**Combating Human Trafficking in Migration Contexts: The Need for Strengthened Investigations and Prosecutions**

18 February 2019

1. **Introduction**

Traffickers in many migration contexts operate with impunity.[[1]](#footnote-1) Although most States Party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) have a statute criminalizing human trafficking,[[2]](#footnote-2) in many countries, it is extremely rare for traffickers to be prosecuted.[[3]](#footnote-3) When exploiting people for financial gain has no consequences, a trafficker’s cost-benefit analysis is relatively simple—it pays to traffic. On the other hand, increasing the risk of imprisonment or monetary fine can alter a prospective trafficker’s calculation, since the risks of engaging in the crime outweigh the economic benefits. As a result, fighting impunity by enforcing human trafficking laws can not only free a convicted trafficker’s current victims and prevent that trafficker from victimizing individuals in the future, it may also deter traffickers who are not prosecuted and dissuade risk-adverse would-be traffickers from committing the crime in the first place.[[4]](#footnote-4) In this way, convicting a critical mass of traffickers represents a much larger number of victims protected and has the potential to reduce trafficking in a given jurisdiction.

In migration contexts, effective human trafficking investigations and prosecutions are key to protecting migrants from human traffickers who would manipulate their immigration status to coerce commercial sex or labor. To this end, the Human Trafficking Institute[[5]](#footnote-5) offers two considerations to inform the Committee’s new General Recommendation:

* First, States Party should invest in dedicated human trafficking units within justice sectors that receive specialized training, with an emphasis on investigations and prosecutions of labor trafficking and fraudulent immigration consultants.
* Second, States Party should support human trafficking investigations and prosecutions by providing immigration relief for trafficking victims that allows migrants to participate in the cases against their traffickers and achieve the stability necessary to begin recovery.

These measures in conjunction with prevention programs and aftercare services will give States Party a more comprehensive approach to fighting human trafficking in migration contexts.

1. **Investing in Dedicated Human Trafficking Units and Specialized Training**

States Party can increase human trafficking investigations and prosecutions by investing in dedicated human trafficking units within justice sectors that focus exclusively on trafficking investigations and receive extensive specialized training. Human trafficking enforcement is highly specialized, and specialized training equips law enforcement officers and prosecutors with the unique skills, strategies, and expertise required to stop traffickers. When no unit has that specialized expertise and the clear responsibility to focus exclusively on human trafficking cases, trafficking enforcement can become a perennially neglected “added-task” on the already bloated task lists of busy police and prosecutors. Forming dedicated units within police departments and prosecution divisions ensures that working human trafficking cases becomes the priority of a group of specialized officers and prosecutors and frees up other justice sector officials to learn how to identify trafficking indicators and refer potential cases to the dedicated unit.

Dedicated human trafficking units that receive long-term specialized training have proven effective. In 2011, the U.S. Department of Justice’s Human Trafficking Prosecution Unit piloted this model through its Anti-Trafficking Coordination Teams (ACTeams) in six federal prosecution districts and saw impressive results.[[6]](#footnote-6) Within two years, the six ACTeam districts increased the number of traffickers charged by 114 percent while the remaining 88 districts only saw a 12 percent increase.[[7]](#footnote-7) Notably, although those six districts represented just seven percent of federal districts, they accounted for more than half of all of the human trafficking convictions in the entire country.[[8]](#footnote-8)

1. *Forced Labor*

Specialization may be especially crucial when it comes to developing proactive investigative strategies for identifying forced labor cases. Although migrants are often vulnerable to both sex and labor trafficking, forced labor cases are less likely to be discovered in the course of other types of criminal investigations. Global estimates suggest that there are considerably more labor trafficking victims than sex trafficking victims,[[9]](#footnote-9) but the U.S. federal government prosecutes significantly more sex trafficking cases than forced labor cases. In 2017, only 4.9 percent of the human trafficking cases prosecuted at the federal level were labor trafficking cases.[[10]](#footnote-10) This is due in part to the illicit nature of commercial sex compared to legal forms of labor. Many law enforcement agencies are already proactively investigating areas where illegal commercial sex commonly takes place in their communities, and, therefore, have greater opportunity to discover evidence of sex trafficking schemes. In contrast, law enforcement agencies may not regularly monitor otherwise lawful businesses into which migrants can be trafficked for forced labor. Accordingly, specialized training and units focused on identifying, investigating, and prosecuting forced labor schemes could protect more migrants from exploitation.[[11]](#footnote-11)

1. *Fraudulent Immigration Consultants*

States Party may be able to uncover more trafficking schemes and prevent migrants from becoming vulnerable to trafficking in the first place by investing in specialized training and units dedicated to combating fraudulent immigration legal services. Fraudulent immigration consultants and unethical or incompetent attorneys exploit migrants who need representation for their immigration cases and do not know about alternatives.[[12]](#footnote-12) Many migrants are unaware of their rights and where to turn for help shortly after arriving in a new country. Language barriers may prevent migrants from applying for immigration relief or knowing about the resources available to them.[[13]](#footnote-13) Misinformed migrants may unknowingly refer other migrants to fraudulent consultants, perpetuating the scam.[[14]](#footnote-14)

Migrants with bona fide claims for immigration protection can lose their cases due to fraud or error by these illegitimate practitioners,[[15]](#footnote-15) making them vulnerable to having their lack of immigration status exploited by traffickers.[[16]](#footnote-16) Perpetrators of the fraud often prevent their victims from seeking redress by threatening to have them deported.[[17]](#footnote-17) In some cases, the fraudulent consultants are themselves traffickers.[[18]](#footnote-18) Despite efforts by some governments to combat fraudulent or incompetent representation, this remains a significant area of vulnerability for many migrants.[[19]](#footnote-19)

1. **Supporting Trafficking Investigations and Prosecutions by Providing Immigration Relief for Victims**

States Party should establish and improve immigration protection for trafficking victims that enable human trafficking investigations and prosecutions to succeed. Law enforcement officials and prosecutors often need victims’ help to investigate and prosecute traffickers. Victims may help identify their traffickers, provide necessary information about the trafficking operation, and testify about the coercive scheme their traffickers used to exploit them. Recognizing this, the Trafficking in Persons Protocol encourages countries to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”[[20]](#footnote-20) Accordingly, States Party should grant trafficking victims the right to remain in the destination country to have time to decide whether to cooperate with law enforcement authorities as well as time to adequately assist in the prosecution of the traffickers.[[21]](#footnote-21)

1. *Existing Models of Immigration Relief for Trafficking Survivors*

Many countries already offer some version of short-term immigration relief that will allow trafficking survivors to stay in the destination country temporarily. Some countries offer foreign nationals the extension of temporary immigration relief that may range from three to six months.[[22]](#footnote-22) Other countries offer opportunities to apply for witness protection visas for trafficking victims if the authorities believe that a victim may contribute to a criminal investigation and would be in danger if deported to his or her country of origin.[[23]](#footnote-23) There are also countries that purport to offer immigration relief to trafficking survivors but have yet to promulgate regulations to implement and enforce such provisions.[[24]](#footnote-24)

In the United States, the federal government may authorize temporary “continued presence” in the country for trafficking victims who may be witnesses in an investigation or prosecution.[[25]](#footnote-25) Although continued presence benefits law enforcement, a victim can receive this protection regardless of whether the government prosecutes his or her trafficker.[[26]](#footnote-26) Recipients of continued presence receive lawful residence and work authorization for one year, which may be renewed.[[27]](#footnote-27) Further, the government can provide the survivor with social welfare assistance including a range of public benefits and the opportunity to petition for certain family members to reunite with them in the United States. These benefits contribute to a stronger sense of safety and stability, which can in turn positively impact the victim’s cooperation with and trust of law enforcement, leading to a more successful prosecution of the trafficker and protection of other victims.[[28]](#footnote-28) Additionally, U.S. immigration authorities may grant T nonimmigrant status,[[29]](#footnote-29) which is similarly independent of a prosecution but allows the survivor to stay in the country for up to four years and provides a path to permanent residency.[[30]](#footnote-30)

1. *Best Practices*

In establishing immigration relief for trafficking victims, States Party should consider what financial or logistical burdens exist for trafficking survivors seeking protection.[[31]](#footnote-31) For example, some victims may not be able to fully participate in the case against their traffickers due to the physical, psychological, or emotional injuries they have endured because of their trafficking experience.[[32]](#footnote-32) Recognizing this, the United Nations Office of Drugs and Crime Model Law on Trafficking in Persons recommends that identified trafficking victims be given six months of temporary residence regardless of their decision to cooperate with law enforcement.[[33]](#footnote-33)

Many countries have already made strides to provide immigration relief for trafficking survivors without placing certain burdens on the survivor. For example, in the United States, certification of the victim’s cooperation with the case is not necessary for the maintenance of continued presence[[34]](#footnote-34) and the certification may be waived for T nonimmigrant status recipients who have suffered significant trauma.[[35]](#footnote-35) Similarly, Canada and Italy offer temporary residence permits to trafficking victims without requiring them to testify against or participate in the investigation of their trafficker.[[36]](#footnote-36) Both countries encourage and facilitate such testimony with protective measures, including a witness protection program and the availability of closed-circuit testimony.[[37]](#footnote-37) In addition to being mindful of what burdens immigration relief may place on trafficking survivors, States Party should ensure trafficking survivors are not penalized for utilizing the resources afforded under these special immigration protections.[[38]](#footnote-38)

1. **Conclusion**

To combat human trafficking in migration contexts, States Party must hold traffickers accountable. This may be accomplished by investing in dedicated units in justice sectors that receive specialized training that empowers them to fight human trafficking. Additionally, States Party can strengthen human trafficking investigations and prosecutions by providing immigration relief that allows victims to assist with the case against their traffickers.

1. *Cf.* Victor Boutros and John Cotton Richmond, *Investments in Human Trafficking Prosecutions are Indispensable*, 6 Anti-Trafficking Review 107, 108-09 (2016), available at http://gaatw.org/ATR/AntiTraffickingReview\_issue6.pdf. [↑](#footnote-ref-1)
2. *See* UNODC, *Global Report on Trafficking in Persons 2018*, 45 (2018), https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\_2018\_BOOK\_web\_small.pdf. [↑](#footnote-ref-2)
3. For example, Belize has not initiated a human trafficking prosecution in three years. *See* U.S. Department of State, 2018 Trafficking in Persons Report 97 (2018), https://www.state.gov/documents/organization/282798.pdf. [↑](#footnote-ref-3)
4. *Cf.* Boutros and Richmond, *supra* note 1 at 109. [↑](#footnote-ref-4)
5. The Human Trafficking Institute works to combat human trafficking at its source by empowering police and prosecutors to stop traffickers. Working inside criminal justice systems, the Institute provides the embedded experts, training, investigative resources, and evidence-based research necessary to free victims. [↑](#footnote-ref-5)
6. U.S. Department of Justice, Anti-Trafficking Coordination Team (ACTeam) Initative Fact Sheet 1, available at https://www.justice.gov/opa/file/623176/download. [↑](#footnote-ref-6)
7. *Id*. at 2. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *See* ILO, *Global Estimates of Modern Slavery* 10-11 (2017), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\_575479.pdf. [↑](#footnote-ref-9)
10. Kyleigh Feehs and John Cotton Richmond, *2017 Federal Human trafficking Report* 11 (2018), available at https://www.traffickingmatters.com/wp-content/uploads/2018/05/2017-Federal-Human-Trafficking-Report\_hi-res.pdf. [↑](#footnote-ref-10)
11. A number of countries have invested in specialized initiatives to combat labor trafficking. *See* Nick Clark, *Detecting and Tackling Forced Labour in Europe*, Joseph Rowntree Foundation 31-32 (2013), available at https://www.unive.it/pag/fileadmin/user\_upload/dipartimenti/filosofia/doc/laboratori/laris/library/forced-labour-europe-full.pdf. [↑](#footnote-ref-11)
12. *See* Emily Unger, *Solving Immigration Consultant Fraud Through Expanded Federal Accreditation*, 29 Law & Ineq. 425, 428-430 (2011), available at https://scholarship.law.umn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1156&context=lawineq; *see also* Robert Katzmann, *The Marden Lecture: The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 Geo. J. Legal Ethics 3 8-9 (2008). [↑](#footnote-ref-12)
13. *Cf.* Sabrineh Ardalan, *Access to Justice for Asylum Seekers: Developing an Effective Model of Holistic Asylum Representation*, 48 U. Mich. J. L. Reform 1001, 1013 (2015). [↑](#footnote-ref-13)
14. *See* Unger, *supra* note 12 at 443. [↑](#footnote-ref-14)
15. For example, among populations fleeing generalized oppression or violence, there have been instances where attorneys create false claims based on others’ recitations of events.For example, Chinese, Afghan, and Mexican communities. *See* Kirk Semple, Joseph Goldstein, & Jeffrey Singer, *Asylum Fraud in Chinatown: An Industry of Lies*, N.Y. Times, Feb. 22, 2014, available at https://www.nytimes.com/2014/02/23/nyregion/asylum-fraud-in-chinatown-industry-of-lies.html; *see also* *cf.* Damien Cave, *A Civil Servant in Mexico Tests U.S. on Asylum*, N.Y. TIMES, Dec. 28, 2013, available at http://www.nytimes.com/2013/12/29/world/americas/path-to-asylum-for-mexicans-bearing-letter.html. [↑](#footnote-ref-15)
16. *See* Unger, *supra* note 12 at 247. [↑](#footnote-ref-16)
17. *See* Unger, *supra* note 12 at 430. [↑](#footnote-ref-17)
18. *See e.g.*, *United States v. Jumroon*, 3:18-CR-00036 (D. Or. 2018) (convicting defendants of forced labor after defendants lured Filipino victims to the United States on fraudulent visas). [↑](#footnote-ref-18)
19. The Federal Trade Commission received 1,109 complaints about immigration services in 2016. According to Ayuda, the issue is underreported and much more pervasive. *See* Ayuda, *Statistics on Immigration Services Fraud Targeting Immigrants*, available at https://www.americanbar.org/content/dam/aba/events/professional\_responsibility/2017%20Meetings/2017upl\_school school/Materials/breakout2/statistic\_%20on\_immigration\_fraud%20\_targeting\_immigrants.authcheckdam.pdf. The federal government recently increased staffing for the Document and Benefit Fraud Task Forces, part of the Executive Office for Immigration Review’s (EOIR) Fraud and Abuse Prevention Program. *See* K. Tate Chambers, EOIR, *Prosecuting Immigration Offenses*, 106 (2017), available at https://www.justice.gov/usao/page/file/986131/download. [↑](#footnote-ref-19)
20. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, United Nations, art. VII, ¶ 7, Nov. 15, 2000. [↑](#footnote-ref-20)
21. *See* Inter-Agency Coordination Group against Trafficking in Persons, *Providing Effective Remedies for Victims of Trafficking in Persons* (2016). [↑](#footnote-ref-21)
22. U.S. Department of State, *supra* note 3 at 78-79. [↑](#footnote-ref-22)
23. Inter-Agency Coordination Group against Trafficking in Persons, *Providing Effective Remedies for Victims of Trafficking in Persons* (2016) (citing Joy Ngozi Ezeilo, (Special Rapporteur on Trafficking in Persons, Especially Women and Children) *Addendum, Mission to Australia*, UN Doc. A/HRC/20/18/Add.1 (May 18, 2012)). [↑](#footnote-ref-23)
24. U.S. Department of State, *supra* note 3 at 388-91. [↑](#footnote-ref-24)
25. 22 U.S.C. § 7105(e)(3). [↑](#footnote-ref-25)
26. U.S. Immigration and Customs Enforcement, *Continued Presence: Temporary Immigration Status for Victims of Human Trafficking* (Aug. 2010). [↑](#footnote-ref-26)
27. *Id*. [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. 8 C.F.R. § 214.11. [↑](#footnote-ref-29)
30. U.S. Immigration and Customs Enforcement, *supra* note 26*.* [↑](#footnote-ref-30)
31. When avenues to immigration relief are encumbered by financial and logistical burdens, it can result in a lack of any meaningful protection. *See* *e.g.*, U.S. Department of State, *supra* note 3 at 388-91. [↑](#footnote-ref-31)
32. Charles Song & Suzy Lee, *Between A Sharp Rock and A Very Hard Place: The Trafficking Victims Protection Act and the Unintended Consequences of the Law Enforcement Cooperation Requirement*, 1 Intercultural Hum. Rts. L. Rev. 133, 151 (2006). [↑](#footnote-ref-32)
33. *See* UNODC, Model Law against Trafficking in Persons (2009), https://www.unodc.org/documents/human-trafficking/UNODC\_Model\_Law\_on\_Trafficking\_in\_Persons.pdf. [↑](#footnote-ref-33)
34. U.S. Immigration and Customs Enforcement, *Continued Presence: Temporary Immigration Status for Victims of Human Trafficking* (2010). [↑](#footnote-ref-34)
35. 8 U.S.C. § 1101 (a)(15)(T)(i)(III)(bb); 8 C.F.R. § 214.11 (d)(5). [↑](#footnote-ref-35)
36. Government of Canada, Protection and Assistance for Victims of Human Trafficking (2016) https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/protection-assistance-victims-human-trafficking.html; Stacie Reimer Smith, *Underutilization of the T-Visa: Comparing the T-Visa to Similar Temporary Residence Programs Around the World*, 14 Geo. J. Gender & L. 719, 733 (2013) (citing Legislative Decree No. 286 of 1998, Article 18, Italy). [↑](#footnote-ref-36)
37. Smith, *supra* note 36. [↑](#footnote-ref-37)
38. For example, T nonimmigrant status recipients should not be subjected to extra scrutiny when applying for permanent residency for simply accessing the public benefits necessary to rebuild their lives. *See* Em Puhl, Erin Quinn, and Sally Kinoshita, An Overview of Public Charge, Immigration Legal Resource Center 2 (2018), https://www.ilrc.org/sites/default/files/resources/overview\_of\_public\_charge-20181214.pdf. [↑](#footnote-ref-38)