

²³ Roth, *supra* 2, at 81.

²⁴ *Id* at 78.

²⁵ Allain, *supra* 9, at 212.

²⁶ Roth, *supra* 2, at 90.

of Central American countries have signed and ratified the Protocols.²⁸ El Salvador signed the Trafficking Protocol on August 15, 2002 and ratified it on March 18, 2004.²⁹

2. *United States Policy*

The Trafficking Victims Protection Act (TVPA) was enacted into law in the United States in October 2000 as the foundation of its efforts to combat human trafficking and forced labor.³⁰ The TVPA outlines the standards for the elimination of trafficking.³¹ The TVPA requires that “serious and sustained efforts”³² must be taken by governments to eradicate trafficking.³³ The TVPA defines “severe forms” of human trafficking as:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.³⁴

Since 2001, the U.S. Department of State has submitted to Congress annual Trafficking in Person (TIP) Reports.³⁵ These annual reports evaluate governments’ measures to eliminate human trafficking.³⁶ The report ranks 188 countries and attempts to hold them accountable for

²⁷ U.N. Office on Drugs and Crime, Signatories to the UN Convention Against Transnational Crime and Its Protocol, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en.

²⁸ Clare R Seelke, *Trafficking in persons in Latin America and the Caribbean*, CONGRESSIONAL RESEARCH SERVICE, July, 2013, at 10, available at <http://www.fas.org/sgp/crs/row/RL33200.pdf>.

²⁹ *supra* 27.

³⁰ Seelke, *supra* 28, at 7.

³¹ U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 410 (June 2013), available at <http://www.state.gov/documents/organization/210737.pdf>.

³² Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

³³ *supra* 31, at 410.

³⁴ *supra* 32.

³⁵ Seelke, *supra* 28, at 7.

³⁶ *supra* 31 at 7.

human trafficking in their territories.³⁷ Countries are placed into tiers based on their compliance with the TVPA minimum standards to eliminate human trafficking.³⁸ Countries not complying may be subject to sanctions, such as the non-receipt of humanitarian aid.³⁹ Significant funds are donated every year by the United States to support local efforts to address trafficking.⁴⁰ In 2011 the US government gave approximately 8.4 million in anti-trafficking assistance to support projects in Latin America.⁴¹

B. Human Trafficking vs. Human Smuggling

The Trafficking Protocol and the Smuggling of Migrant Protocol deal with substantially different matters. It is important that countries understand the factors that help distinguish smuggling from trafficking. These tools essentially dictate how authorities treat smuggled people as compared to trafficked victims.⁴² The Trafficking Protocol defines trafficking as:

the recruitment, transportation, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or 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.⁴³

Human trafficking can be understood as a process by which people are recruited in their community and exploited by traffickers using deception and/or some form of coercion to lure and control them.⁴⁴ There are three distinct elements of this crime: “the act, the means, and the

³⁷ *Id* at 2.

³⁸ *Id* at 41.

³⁹ Seelke, *supra* 28, at 8.

⁴⁰ *Id* at 8.

⁴¹ *Id* at 9.

⁴² *Id* at 2.

⁴³ G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Dec.25, 2003. available at http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf

⁴⁴ *supra* 3, at 16.

purpose.”⁴⁵ All three parts must be present to constitute a trafficking in person offence.⁴⁶ The “act” represents the recruitment, transport, harboring or receipt of the victim.⁴⁷ While “the means” is the threat or use of force, deception, coercion or abuse of power used to entice the victims.⁴⁸ The “purpose” is the form of exploitation to which the traffickers subject their victims.⁴⁹ These can include sexual exploitation, forced labor and domestic servitude.⁵⁰

The Smuggling of Migrant Protocol defines the smuggling of migrants as the:

procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.⁵¹

Smuggling of migrants involves the hiring of a person that guides the migrant across borders.⁵² The migrant is transported from one country to another.⁵³ In this type of situation the migrant knowingly consents and pays for the service.⁵⁴ Migrants pay large amounts of money to the smuggler to be taken to foreign countries.⁵⁵ The process ends when the individual has gained illegal entry into a foreign country.⁵⁶

Human trafficking is often confused with human smuggling. There are factors that help distinguish between the two crimes. These differ in three key elements: “movement across borders, consent, and the purpose of exploitation.”⁵⁷ According to the Smuggling of Migrant

⁴⁵ *Id* at 16.

⁴⁶ *Id* at 16.

⁴⁷ *Id* at 16.

⁴⁸ *Id* at 16.

⁴⁹ *Id* at 16.

⁵⁰ *Id* at 16.

⁵¹ G.A. Res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Jan. 28, 2004. *available at* http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf

⁵² Seelke, *supra* 28, at 2.

⁵³ *Id* at 2.

⁵⁴ *Id* at 2.

⁵⁵ *Id* at 2.

⁵⁶ Seelke, *supra* 28, at 2.

⁵⁷ *Id* at 2.

Protocol, since migrants being smuggled are willing participants in a criminal activity, they are only entitled to “humane treatment and full protection of their rights.”⁵⁸ On the other hand, human trafficking involves people who do not go willingly; they are coerced and forced into the system of trafficking.⁵⁹ The Trafficking Protocol considers these coerced individual victims be entitled to protection and a broad range of social services from governments.⁶⁰ Trafficking is viewed as a “crime against a person,”⁶¹ whose victims deserve to be helped. On the other hand, smuggling is depicted as a “crime against the state,” and the smuggled should be immediately deported.⁶² In the smuggling process all parties involved commit a crime while in a human trafficking act the victim is innocent.⁶³

Research has shown, however, that defining the difference between these types of crimes is not as simple as the Protocols set them out to be.⁶⁴ Many factors blur the distinction between trafficked persons and smuggled migrants. It has been said that violence, coercion and exploitation are integral aspects of the smuggling of migrants as well as of the human trafficking.⁶⁵ Often illegal migrants become victims when they are caught in the immigration system and are diverted into trafficking systems.⁶⁶ Criminals take advantage of the vulnerable situations in which undocumented migrants find themselves.⁶⁷

Legal instruments such as the Palermo Protocols were created to tackle the rise of human trafficking. They provide tools to help countries, including those in Central America, address

⁵⁸ *supra* 39.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Seelke, *supra* 28, at 2.

⁶² *Id.* at 2.

⁶³ *Id.* at 2.

⁶⁴ LOUISE SHELLEY, HUMAN TRAFFICKING: A GLOBAL Perspective 272 (Cambridge University Press, 2010)

⁶⁵ *Id.* at 272.

⁶⁶ Territo, *supra* 6, at 73.

⁶⁷ Shelley, *supra* 64, at 272.

human trafficking. In Central America the rise of human trafficking was not surprising according to some scholars. Historical conflicts influenced the growth of human trafficking in the region.

III. HISTORICAL EVENTS THAT GAVE RISE TO THE FLOURISHING OF HUMAN TRAFFICKING IN CENTRAL AMERICA

A. Historical Background of Central America

Central American countries obtained independence from Spain during the nineteenth century.⁶⁸ The “legacy of strict class hierarchies, the subjugation of indigenous people, indentured servitude and slavery”⁶⁹ created the foundation for different conflicts that would be common in Central America. Countries in the region have had a history of “civil conflicts, political struggles and military clashes.”⁷⁰ However, these constant conflicts intensified during the Civil War.⁷¹ The Civil War took place in Guatemala, Nicaragua and El Salvador throughout the 1980s and into the 1990s.⁷² Armed revolutionaries backed by Soviet and Cuban Marxist insurgencies fought against American-supported right-wing forces.⁷³ The war led to the killing of thousands of people and produced millions of refugees.⁷⁴ It devastated the economies of El Salvador, Guatemala and Nicaragua.⁷⁵

Some scholars have argued that poverty and underdevelopment made the conflicts inevitable in Central America.⁷⁶ Others argue that political dynamics triggered the violence.⁷⁷

⁶⁸ *Id* at 272.

⁶⁹ *Id* at 272.

⁷⁰ CHRISTIAN SMITH, *RESISTING REAGAN: THE U.S. CENTRAL AMERICA PEACE MOVEMENT* 5 (University of Chicago Press, 2010).

⁷¹ *Id* at 30.

⁷² *Id* at 30.

⁷³ *Id* at 30.

⁷⁴ *Id* at 31.

⁷⁵ *Id* at 31.

⁷⁶ *Id* at 32.

⁷⁷ *Id* at 32.

Even though the transitions of the political systems from dictatorships to democracies have concluded, violence is still a reality in Central America.⁷⁸ Many people still experience deep socioeconomic uncertainty and insecurity caused by the excessive violence and corruption.⁷⁹ Crimes such as human trafficking tend to succeed in regions like Central America because there is little “opportunity for social or economic advancement.”⁸⁰

B. Historical Background of El Salvador

The Civil War in El Salvador lasted 12 years.⁸¹ The opposing parties in the war were the military-led government of El Salvador and the Farabundo Martí National Liberation Front (FMLN), a coalition or umbrella organization of five left-wing guerrilla groups.⁸² While the government was fighting to maintain the legacy of authoritarian rule, the FMLN was fighting for a democratic revolution.⁸³

This conflict was responsible for the death of about 75,000 people and would be the major cause of migration flows out of El Salvador during the 1980s.⁸⁴ The Civil War and difficult economic conditions pushed many to seek refuge in the United States.⁸⁵ Los Angeles, California became the destination of thousands of people that fled the conflict during the 1980s.⁸⁶ According to the 1990 Census, approximately seventy percent of all Central Americans

⁷⁸ Clare R Seelke, *El Salvador: Political and Economic Conditions and U.S. Relations*, CONGRESSIONAL RESEARCH SERVICE, August, 2012 at 6, available at <http://fpc.state.gov/documents/organization/196922.pdf>.

⁷⁹ *Id* at 6.

⁸⁰ Shelley, *supra* 64, at 292.

⁸¹ Seelke, *supra* 78, at 1.

⁸² Shelley, *supra* 64, at 18.

⁸³ *Id* at 18.

⁸⁴ Seelke, *supra* 78, at 1.

⁸⁵ Jessica M. Vaughan, *Taking Back the Streets: ICE and Local Law Enforcement Target Immigrant Gangs*, CENTER FOR IMMIGRATION STUDIES, Oct. 2008 at 5, available at <http://www.cis.org/sites/cis.org/files/articles/2008/back1208.pdf>.

⁸⁶ Seelke, *supra* 28, at 3.

in the United States arrived after 1980.⁸⁷ Some estimates place the Salvadoran population alone in Los Angeles at 300,000 by the end of the decade. The population had increase 10 times greater than it was during the 1980s.⁸⁸

Once in America, the children of these immigrants struggled to adjust to the new life. Many settled in some of America's worst neighborhoods, where gang culture was already well-established.⁸⁹ These rough neighborhoods exposed newly arrived immigrants to gangs.⁹⁰ It is widely believed that the Central American immigrants formed their own gangs to protect themselves from the existing Mexican-American and African-American gangs.⁹¹ Different socioeconomic factors predisposed the new Central American immigrants to gang affiliations. Factors such as their illegal status, poverty and lack of education pushed them to join such groups.⁹²

During the 1990s, the United States tried to tackle the influx of immigration by changing its immigration policy.⁹³ The regulations facilitated the deportation of convicted felons.⁹⁴ These new policies were applied aggressively to gangs in California, in which a large percentage of immigrant gang members lived.⁹⁵ The massive deportations led to a sudden inflow of gang members into Central America and Mexico which at that point had not experienced much gang activity.⁹⁶ The results were catastrophic for El Salvador.⁹⁷ The deportees, many of whom had

⁸⁷ U. S. Census Bureau. (1990). We the American Hispanic Reports. Retrieved February 13, 2014 <http://www.census.gov/prod/cen1990/wepeople/we-2r.pdf>.

⁸⁸ Vaughan, *supra* 85, at 5.

⁸⁹ *Id* at 5.

⁹⁰ Steven S. Dudley, *Drug Trafficking Organizations in Central America: Transportistas, Mexican Cartels and Maras*, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS, May, 2010, at 19 available at <http://www.stevendudley.com/pdf/Wilson%20Center%20Central%20America%20Dudley%2005%2017%2010.pdf>.

⁹¹ *Id* at 19.

⁹² Vaughan, *supra* 85, at 7.

⁹³ *Id* at 7.

⁹⁴ *Id* at 7.

⁹⁵ *Id* at 7.

⁹⁶ *Id* at 7.

⁹⁷ *Id* at 7.

never lived in El Salvador, brought with them the tattoos, the “Spanglish,”⁹⁸ and the gang hand language.⁹⁹ These “returnees,” as they were called, replicated the gang structure and culture they had learned in the United States.¹⁰⁰

Peace officially was reached in El Salvador on January 16, 1992, when representatives of the government and the FMLN signed the Chapultepec Accords. Nonetheless, civil conflicts continued to be an integral part of El Salvador.¹⁰¹ Recruiting by *maras* (gangs) in El Salvador was not difficult.¹⁰² This was due to the severe poverty and shortage of economic opportunity.¹⁰³ Also, the country had weak law enforcement.¹⁰⁴ The newly formed Salvadoran police force, National Civilian Police (PNC) was overwhelmed with the thousands of gang members arriving by the mid-1990.¹⁰⁵ El Salvador still receives an average of five airplanes weekly carrying about one hundred deportees.¹⁰⁶ At least one of the planes is full of convicted criminals.¹⁰⁷

Different conflicts created an environment susceptible to crimes in Central America. The Civil War in countries like El Salvador pushed a generation to a new country where they learned a lifestyle that would eventually come back to haunt El Salvador. It is these gang members that become major players in the human trafficking problem of the region. The next section takes a closer look at these individuals and their methods.

⁹⁸ “Spanish as language that includes the use of English words.” Merriam-Webster Online Dictionary. 2014 <http://www.merriam-webster.com/> (last visited May 10, 2014).

⁹⁹ Vaughan, *supra* 85, at 5.

¹⁰⁰ Douglas Farah, *Organized Crime in El Salvador: The Homegrown and Transnational Dimensions*, WOODROW WILSON CENTER FOR INTERNATIONAL SCHOLARS, Feb. 2011 at 11 available at <http://www.wilsoncenter.org/sites/default/files/Farah.FIN1.pdf>.

¹⁰¹ ELLEN MOODIE, *EL SALVADOR IN THE AFTERMATH OF PEACE: CRIME, UNCERTAINTY, AND THE TRANSITION TO DEMOCRACY* 41 (University of Pennsylvania Press, 2010).

¹⁰² Vaughan, *supra* 85, at 6.

¹⁰³ *Id* at 6.

¹⁰⁴ Dudley, *supra* 90, at 19.

¹⁰⁵ *Id* at 19.

¹⁰⁶ *Id* at 19.

¹⁰⁷ *Id* at 19.

IV. TRAFFICKING ACTORS AND THEIR METHODS

A. Participants

1. *Traffickers in Central America*

Human trafficking is done by a wide variety of individuals in Central America. They range from individual criminals to large criminal organizations.¹⁰⁸ However, these individuals and groups do not work alone.¹⁰⁹ In addition to these criminals, the private and public sectors have been linked to the human trafficking system.¹¹⁰

In Central America the networks that facilitate and maintain human trafficking for sexual exploitation involve a variety of actors in the private sectors.¹¹¹ These include the transportation, tourism, media, entertainment and legal industries.¹¹² Taxi drivers, rickshaw drivers, and truck drivers participate in the movement of women to and between places of exploitation.¹¹³ They may also be engaged as recruiters, working under agreements with establishment owners or working independently.¹¹⁴

Throughout the region, the media is a method of recruitment. Advertisement of fake jobs are posted on newspapers and advertised in the radio.¹¹⁵ Increasingly, the Internet is being used to support and encourage the demand for commercial sexual services---through web-based tourism operations, sex tourism guides, and chat rooms.¹¹⁶ Hotels and motels are often used as

¹⁰⁸ DAVID GUINN, IN MODERN BONDAGE: SEX TRAFFICKING IN THE AMERICAS 29 (International Human Rights Law Institute, DePaul University College of Law, 2002)

¹⁰⁹ *Id* at 29.

¹¹⁰ *Id* at 29.

¹¹¹ *Id* at 29.

¹¹² *Id* at 30.

¹¹³ *Id* at 30.

¹¹⁴ *Id* at 30.

¹¹⁵ *Id* at 30.

¹¹⁶ *Id* at 30.

“safe houses” for migrants and human trafficking victims.¹¹⁷ The legal profession has been associated with human trafficking as well. They arrange false documentation that - allows young girls to travel without parental permission and fix immigration status in destination countries.¹¹⁸ Bars, nightclubs and brothels are where trafficked women are exploited and forced into sexual servitude.¹¹⁹ Owners and managers of these establishments receive and control the majority of profits from trafficking.¹²⁰

A case in point is the 2011 “Torres Cuello” case in El Salvador.¹²¹ One man and two women were convicted of luring girls aged 14 to 16 years from the Dominican Republic and Nicaragua to El Salvador. Their sexual services were advertised on the Internet for prices ranging from US\$60 to US\$150.¹²²

The public sector is also very much involved in this criminal activity. In many cases, immigration, police and other civil servants aid traffickers.¹²³ Public officers’ provide fraudulent birth certificates and other legal documents.¹²⁴ Borders are supervised by corrupt law enforcement that allows the illegal border crossings. Bar and brothel owners are often protected from investigation or prosecution.¹²⁵

¹¹⁷ *Id* at 30.

¹¹⁸ *Id* at 31.

¹¹⁹ *Id* at 30.

¹²⁰ *Id* at 30.

¹²¹ U.N. OF OFFICE ON DRUGS AND CRIME, TRANSNATIONAL ORGANIZED CRIME IN CENTRAL AMERICA AND THE CARIBBEAN: A THREAT ASSESSMENT at 67 (2012) available at http://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf.

¹²² *Id* at 67.

¹²³ Guinn, *supra* 108, at 30.

¹²⁴ *Id* at 31.

¹²⁵ *Id* at 31.

*Johns*¹²⁶ are at the root of human trafficking.¹²⁷ Women are trafficked into the sex industry not to satisfy the demand of the traffickers, but demand of the purchasers.¹²⁸ It is the “clients” demand for commercial sexual services that fuels human traffickers business.¹²⁹ The demand in Central America is mostly for prostitution and stripping.¹³⁰ These activities are concentrated in “zones of tolerance.”¹³¹ These are areas where prostitution is allowed.¹³² Other popular areas are ports, along international trucking routes, and in certain agricultural areas where migrant laborers are predominantly male.¹³³ The growth of the tourism industry and the increasing number of gambling establishments in the region has also opened markets for the industry.¹³⁴

The collaboration of these groups, each playing a role, has helped the human trafficking to evolve into transnational crime. They have sophisticated intelligence networks and assistance from corrupt state officials.¹³⁵ According to law enforcement officials, gangs are employed as muscle during the transportation; they serve as triggermen to make sure the arrangements are enforced.¹³⁶ The transporters pay the proper authorities to make sure the border crossings runs smoothly.¹³⁷

2. *Traffickers in El Salvador*

¹²⁶ RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE: A MEMOIR* 107 (HarperCollins, 2011).

¹²⁷ Guinn, *supra* 108, at 31.

¹²⁸ *supra* 121, at 21.

¹²⁹ Guinn, *supra* 108, at 3.

¹³⁰ *Id* at 32.

¹³¹ *Id* at 32.

¹³² *Id* at 32.

¹³³ *Id* at 32.

¹³⁴ *Id* at 32.

¹³⁵ Farah, *supra* 100, at 7.

¹³⁶ *Id* at 18.

¹³⁷ *Id* at 18.

Human trafficking and migrant smuggling involves different types of people. During the 1980s Salvadorans turned to “coyotes”¹³⁸ to escape the conflicts in the country.¹³⁹ *Coyotes* guide migrants through Central America into Mexico and across the border into the United States.¹⁴⁰ However, as immigration and border restriction tightened smugglers took advantage of the migrants.¹⁴¹ Instead of taking migrants to their destinations, they would sell them into situations of forced labor or prostitution.¹⁴²

The rise of human trafficking in El Salvador is a direct product of irregular migrations.¹⁴³ An example of this occurred in 2004 when it was discovered that Juan Carlos Soto, an illegal immigrant from Mexico, ran an alien smuggling operation out of Edinburg, Texas.¹⁴⁴ However, instead of letting the women go when they arrived in the United States he kept them as “slaves.”¹⁴⁵ He forced women from El Salvador and Honduras to “work off” the debt they owed for being smuggled into the United States.¹⁴⁶ The tragic routine for the woman was to work as domestics during the day for no pay and be sexually exploited at night.¹⁴⁷

Another group involved in human trafficking is called *Los Perrones*.¹⁴⁸ They are El Salvador’s most notorious transportation group.¹⁴⁹ They consist of hoteliers, human smugglers and contraband traders. *Los Perrones* originally were known for smuggling food and clothing

¹³⁸ *supra* 121, at 49. *Coyotes: human smugglers*.

¹³⁹ *Id* at 49.

¹⁴⁰ *Id* at 49.

¹⁴¹ Seelke, *supra*. 28 at 3.

¹⁴² Seelke, *supra*. 28 at 3.

¹⁴³ *supra* 120, at 53.

¹⁴⁴ Terry Eastland, *The Bush administration targets the modern day slave trade. But will the president's plan work?*” THE WEEKLY STANDARD, Feb. 11, 2004 available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/003/718xfSDL.asp>.

¹⁴⁵ *Id*.

¹⁴⁶ *Id*.

¹⁴⁷ *Id*.

¹⁴⁸ Farah, *supra* 100, at 18.

¹⁴⁹ *Id* at 18.

across Central American borders.¹⁵⁰ This changed, as the demand for drugs and human trafficking became more lucrative.¹⁵¹ *Los Perrones* are experts at moving merchandise through El Salvador.¹⁵² They have developed deep ties to the different criminal entities at the forefront of the criminal world.¹⁵³

The two most dangerous participants in the trafficking business in El Salvador are the MS13 and MS18 gangs. They sell “protection” to those in the smuggling or trafficking business.¹⁵⁴ Basically they are selling security from themselves.¹⁵⁵ The *Mara Salvatrucha*¹⁵⁶ was founded in the neighborhoods of Los Angeles during the 1980’s.¹⁵⁷ It initially was composed of refugees from El Salvador trying to escape the civil war.¹⁵⁸ Eventually *Mara Salvatrucha* joined forces with a Mexican gang known as the Mexican Mafia, or “la M” for short. They integrated their names to create MS-13. MS-13 is considered by law enforcement to be the fastest-growing and most violent street gang in the United States.¹⁵⁹ The Barrio 18 (M18) gang also emerged as a small street gang in Los Angeles during the 1980’s and early 1990’s.¹⁶⁰ Originally it was exclusively made up of Mexican immigrants.¹⁶¹ Eventually they recruited members from a variety of Central American countries.¹⁶²

¹⁵⁰ *Id* at 18.

¹⁵¹ *Id* at 18.

¹⁵² *Id* at 18.

¹⁵³ *Id* at 18.

¹⁵⁴ *supra* 121, at 49.

¹⁵⁵ *Id* at 49.

¹⁵⁶ The word *mara* is a slang term for “gang.” It is derived from the name of a type of ant known for its ferocity. Literally, *trucha* means “trout” and is also a slang term for “shrewd Salvadoran.” Thus, *Mara Salvatrucha* translates to a gang of shrewd Salvadorans.

¹⁵⁷ Clare R Seelke, *Gangs in Central America*, CONGRESSIONAL RESEARCH SERVICE, March, 2013, at 2, available at <http://www.refworld.org/docid/50bf56012.html>.

¹⁵⁸ *Id* at 2.

¹⁵⁹ *Id* at 2.

¹⁶⁰ *Id* at 2.

¹⁶¹ *Id* at 2.

¹⁶² *Id* at 2.

About one third of El Salvador's violence is linked to the *maras*.¹⁶³ According to State reports there may be about 85,000 MS-13 and 18th Street gang members in the northern triangle countries, which is a region made up by El Salvador, Guatemala, and Honduras.¹⁶⁴ According to UNODC, in 2012, there were about 20,000 gang members in El Salvador.¹⁶⁵

B. Trafficking Systems

1. *Methods*

Human trafficking has different stages. It is a “complex form of trade involving movement” of victims from one place to another.¹⁶⁶ The first stage is the recruitment.¹⁶⁷ Traffickers use a range of techniques for recruiting victims.¹⁶⁸ They promise lucrative employment opportunities in other countries. Victims are essentially recruited through coercion, fraud, deception.¹⁶⁹

After the recruitment, the transportation phase follows.¹⁷⁰ This presents numerous logistical challenges for traffickers.¹⁷¹ They need to deal with different aspects of the physical transportation of the victims.¹⁷² Among the most difficult issues they face is crossing the borders with the victims and making sure they do not get caught.¹⁷³ To help them with this challenge, traffickers have developed structured practices that allow them to successfully transport victims across borders undetected. These methods of traveling with victims are known as trafficking

¹⁶³ *Id* at 3.

¹⁶⁴ *Id* at 3.

¹⁶⁵ *supra* 121, at 28.

¹⁶⁶ Territo, *supra* 6, at 73.

¹⁶⁷ *supra* 3, at 81.

¹⁶⁸ Guinn, *supra* 108, at 6.

¹⁶⁹ *supra* 3, at 81.

¹⁷⁰ *supra* 3, at 81.

¹⁷¹ Guinn, *supra* 108, at 99.

¹⁷² *Id* at 99.

¹⁷³ *Id* at 99.

routes.¹⁷⁴ UNODC identified victims of 136 different nationalities in 118 countries worldwide between 2007 and 2010.¹⁷⁵

2. *Networks*

There are different ways that women can enter the trafficking industry.¹⁷⁶ Scholars have categorized these diverse entry points into networks.¹⁷⁷ Various trafficking networks have been identified both at the domestic and international level.¹⁷⁸ Entertainment networks constitute the most common type, made up of shopping malls, nightclubs, bars, restaurant, motels, and brothels.¹⁷⁹ These networks are usually the ones financing the women's transportation and maintenance.¹⁸⁰ The tourism industry is one of the most popular networks that fuel the trafficking industry.¹⁸¹ It consists of travel agencies, hotel, spas, and resorts.¹⁸² Employment agencies are another network used as a front to recruit women.¹⁸³ They provide the connection by advertising false jobs such as domestic laborers, dancers, factory workers, and modeling.¹⁸⁴

3. *Routes*

In Central American there are domestic, intra-regional and inter-regional routes.¹⁸⁵ The flow of the trafficking follows an economic path.¹⁸⁶ Trafficking across international borders

¹⁷⁴ *Id* at 99.

¹⁷⁵ *supra* 3, at 7.

¹⁷⁶ Guinn, *supra* 108, at 29.

¹⁷⁷ *Id* at 33.

¹⁷⁸ *Id* at 33.

¹⁷⁹ *Id* at 94.

¹⁸⁰ *Id* at 94.

¹⁸¹ *Id* at 96.

¹⁸² *Id* at 96.

¹⁸³ *Id* at 96.

¹⁸⁴ *Id* at 96.

¹⁸⁵ Guinn, *supra* 108, at 33.

¹⁸⁶ *Id* at 64.

generally runs from developing to more developed countries.¹⁸⁷ The greatest flow of both human trafficking and migrant smuggling is to the United States.¹⁸⁸

Map 10: Trafficking flows of women and girls in Central America, 2011



Source: UNODC

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In Central America countries with growing tourism, such as Mexico, Costa Rica, and Panama are the principal receiving countries of trafficked women in the region.¹⁹⁰ While the poorer countries in the region, such as Guatemala, El Salvador, Honduras, and Nicaragua supply the majority of the trafficked women.¹⁹¹



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¹⁸⁷ *Id* at 64.

¹⁸⁸ Guinn, *supra* 108, at 19.

¹⁸⁹ *supra* 120, at 55.

¹⁹⁰ Guinn, *supra* 108, at 19.

¹⁹¹ *Id* at 19.

¹⁹² *Id* at 34.

The migration flow in Central America is facilitated by the corruption and weak border controls.¹⁹³ The Central America-4 (CA-4) agreement in 2006 between El Salvador, Guatemala, Honduras and Nicaragua also worsen the situation.¹⁹⁴ This border control Agreement allows the free movement across borders of the citizens of the four signatory states without any restrictions or checks.¹⁹⁵ Multilateral agreements such as this contribute to the intra-regional trafficking. It allows free movement between countries where victims can travel undetected.¹⁹⁶

4. *Flow of Trafficking in El Salvador*

El Salvador has become a source, transit, and destination country for human trafficking.¹⁹⁷ It has both intra- and inter-regional trafficking. El Salvador has identified victims from its neighboring countries, such as Guatemala, Honduras, and Nicaragua.¹⁹⁸ Women seeking employment from these countries are forced into prostitution and domestic services.¹⁹⁹ A limited number of victims in El Salvador were from the Dominican Republic and East Asia.²⁰⁰

Despite being the smallest country in Central America, El Salvador has its own domestic trafficking routes. The victims are taken from poor areas to wealthy areas.²⁰¹ About 79% of the victims reported in El Salvador were nationals.²⁰² Women and girls are trafficked from rural areas of El Salvador to urban centers and forced to work as “bad girls.”²⁰³

¹⁹³ *Id* at 34.

¹⁹⁴ *Id* at 34.

¹⁹⁵ *Id* at 26.

¹⁹⁶ *Id* at 26.

¹⁹⁷ *supra* 120, at 54.

¹⁹⁸ *Id* at 54.

¹⁹⁹ *Id* at 55.

²⁰⁰ *Id* at 55.

²⁰¹ Guinn, *supra* 108, at 3.

²⁰² *supra* 120, at 54.

²⁰³ *supra* 31, at 160.

Human trafficking exists in Central America at the hands of different actors. They have developed networks that facilitate the flow of trafficking in the region. Women with little or no options are defenseless against their coercion. Next Section discusses the factors that push women to risk their lives in hope of finding a better life.

V. FACTORS CONTRIBUTING TO HUMAN TRAFFICKING IN THE REGION

A. Socio- Economic Factors

1. Personal and External Factors

Both personal factors and outside circumstances contribute to the rise of human trafficking in Central America.²⁰⁴ According to the World Bank, Central America in the past few decades has faced lagging economic growth, persistent poverty, and income inequality.²⁰⁵ It is one of the most impoverished regions in the Western hemisphere.²⁰⁶

Studies have found that certain individual risk factors significantly contribute to making certain people vulnerable to trafficking.²⁰⁷ Among these are unemployment, lack of education, illiteracy, family disintegration, and drug abuse.²⁰⁸ Social circumstances such as gender inequality disempower women.²⁰⁹ There is also cultural tolerance of sexual abuse and domestic violence towards women.²¹⁰ Also socially accepted machismo allows for sexist attitudes and practices to discrimination against them.²¹¹ These continuing gender stereotypes reduce educational opportunities and limit options for women in the workplace.²¹²

²⁰⁴ Guinn, *supra* 108, at 27.

²⁰⁵ *supra* 215

²⁰⁶ *Id.*

²⁰⁷ Guinn, *supra* 108, at 24.

²⁰⁸ *Id* at 24.

²⁰⁹ *Id* at 27.

²¹⁰ *Id* at 48.

²¹¹ Seelke, *supra* 28, at 4.

²¹² Guinn, *supra* 108, at 6.

In addition to these factors; political and economic crises create an environment of vulnerability and uncertainty.²¹³ These factors push women to accept risky job propositions in another country.²¹⁴ The attraction of better economic opportunity abroad and the pursuit of the “American dream” lead many to dangerous situations.²¹⁵

2. *Life in El Salvador*

After signing a peace agreement in 1992, El Salvador adopted a neoliberal model of modernization.²¹⁶ This “free market democracy”²¹⁷ model involved trade liberalization and privatization of state entities such as banks.²¹⁸ The country's political transformation led to major “structural reforms and stable macroeconomic policies.”²¹⁹ The country's strong economy helped it become the third-largest economy in the region.²²⁰ El Salvador was able to emerge from the war, making significant progress towards peace and democracy.²²¹ However, many challenges remain.

According to the World Bank El Salvador is facing a slow growing economy.²²² About 40 percent of the population survives on under \$2 daily.²²³ Families live on a gross national income of \$3,590 yearly.²²⁴ In 2012 about 34.5 percent lived below the national poverty line.²²⁵ The unemployment rate is currently at 6.9 percent.

²¹³ *Id* at 6.

²¹⁴ *Id* at 6.

²¹⁵ *Id* at 6.

²¹⁶ Moodie, *supra* 100, at 41.

²¹⁷ *Id* at 41.

²¹⁸ *Id* at 41.

²¹⁹ El Salvador, WORLD BANK, <http://www.worldbank.org/en/country/elsalvador> (last visited Apr. 24, 2014).

²²⁰ *Id*.

²²¹ Moodie, *supra* 100, at 41.

²²² *supra* 216

²²³ *Id*.

²²⁴ *Id*.

²²⁵ *Id*.

Gender inequality is also a prevalent factor. In 2009 the female labor force participation rate in El Salvador was 45.9 percent, compared to the male rate of 76.7 percent.²²⁶ Women also earn far less than their male counterparts. When employed, women on average make 11.5 percent less than employed men.²²⁷ This disparity increases as years of schooling increases.²²⁸ Social norms still prevent working women from balancing family responsibilities and work outside the home.²²⁹ A significant number assume roles as caretakers at early ages.²³⁰

Crime and violence threaten social development and economic growth in El Salvador.²³¹ These issues negatively affect the quality of life of its citizens. El Salvador is considered one of the most violent countries in the world.²³² Currently, El Salvador has the second highest homicide rate in the world, averaging at 69 homicides per 100,000 inhabitants.²³³ Crimes of every level of violence are present in every region.²³⁴ Among these are robberies, home invasions, kidnapping, and drug-related crimes.²³⁵

B. Profitable Industry

According to Siddharth Kara, a contributing factor to human trafficking is the “billions of dollars in profits” generated by the business of sex slavery each year.²³⁶ International Labour Organization estimates profits from all forced exploitation to be about sixteen billion in Latin

²²⁶ United Nations Development Programme. (2013). Human development report 2013: *The Rise of the South: Human Progress in a Diverse World* available at <http://hdr.undp.org/en/countries/profiles/SLV>.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ El Salvador 2013 Crime and Safety Report, OSAC, April, 2013, at 1 available at <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13875>.

²³² *Id.* at 1.

²³³ *Id.* at 2.

²³⁴ *Id.* at 2.

²³⁵ *Id.* at 1.

²³⁶ SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY*, 16 (Columbia University Press, 2009).

America.²³⁷ The “economic globalization”²³⁸ during the 1990s created a “global marketplace” of an increase movement of goods and services.²³⁹

In a market there are forces creating the demand and a supply for a product, in this case commercial sex.²⁴⁰ Globalization fueled the supply.²⁴¹ It helped make “present-day slaves easy to procure, easy to transport, and easy to exploit.”²⁴² The demand comes from men that are willing to buy commercial sex.²⁴³ These two sides create a market and make it profitable for traffickers to sexually exploit women.²⁴⁴

This high-profit and low-risk is what makes this business persist and thrive.²⁴⁵ Human traffickers are able to maximize revenue with minimal risk.²⁴⁶ Factors such as corruption in law enforcement “allow a trafficker to conduct business with minimal consequences.”²⁴⁷ They face little risk or deterrence to affect their criminal operations. Human trafficking is succeeding in places where traffickers can get substantial monetary gains with relatively low risk of getting caught.²⁴⁸

C. Corruption

1. *Corruption in El Salvador*

Corruption is one of the major elements contributing to human trafficking in El Salvador.²⁴⁹ The situation in El Salvador is in consistent to the other countries in Central

²³⁷ *supra* 3, at 68.

²³⁸ Siddharth, *supra* 236, at 24.

²³⁹ *supra* 121, at 21.

²⁴⁰ Siddharth, *supra* 236, at 23.

²⁴¹ *Id* at 25.

²⁴² *Id* at 25.

²⁴³ *Id* at 33.

²⁴⁴ *Id* at 33.

²⁴⁵ *Id* at 38.

²⁴⁶ *Id* at 38.

²⁴⁷ *Id* at 38.

²⁴⁸ *Id* at 38.

²⁴⁹ U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2010. EL SALVADOR *available at* <http://www.state.gov/documents/organization/160164.pdf>.

America. There is evidence that corruption extends to all levels of the government.²⁵⁰ The legislative assembly, the judicial system, and the attorney general's office have been linked to criminals.²⁵¹ Many cases against leading criminals tend to get dismissed or the charges are reduced.²⁵² It has been reported that criminals bribe mayors in exchange for unregulated transportation of contraband through their regions.²⁵³

The State Department's 2010 report found that substantial corruption in the judicial system contributes to the immunity held by the criminals.²⁵⁴ The criminal conviction rate was less than five percent.²⁵⁵ Corruption made it difficult to identify, arrest, and prosecute perpetrators.²⁵⁶ Intimidation and killing of police officers, crime victims, and witnesses created a "climate of fear."²⁵⁷ Human trafficking prosecutions are nonexistent because inefficient and weak anti-trafficking laws.²⁵⁸

Similarly, the office of the attorney general, *Fiscalia General de la Republica* (FGR), has been found to be infiltrated with corruption.²⁵⁹ According to United States and Salvadoran sources, the FGR has consistently refused to act on organized crime cases where organizations have ties to certain political groups.²⁶⁰ Senior police officials have stated that FRG has refused to deal with important *Perrones* cases.²⁶¹ According to the 2013 TIP report, there was no information available regarding the investigation initiated in 2009 of the former head of the

²⁵⁰ *Id* at 14.

²⁵¹ *Id* at 14.

²⁵² Farah, *supra* 100, at 18.

²⁵³ *Id* at 6.

²⁵⁴ *supra* 249, at 16.

²⁵⁵ *Id* at 8.

²⁵⁶ *Id* at 8.

²⁵⁷ *Id* at 8.

²⁵⁸ *Id* at 8.

²⁵⁹ *Id* at 27.

²⁶⁰ *Id* at 27.

²⁶¹ *Id* at 28.

prosecutorial anti-trafficking unit for trafficking-related complicity.²⁶² Equally the National Civilian Police (PNC) is another institution that is not trusted in El Salvador.²⁶³ Yearly, corrupted police officers with ties to criminal groups are arrested.²⁶⁴

D. Debates about the Crime of Human Trafficking

1. *General Confusion in the Region*

Various reports have stated that a clear common view regarding trafficking does not yet exist in Central America.²⁶⁵ The absence of a unified understanding of the issue in the region contributes to the problem.²⁶⁶ Confusion exists among regional authorities when identifying the type of crime being committed.²⁶⁷ According to the 2013 TIP Report, in El Salvador, some officials, particularly judges, still demonstrate a limited understanding of human trafficking.²⁶⁸ This greatly obstructs efforts to hold trafficking offenders accountable.²⁶⁹

This misunderstanding has been influenced by international policy.²⁷⁰ The introduction of the “trafficking” term by the Palermo Protocol and the TVPA created debates as to what the term really means.²⁷¹ Even though the Human Trafficking Protocol provides definition as to what qualifies as trafficking, there is a wide range of interpretation by countries.²⁷² One of the misconstructions is whether the definition of trafficking, as the process of “recruitment,

²⁶² *supra* 31, at 160.

²⁶³ Farah, *supra* 100, at 27.

²⁶⁴ *Id* at 27.

²⁶⁵ Guinn, *supra* 108, at 11; Territo, *supra* 6, at 60; Siddharth, *supra* 236, at 38.

²⁶⁶ Guinn, *supra* 108, at 11.

²⁶⁷ *supra* 31, at 160.

²⁶⁸ *supra* 31, at 160.

²⁶⁹ *supra* 31, at 160.

²⁷⁰ Siddharth, *supra* 236, at 4.

²⁷¹ *Id* at 4.

²⁷² *Id* at 4.

transportation...and transfer for the purpose of exploitation,” includes the exploitation itself.²⁷³ According to Jean Allain, the Trafficking Protocol does not seek to “suppress human exploitation per se,” its focus is dealing with the crime of trafficking as oppose to the actual enslavement of the person.²⁷⁴

2. Policy Issues

Some scholars have found the Trafficking Protocol has some weaknesses. Firstly, they argue that the Trafficking Protocol language narrows human trafficking to the movement of persons from one state to another.²⁷⁵ However, research has shown that trafficking is a “fluid market.”²⁷⁶ It crosses borders, but it can also occur just within a nation’s territories.²⁷⁷ El Salvador has both domestic and international trafficking.²⁷⁸

The Trafficking Protocol also places trafficking under an organized crime format. An organized criminal group is defined as:

A structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.²⁷⁹

Even though there are organized criminal organizations, trafficking is often done by informal associations of individuals and small groups.²⁸⁰ Evidence has shown that the trafficking process many times is carried out by “unrelated independent agents whose operations are limited to one

²⁷³ *Id* at 4.

²⁷⁴ Allain, *supra* 9, at 214.

²⁷⁵ Territo, *supra* 6, at 60.

²⁷⁶ *Id* at 73.

²⁷⁷ *Id* at 73.

²⁷⁸ Guinn, *supra* 108, at 3.

²⁷⁹ *supra* 43.

²⁸⁰ Territo, *supra* 6, at 73.

small segment within the chain.”²⁸¹ Victims are passed between internal trafficking networks within a country or through international networks.²⁸² Different individuals may be part of the process at different stages of the transaction.²⁸³

Similarly, the Trafficking Victims Protection Act (TVPA) language adopted by the United States created misconceptions. The TVPA defines trafficking as the “recruitment, harboring, or transportation” of a person “for the purpose of subjections to involuntary servitude, peonage, debt bondage, or slavery.”²⁸⁴ In 2007 the US government, clarified the confusion by stating separately that movement need not occur for trafficking to occur.²⁸⁵ Siddharth argues that the awkward wording “connotes movement for the purpose of exploitation.”²⁸⁶ This takes away from the focus of the crime itself.²⁸⁷ This is why some scholars suggest that many countries focus their laws and programs against trafficking on movement rather than exploitation.²⁸⁸

3. *Prostitution and Illegal Immigrants*

According to Siddharth Kara the TVPA does not offer a remedy for two primary categories.²⁸⁹ It excludes cases where it is deemed that the acts were not induced by “force, fraud, or coercion.”²⁹⁰ These apply to situations where the victim originally agreed to work as a prostitute under false promises of certain conditions, but then the situation ended in completely different circumstances.²⁹¹ Similarly, it excludes cases of illegal immigrants who end up in being

²⁸¹ *Id* at 73.

²⁸² *Id* at 73.

²⁸³ *Id* at 73.

²⁸⁴ *supra* 32

²⁸⁵ Siddharth, *supra* 236, at 4.

²⁸⁶ *Id* at 4.

²⁸⁷ *Id* at 4.

²⁸⁸ Territo, *supra* 6, at 59.

²⁸⁹ Siddharth, *supra* 236, at 204.

²⁹⁰ *Id* at 294.

²⁹¹ *Id* at 294.

exploited once they cross the borders.²⁹² These represent a large portion of the victims of “slave-like exploitation” in the United States.²⁹³

The two excluded groups that Kara points to are present in El Salvador. In El Salvador, prostitution is legal.²⁹⁴ However, under the Penal Code Article 169, it is a crime to pay anyone under the age of eighteen for sexual services.²⁹⁵ The Penal Code also criminalizes the “inducement, facilitation, or promotion of prostitution.”²⁹⁶ In other words, in the business of prostitution, the only crime punishable is the ‘pimping’ of women.²⁹⁷ The U.S. Department of State reports that in El Salvador, girls are forced into prostitution or end up in situations involving sexual exploitations through migration.²⁹⁸

Scholars have argued that where prostitution is legalized or tolerated, there tends to be a greater demand for human trafficking.²⁹⁹ According to Dianne Post, a Human Rights lawyer, there is a positive correlation between prostitution and human trafficking.³⁰⁰ According to her the majority of sex trafficking would not exist if prostitution did not exist.³⁰¹ She states that for prostitution to exist as a “monetary exchange, women must be reduced to a commodity to be purchased in the stream of commerce.”³⁰² Through the legalization of prostitution women are

²⁹² *Id* at 294.

²⁹³ *Id* at 294.

²⁹⁴ Cód. Pen. art. 169 (El Sal. 1997).

²⁹⁵ *Id*.

²⁹⁶ *Id*.

²⁹⁷ *Id*.

²⁹⁸ *supra* 31, at 160.

²⁹⁹ Guinn, *supra* 108, at 43; Seelke, *supra* 28, at 13.

³⁰⁰ Dianne Post, *Legalization of Prostitution is a violation of Human Rights*, 68 NATIONAL LAWYERS GUILD REVIEW 65, 74 (2011), available at <http://www.nlg.org/sites/default/files/wp-content/uploads/2011/10/NLGRev-68-2-Final.pdf>.

³⁰¹ *Id* at 33.

³⁰² *Id* at 93.

reduced to a material thing that can be “controlled and treated violently.”³⁰³ By governments allowing prostitution, they are approving criminal actions against women.³⁰⁴

If there was no profit to selling women, criminals would not bother. The U.S. Department of State recognizes that legalization of prostitution makes anti-trafficking work more difficult.³⁰⁵ In the 2008 TIP asserts that “sex trafficking would not exist without the demand for commercial sex flourishing around the world.”³⁰⁶ It also stresses that prostitution and any related activities “should not be regulated as a legitimate form of work for any human being.”³⁰⁷

Human Trafficking is empowered by many different factors in Central America. From the social- economic issues the woman face every day to the corruption that controls many governments. These obstacles conflict with any anti-trafficking efforts in the region. In order for the Central America to successfully tackle human trafficking it will need to seriously consider improving the way they are addressing human trafficking.

VI. PROGRESS AND REMAINING CHALLENGES

A. Recommendations

Human trafficking is a crime that affects Central American as a whole. The response to the problem needs to take place both at a local and regional level. Different recommendations have been presented for countries to be effective in in fighting human trafficking. For Central America to really have an impact against human trafficking they should consider the following two recommendations. Countries in the region need unite and adopt a collaborative approach, where

³⁰³ *Id* at 87.

³⁰⁴ *Id* at 75.

³⁰⁵ Seelke, *supra* 28, at 13.

³⁰⁶ *Id* at 13.

³⁰⁷ *Id* at 13.

they can work together against the problem. Secondly they should adopt a uniformed law enforcement strategy that will result in more efficient prosecution of human traffickers.

1. Collaboration in the Region

In the past, cross-border investigations in Central America have been few.³⁰⁸ Coordinated law enforcement activities across borders rarely take place.³⁰⁹ Since human trafficking is considered a transnational crime, countries in Central America would greatly benefit if they joined efforts and create a regional framework.³¹⁰ By collaborating with each other, countries would take into account the internal and external factors that affect their territories.

The “exchanges of good practices”³¹¹ and coordination with law enforcements in other countries is a crucial step to ensure a sustained response to human trafficking.³¹² By doing this countries will be tackling the problem rather than just moving the problem along to the next country.³¹³ The sharing of information would expedite and make the investigation process more efficient.³¹⁴ This will lead to more prosecutions of human traffickers and deter others.³¹⁵ By working together countries will ensure that their interests are represented in working towards eliminating human trafficking in Central America.³¹⁶

2. Law enforcement Improvement

³⁰⁸ Guinn, *supra* 108, at 67.

³⁰⁹ *Id* at 67.

³¹⁰ Territo, *supra* 6, at 10.

³¹¹ *supra* 3, at 83.

³¹² *Id* at 83.

³¹³ Territo, *supra* 6, at 10.

³¹⁴ *Id* at 10.

³¹⁵ *Id* at 10.

³¹⁶ *Id* at 10.

Even though prosecutions and conviction have risen in Central America, the statistics are extremely low compared to other regions.³¹⁷ There exist a disparity in the number of victims that have been identified in Central America and what countries in the region are reporting.³¹⁸ Countries in Central America need to improve the laws that deal with human trafficking.³¹⁹ Penalties and sentencing guidelines need to reflect the seriousness of human trafficking.³²⁰

Judicial proceedings need to change in order to better serve the victim.³²¹ Evidentiary standards should not only rely on victim's testimony.³²² The burden of proof should be shifted to the traffickers.³²³ Stricter laws regulating the sex industry should be passed.³²⁴ Measures should be taken to make commercial sex less readily available.³²⁵

3. *Considerations/Reflections in El Salvador Efforts*

El Salvador is making significant efforts to bring themselves into compliance with TVPA standards. Article 367B of El Salvador's penal code prohibits all forms of human trafficking and proposes penalties of four to eight years imprisonment.³²⁶ These penalties are not as harsh as other serious offenses, such as rape, which carries a punishment of six to twenty years.³²⁷ In 2011, El Salvador announced a set of national security reforms focused on addressing deficiencies in the penal system that would improve the handling of human trafficking crimes.³²⁸ In past year, the army of 11,000 has added 6,300 new soldiers to help better patrol certain

³¹⁷ *Id* at 59.

³¹⁸ *Id* at 59.

³¹⁹ Territo, *supra* 6, at 10.

³²⁰ *Id* at 10.

³²¹ Territo, *supra* 6, at 11.

³²² *Id* at 11.

³²³ *Id* at 12.

³²⁴ *Id* at 12.

³²⁵ *Id* at 12.

³²⁶ Cód. Pen. art. 367B (El Sal. 1997).

³²⁷ *supra* 31, at 160.

³²⁸ *Id* at 60.

unregulated regions.³²⁹ In 2012, over 700 police officers were trained on how to detect trafficking cases and assist trafficking victims.³³⁰ Also authorities trained 420 immigration officials on human trafficking.³³¹

According to the 2013 TIP report, in 2012, officials reported investigating 61 potential cases of human trafficking, all but one case involved sex trafficking.³³² To see a substantial improvement in human trafficking efforts, El Salvador needs to focus on the corruption affecting the country. This would lessen the discrepancy between the amounts of prosecution and trafficking estimated in the region. The Salvadoran government will have to adopt a plan to overcome the underlying causes of the widespread corruption found at all levels of the government. One way to do this would be to raise government employee's wages to deter them from being vulnerable to corruption.

B. CONCLUSION

A combination of political, cultural, and socioeconomic factors creates a deep level of desperation in Central America. Left with few choices and resources, people are pushed to find alternatives elsewhere. This environment creates ground for traffickers to perpetrate their crimes. Supply, demand, and impunity together create a space in which trafficking can flourish. Economic globalization and unregulated borders have created conditions that allow organized crime to flow through Central Americas' borders.

International laws have been instrumental in the fighting against human trafficking in the region. However, due to lack of enforcement and resources, human trafficking, continues to be a

³²⁹ *supra* 249, at 16.

³³⁰ *supra* 31, at 160.

³³¹ *Id* at 60.

³³² *Id* at 60.

problem for countries like El Salvador. El Salvador has made significant efforts to address human trafficking. Nonetheless the government will need to make a stronger commitment to be able to defeat human trafficking.

In addition to bringing more attention to human trafficking, El Salvador should collaborate with neighboring countries such as Honduras and Guatemala. By joining forces with these countries, together they will strengthen both local and regional capacities. El Salvador will get to the root of human trafficking within its territory by boosting its economy. This will create jobs and bring resources. The poverty and violence dominating the country makes vulnerable citizens. In order to reduce corruption it needs to toughen the penalties to those that assist the trafficking. Also better wages for law enforcement will incentivize them to work for the benefit of the country.