

THE UNITED STATES' RESPONSE TO HUMAN TRAFFICKING: ACHIEVEMENTS AND CHALLENGES



**The United States Conference of Catholic Bishops/
Department of Migration and Refugee Services**

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April 2011



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Migration and Refugee Services*

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THE UNITED STATES' RESPONSE TO HUMAN TRAFFICKING: ACHIEVEMENTS AND CHALLENGES

“If slavery is not wrong, nothing is wrong.”

– Abraham Lincoln

Human trafficking is a horrific crime against the basic dignity and rights of the human person. Defined as the recruitment, transportation, harboring or receipt of persons by means of force, fraud, or coercion¹, human trafficking is a multi-billion-dollar-a-year growth industry.² In fact, it is the fastest growing criminal industry in the world, and is tied with the illegal arms industry as the second largest, after the drug-trade. Though efforts to combat it have been increasing, human trafficking has been experiencing a dramatic resurgence in recent years.³ An estimated 800,000 persons are trafficked annually within or across international boundaries, half of whom are children. According to the State Department’s 2010 Trafficking in Persons (TIP) report, 12.3 million adults and children are currently held in modern-day slavery, including forced labor and prostitution. Millions more are trafficked within their own national borders for a variety of purposes, including forced labor, bonded labor, sexual servitude, and involuntary servitude.

The United States has begun to recognize and respond to this problem, but much still needs to be done. While awareness of human trafficking is growing, the vast majority of victims remain trapped in situations of exploitation and oppression. This paper will review the progress that has been made by the United States to address the scourge of human trafficking to date; identify the areas in which U.S. efforts to prevent trafficking, protect victims, and prosecute traffickers has fallen short; and suggest steps for improving the U.S. response going forward.

BACKGROUND

Trafficking victims mostly come from less-developed countries and regions, such as Asia, India, the former Soviet Union, Central and South America, and throughout Africa. Their destinations span the globe; they often end up in Germany, Italy, the Netherlands, Israel, Australia, Japan, Canada, and the United States. While those in developing countries are the most vulnerable to this kind of exploitation, the crime of human trafficking affects virtually every country in the world. There are 127 countries of origin for trafficking victims, 98 transit countries, and 137 destination countries⁴, while uncounted numbers of people are trafficked within the borders of their own countries. Historically, trafficking has been defined largely as trade in women and children for prostitution or other forms of sexual exploitation. However, more recently the definition has been expanded to include individuals trafficked to participate in forced labor and services, along with those trafficked for the purpose of organ removal.

Victims of human trafficking are commonly linked by poverty and lack of opportunity. They are also connected by their desperation and urge to escape the double trap of privation and their perception of migration as an accessible escape route. Other factors which make individuals exceptionally vulnerable to trafficking include family disintegration; government corruption; lack of parental education; indebtedness; lack of the rule of law in the home country; lack of governments' monitoring of trade, work environments, and child labor; domestic violence; and parental discrimination favoring boys over girls. Often those who become trafficking victims seek to escape life in a dreary village or oppressive slum, with the hope of finding opportunity and a brighter future in a more developed land. In chaotic situations of mass displacement, traffickers often prey on the most vulnerable, making refugees and internally displaced persons at particularly high risk of being trafficked.

It is in these environments that human traffickers flourish, tempting unsuspecting victims with promises of employment, education, and, in some cases, love. At the end of the journey, whether across the ocean or to a nearby town, they find coercion, abuse, entrapment, and exploitation in a brothel, a massage parlor, an illicit factory, or an agricultural outpost. By the time they are rescued, if ever, they are shattered by physical, mental, and psychological abuse in the roles of prostitutes, domestic servants, or manual laborers. Many become ill with disease or become infected with HIV. Some lose their lives.

THE CATHOLIC RESPONSE TO HUMAN TRAFFICKING

The Catholic Church has long been active in the fight against human trafficking in all its forms. The Catholic response to the migration of people in general rests on the principles of Catholic social teaching, central to which is the sacredness and dignity of human life. As the United States Conference of Catholic Bishops' (USCCB) Committee on Migration put forth in the statement *On Human Trafficking* in 2007, "The movement of people across boundaries is a part of a collective human experience. There is an element of this experience that must be eradicated: the trafficking of human beings through the use of fraud, force, and coercion for the purpose of forced prostitution or forced labor. Human trafficking is a horrific crime against the basic dignity and rights of the human person. All

efforts must be expended to end it...to ensure that, one day soon, trafficking in human persons vanishes from the face of the earth."⁵

CATHOLIC SOCIAL TEACHING AND MIGRATION

This commitment to end slavery in all its forms is rooted in the Catechism of the Catholic Church. It forbids acts or enterprises that, for any reason, lead to the enslavement of human beings – to their being bought, sold, and exchanged like merchandise, in disregard for their personal dignity.⁶ During the Second Vatican Council in 1965, the Catholic Church reaffirmed its historic concern about human trafficking, stating that "slavery, prostitution, the selling of women and children, [and] disgraceful working conditions where [people] are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society...and are supreme dishonor to the Creator".⁷

Since that time, Papal teaching has reflected this concern. In his Letter to Women in 1995, Pope John Paul II stated that "Trafficking in human beings - especially women...flourishes where opportunities to improve their standard of living or even to survive are limited. It becomes easy for the trafficker to offer his own "services" to the victims, who often do not even vaguely suspect what awaits them. In some cases there are women and girls who are destined to be exploited almost like slaves in their work, and not infrequently in the sex industry, too."⁸ He pointed out the broader implications of this affront to human dignity in 2002, adding that "The alarming increase in the trade in human beings is one of the pressing political, social, and economic problems associated with the process of globalization; it presents a serious threat to the security of individual nations and a question of international justice which cannot be deferred."⁹

The U.S. Bishops have also been vocal in their opposition to human trafficking. In 2004, Bishop Thomas Wenski, then Chair of the USCCB Committee on Migration, declared that "The Catholic Church...in the United States stands ready to work with our government to end this scourge. We cannot rest until trafficking in human persons is eliminated from the globe." Addressing the need for eradicating the demand which fuels the illicit trade in human beings, The U.S.

Conference of Catholic Bishops noted that “human trafficking will never be truly defeated without eliminating the consumerism that feeds it and prosecuting those actors in receiving countries, including our own, that benefit because of the exploitation of vulnerable human beings.”¹⁰

THE U.S. CHURCH’S ANTI-TRAFFICKING WORK

Operationally, the Catholic Church has placed the elimination of trafficking as an important priority in the areas of public education, advocacy and services to trafficking victims. The Church works diligently to raise awareness within the Catholic community about the problem, including training to help diocesan staff identify and assist victims of trafficking. These awareness-raising efforts include the sponsorship of roundtables and conferences on the subject and the convening of public meetings on several occasions to educate the Catholic faithful and others on human trafficking. All of the Church’s training and education is directed toward one end: advancing the best interest of the victims. This education and training are intended to help people to identify victims when they see them, and to empower them to act on what they see.

Part of this effort is driven by the Catholic Coalition Against Human Trafficking, which consists of about twenty Catholic organizations which convene quarterly and work together on advocacy and public outreach. The coalition was instrumental in providing important input on certain provisions of the Trafficking Victims Protection Act of 2000 and its successors, the Trafficking Victims Protection Reauthorization Acts of 2003 and 2005 and the William Wilberforce Trafficking

Victims Protection Reauthorization Act of 2008, and is now preparing to weigh in on closing the gaps that still remain as the next TVPA reauthorization comes around in 2011.

The USCCB works closely with the Departments of Health and Human Services and Justice to raise awareness about this problem and to assist its victims. The U.S. government also relies on Church networks overseas to help combat trafficking and slavery. According to Ambassador John R. Miller, former Director of the U.S. State Department’s Office to Monitor and Combat Trafficking in Persons,

“the Catholic Church is already well underway in getting involved in this problem. [On a trip in 2007, I] met with Vatican officials to learn how we can work within the structure of the Catholic Church to end the demand for victims of sex trafficking. We will also work to identify Bishops around the world who are potential allies in the fight against human trafficking and slavery. I think the Church will have a special role to play, helping everyone to look at this education issue and helping address demand.”¹¹

THE U.S. RESPONSE TO HUMAN TRAFFICKING

Human trafficking is not a problem that exists merely on faraway shores and in developing countries. It is estimated by the U.S. State Department that between 14,000 and 17,500 human beings each year are trafficked into the United States to work in the sex trade or as slave labor.¹² However, it is very difficult to gauge the actual prevalence of trafficking in the United States, due to the covert nature of the crime and a

USCCB’s Migration and Refugee Services (MRS) department identifies and assists vulnerable migrating populations including refugees, Cuban and Haitian entrants, unaccompanied children and survivors of human trafficking. MRS began assisting refugees during World War I and has become the largest voluntary refugee resettlement agency in the world. MRS/USCCB provides services to survivors of trafficking in the U.S. and its territories through the USCCB Per Capita Victims Services Contract.

MRS/USCCB administers the program through partnerships with local social service organizations across the country by subcontracting with them to provide comprehensive case management services to survivors. As the central coordinating mechanism for services to foreign born trafficking victims in the United States, MRS/USCCB offers coordination of case referrals and services, training, and per-capita funding. MRS/USCCB is also responsible for monitoring 100 plus subcontractors, and partners with experts in the field to provide specialized assistance to trafficking victims. From April 2006 to January 2011, USCCB’s subcontractors served 1,966 survivors of trafficking, including 59 children, and 450 of their family members with derivative status.

lack of adequate data collection on trafficking in the United States. About one-third of foreign born victims trafficked into the country are children.¹³ U.S. citizens are also trafficked within the United States, although estimates of how many are not readily available. Women and children have been forced to work in prostitution and child pornography rings, while men, women, and children have been forced into different types of manual labor, without pay or protection. The best available data suggest that at least 100,000 U.S. children a year are victimized through the practice of child prostitution.¹⁴

Contrary to popular belief, most trafficking of foreigners into the United States is for the purposes of forced labor, not sex work. Some common areas into which foreign national victims are trafficked include domestic servitude, agriculture, manufacturing, restaurant work, janitorial services, hotel services, construction, health and elder care, hair and nail salons, and strip club dancing.¹⁵ Even though they are here legally, documented temporary workers are at particularly high risk of being trafficked, as they can fall prey to fraudulent recruitment practices in which they accrue large debts and end up in debt bondage. There is also a high incidence of trafficking among the domestic workers of foreign diplomats. The most common countries of origin for trafficking victims identified in the United States are Thailand, Mexico, the Philippines, Haiti, India, Guatemala, and the Dominican Republic. Eighty-two percent of these foreign adult victims and 56 percent of foreign child trafficking victims were labor trafficking victims.¹⁶

Domestic trafficking victims, in contrast, are more often encountered in sex trafficking situations than as forced laborers.¹⁷ More attention has been paid to domestic trafficking in the U.S. in recent years, as trafficking has traditionally been thought of as involving the crossing of an international border. Under the U.S. law defining “severe forms of trafficking in persons”, transportation or physical movement does not need to take place in order for the crime of human trafficking to occur. Further complicating the issue is the fact that women and children arrested for prostitution in the United States are not consistently screened for trafficking, and both adults forced into prostitution and children involved in it are usually treated as criminals, not as victims. Training and education of law enforce-

Rosa’s Story

Rosa was born in Honduras. When she was 16 years old, she was persuaded to go to the United States by a friend of the family, who promised her a better life and a chance to earn lots of money to send home. Though she was given a job picking fruit, she was escorted there and back every day and was not allowed to go anywhere on her own. She was never paid for her work, and was regularly drugged and abused. She wasn’t allowed medical attention when she was ill or hurt, and wasn’t allowed to leave her apartment except when she went to work.

The man who had brought her to the U.S. threatened her. He said that if she tried to escape she deported and hurt (or jailed) by the immigration authorities, or that harm would come to her family in Honduras. Eventually, Rosa managed to escape with her young son. She is now being assisted by an agency that takes care of people who have been trafficked or abused, where she receives shelter, food, clothing and advice about what to do next. She is hoping to be able to stay in the United States and start a new life.

ment is starting to change this, but there is still a long way to go.

LEGAL PROTECTIONS

The United States prohibits all forms of trafficking in persons through criminal statutes that were enacted over 150 years ago, in the wake of the U.S. Civil War, which outlawed slavery and involuntary servitude.¹⁸ In 2000 the U.S. Congress passed landmark legislation entitled the Trafficking Victims Protection Act of 2000 (TVPA), which provided the U.S. government the framework to respond to the plague of human trafficking in the United States.¹⁹ Specifically, the TVPA revamped U.S. law by making human trafficking a crime against an individual, allowing the U.S. government to focus on victims of trafficking. The government now provides funding to assist victims and issues a Trafficking (T) visa, created under the law, to provide protection and permanency to foreign born victims. Because of this law, if the crime occurred in the United States victims are able to remain in the United States and not be sent back to traffickers in their home country. The Department of Homeland Security is

authorized to give 5,000 T visas per year, but has only granted 1,168 to foreign nationals since 2001.²⁰

Despite the staggering numbers of victims of this horrific crime, the numbers of traffickers caught and punished for their crime is pitifully low. In 2009, the U.S. Department of Justice's Human Trafficking Prosecution Unit charged 114 individuals and obtained 47 convictions in 43 human trafficking prosecutions (21 labor trafficking and 22 sex trafficking). The average prison sentence imposed for federal trafficking crimes in 2009 was 13 years, and prison terms imposed that year ranged from two months to 45 years.²¹

In addition to federal laws and actions, 45 states and U.S. territories have enacted statutes for the prosecution of human trafficking. All of these states treat such an offense as a serious crime, classifying human trafficking as either a first or a second-degree felony.²² Washington State was the first to pass a law criminalizing human trafficking in 2003.²³

SERVICES TO VICTIMS

So, what actually happens to foreign national trafficking victims when they end up in the United States? Unfortunately, most trafficked individuals never escape their horrific situations. Traffickers use a variety of methods to keep their victims captive, including passport confiscation, nonpayment of wages, restriction of movement, threats to harm the victim's family, psychological abuse and manipulation, isolation from the community, and physical and sexual abuse.²⁴

Those who are fortunate enough to escape or be rescued are in immediate need of safety and security. They are terrified of the traffickers who brought them to the United States, and many show signs of post traumatic stress disorder, among other mental health problems. In addition to basics like food and shelter, they need assistance with legal issues (concerning their own immigration status and the prosecution of their traffickers), medical and mental health needs, employment, access to public benefits, and family reunification. The best way to meet these complex needs is through a comprehensive case management system staffed by trained professional social workers experienced in dealing with this population. It is all too easy for survivors without the proper support to be captured again by their traffickers, or to volun-

tarily return if their most basic needs are not being met. Providing them with a secure, safe, and nurturing environment is crucial to ensuring their survival and their return to society as contributing members.

Once those who are identified are removed from the trafficking situation, attorneys and social service agencies often have to advocate to have them interviewed and certified by law enforcement so that they receive the proper paperwork that entitles them to government assistance. Foreign national victims of a severe form of trafficking in the United States have certain rights and, once certified, are eligible for benefits including immigration relief, social services, and access to refugee benefit programs. However, social services and benefits only last a few months, and in that time service agencies – who are contracted by the federal government – must find medical help, housing, food, clothing, jobs, and counseling for them. Before victims are certified they are limited in the services they can receive, and they are not authorized to work. Due to a chronic lack of funding, there is a serious under-supply of attorneys who are available to work with this indigent population. When available, immigration attorneys work, usually on a pro-bono basis, to file immigration relief for the victim, as well as for their children or spouses.

Some cases of trafficking will be prosecuted, and some victims must testify before a court. Because involvement in the trial is time consuming and emotionally draining, some survivors suffer an emotional relapse, lose their jobs and risk losing their housing. Once their immigration application is approved, certain family members, usually children, are paroled into the United States legally as derivatives of the victim. After many years of separation, parent and child are reunited. These are happy but often stressful times, as the child and parent may not know each other well.

No one is officially tracking the lives of these survivors after they are done receiving federal benefits, but some of them continue to remain in contact with the agencies that served them. Some successful former clients own their own businesses, get married, and have children. Others remain vulnerable and find themselves in exploitative jobs and relationships. Their cycle of violence continues. But at least they know there is help available to them somewhere. Many, many more go unidentified, without hope and

Nadia's Story

In 2007, Nadia left for the U.S. to work in a summer job at a tourist resort, hoping to earn some money and learn English. When she and her friend arrived from Ukraine they were met by two Ukrainian men who were holding signs with the girls' names, and claimed to be with their soon-to-be employer. They helped the girls and their luggage into a taxi. But instead of arriving at the resort, the cab took them to a hotel, where everything changed. The men took their passports and demanded money, saying they were owed a huge sum for the girls' transportation and for arranging their employment. The girls were then forced to work off their "debt" in a strip club and, later, as prostitutes. The men controlled the girls through intimidation and threats to hurt family members back home.

Finally, local police conducted a raid on the strip club, suspecting it was doubling as a brothel. At long last, the girls had the chance to tell their stories to law enforcement officials and receive assistance while they awaited their return to Ukraine. Their escape resulted in the arrest of their traffickers, both of whom pleaded guilty and are serving time in federal prison for their crimes. Though her captors are in prison, Nadia says she will never live without fear.

with the belief that no one, anywhere, cares about them. In 2010, 801 foreign national trafficking victims and 147 of their family members received services from USCCB subcontractors, local NGOs receiving funding through the national HHS-USCCB Per Capita Services Program. Fifty-seven percent of these were men and 43 percent were women. In 2009, the Department of Justice issued grants to 27 victim assistance organizations working in conjunction with law enforcement task forces nationwide.²⁵ These grants focus on emergency assistance for foreign victims until an individual is certified or decides not to work with law enforcement. This bifurcated system, with one agency responsible for serving pre-certified victims and the other responsible for certified individuals, is cumbersome and unwieldy.

Moreover, while there has been a 210 percent increase in certifications of foreign victims over the past five years²⁶, there has been no increase in funding to serve these victims. HHS regularly runs out of funding well before the end of the year, leaving social service agencies to pick up the tab or let victims go un-served. In addition to the more than 700 foreign born (potential) victims identified by HHS-funded outreach programs in 2009, over 1,000 American citizen victims were also identified. The majority of identified U.S. citizen victims were children found in prostitution.²⁷

PREVENTION EFFORTS

Any comprehensive strategy to fight human trafficking has to attack the demand for trafficked per-

sons. As with any illicit trade, it is extremely difficult to get at the root cause of the problem. The United States has taken some important steps to address demand for commercial sex and cheap labor. For example, the U.S. Department of Labor (DOL) now publishes a list of goods from countries it has reason to believe were produced by child labor or forced labor.²⁸ DOL also carries out civil law enforcement in the workplace and targets industries that employ at-risk workers, including restaurants, construction, and agriculture. The U.S. government also focuses on prevention efforts with its government contractors, within temporary worker programs, and with U.S. and foreign diplomats, as these are areas in which exploitation and trafficking have occurred with some frequency. Public awareness campaigns are also a part of this prevention strategy; DHS conducted three extensive human trafficking public awareness campaigns in 2009. Additionally, the U.S. government provides international assistance aimed at preventing trafficking, protecting victim, and prosecuting traffickers overseas.

THE TRAFFICKING VICTIMS PROTECTION ACT²⁹

The TVPA of 2000 not only set forth the standard legal U.S. definition of human trafficking, but also established the framework for U.S. anti-trafficking efforts and created a form of legal relief for foreign national trafficking victims in the United States. Prior to its enactment, no comprehensive federal law existed to protect victims of human trafficking or to prosecute their traffickers. The U.S. Catholic Bishops praised the passage of this law at the time, signaling it as an

historic moment in the battle against human trafficking which brought worldwide attention to the phenomenon and demonstrated U.S. leadership on the issue.³⁰

The TVPA created the “3 P” approach to combating human trafficking, focusing on prevention, protection, and prosecution, and established a system for monitoring other nations’ activities that contribute to human trafficking, in the form of the State Department’s annual Trafficking in Persons, or TIP, Report. The results of the TIP report can impact non-humanitarian U.S. aid and assistance to countries with low grades for efforts to address human trafficking. In this way, the law was meant to provide an incentive for other countries to improve their record on human trafficking, the first time the United States had undertaken such an effort. The law also created greater statutory maximum sentences for traffickers, provided resources for protection of and assistance for victims of trafficking, created avenues for interagency cooperation, and established anti-trafficking education programs overseas. As defined in the TVPA, children involved in commercial sex are automatically victims of trafficking, regardless of their citizenship status and whether or not any state or international borders have been crossed.³¹

The TVPA of 2000 provided two principal types of immigration relief to foreign trafficking victims: 1) continued presence, which allows temporary immigration relief and work authorization for victims who are also potential witnesses in an investigation or prosecution and, 2) T non-immigrant status (T-visa), which allows for legal immigration status for up to four years for victims who cooperate with “reasonable” law enforcement requests for assistance with an investigation or prosecution. Testimony against the trafficker is not required, but it does count in an applicant’s favor.³² In 2009, continued presence was issued to 299 potential victim-witnesses, and 313 T visas were granted. T-visas were issued to 273 family members of victims. Approximately 500 T visa holders, including victims and their family members, became lawful permanent residents in 2009, which puts them on a path to obtaining U.S. citizenship.³³

The reauthorizations of the law in 2003 and 2005 strengthened and streamlined some of the provisions of the original law. In 2005, for example, the Department of Labor was directed to publish a list of goods

from countries that the department had reason to believe were made with child labor or forced labor in violation of international standards. This took place for the first time in September of 2009.³⁴ However, it was not until 2008 that major changes and additions were made to the U.S. anti-trafficking regime.

THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (henceforth TVPRA), which was signed into law by then President Bush on December 23rd, 2008, went a long way to strengthen protections and improve services to victims of human trafficking in the United States, especially children. Among a wide range of initiatives, the law established new programs to prevent trafficking from occurring in foreign countries where trafficking begins, widened U.S. assistance programs to U.S. citizens, and provided additional protections for trafficking victims. It also improved upon existing criminal prohibitions against human traffickers, including the creation of new criminal tools to reach unscrupulous labor recruiters.

There are some provisions in particular which were intended to help fill the gaps in the continuum of care for victims. MRS/USCCB was deeply involved in the crafting and passage of these provisions, and continues to monitor how they are being implemented and give input to the Administration and Congress as to the progress being made in the following areas.

While MRS/USCCB applauds the inclusion of many important protections for trafficking victims and children at risk of being trafficked in the TVPRA of 2008, the following changes need to be made so that the intent of the law is being carried out in practice:

- DHS should contract with NGOs with child welfare expertise to screen unaccompanied alien children for trafficking at United States borders and ports of entry;
- Return of an unaccompanied alien child from a contiguous country should be prohibited if that child would face threats to his or her life or safety upon return;

- Post-release services, including periodic home visits, should be provided to all unaccompanied children who are released from HHS custody;
- Children who have obtained U visas should be eligible for the URM program;
- Children who have received SIJS should be eligible for all refugee benefits;
- The U.S. government should work with UNHCR to identify trafficked children in need of resettlement and ensure that Best Interest Determinations are conducted for URMs; and
- The Secretary of HHS should provide interim assistance to a potential child trafficking victim until it has been determined whether or not the child is a trafficking victim.

Screening of Unaccompanied Children at U.S. Borders for Trafficking

While the Department of Homeland Security has taken steps to train its law enforcement officers, including first responder Border Patrol officers, in the identification and screening of potential victims of trafficking, more needs to be done. The TVPRA of 2008 attempted to strengthen this by mandating that, before return, a determination on a case-by-case basis be made that any unaccompanied child from a neighboring country a) is not a victim of a severe form of trafficking or at risk of being trafficked upon return, b) does not have a fear of return, and c) is able to make an independent decision to withdraw his or her application for admission to the United States. The TVPRA of 2008 also mandated the development of policies and procedures to ensure that unaccompanied children who are deported from the U.S. are safely repatriated to their country of origin.

Thus far, DHS's Customs and Border Patrol Office (CBP) has developed training materials and begun to train border patrol officers to identify trafficking victims or other particularly vulnerable minors. However, very few potential victims from contiguous countries have been identified. Migrant children arriving in the United States after difficult journeys have a hard enough time sharing their stories with trained child

welfare professionals, let alone with law enforcement personnel who are charged with preventing their entry into the country. For these reasons, we are concerned that the screening may not be effective and training in its use may not be widespread or comprehensive.

To make the screening as effective and appropriate as possible, non-governmental organizations, particularly those with trafficking and child welfare expertise, should assist in the development and implementation of the screening mechanisms for unaccompanied alien children from contiguous countries. While CBP has acknowledged that screening vulnerable children is not its area of expertise, the agency has yet to take steps to remedy this by partnering with organizations that have this capability. Because children have particular needs, it is essential that organizations with child welfare experience be involved in this screening.

Non-governmental organizations can augment the capacity of the immigration enforcement agencies responsible for this new task. Due to the inherent law enforcement functions of Homeland Security immigration enforcement officers, it is more difficult for border patrol officers to identify these vulnerable children, and the children themselves are less likely to be open and honest about their fear of return to danger in their home country or release to traffickers. NGO staff members, especially staff with child welfare expertise, are in a better position to build trust with an unaccompanied alien child who may be at risk of being trafficked, or who may be coached to avoid discussing their situation with anyone, let alone U.S. federal law enforcement officers. In addition, NGO staff could assist with separating the law enforcement function from a child vulnerability screening function. If government and civil society work together to accomplish this important task, more children at risk of trafficking and abuse will be identified and protected.

Prior to the passage of the TVPRA of 2008, unaccompanied alien children from contiguous countries were automatically returned to their home country upon apprehension by U.S. authorities. This has resulted in children being sent back to Mexico and facing harm upon their return. Under the new law, unaccompanied children are now required to be screened for the vulnerabilities listed above, and an assessment is to be made of the level of the threat they would face if returned, an assessment which must be taken into

consideration in any decision made about their repatriation.

This is an important improvement. However, these children can still be returned to their country of origin, where they may face life threatening dangers. Instead, it should be prohibited to return unaccompanied children from contiguous countries if their return would threaten their life or safety. While children migrate to the United States for many reasons, some are literally running for their lives. The U.S. should not ignore its moral and humanitarian responsibility to protect these most vulnerable children.

Enhancement of Efforts to Protect Vulnerable Children

Section 235 of the TVPRA of 2008 takes steps to strengthen the protection regime for unaccompanied alien children, who are often prey for human traffickers. The law upgraded the care and custody of these children, including the provision of safe and secure placements for children and the provision of post-release services once a child is placed with an individual or family in a less restrictive setting. It also ensures that home studies are conducted prior to the placement of a child, especially when there are concerns regarding the appropriateness of the sponsor or placement. Such sponsors could have connections to smugglers or traffickers or a history of criminal convictions, domestic violence, or drug abuse. Home studies are also now mandated for victims of severe forms of trafficking, children with disabilities, and child victims of physical or sexual abuse under circumstances that indicate a child's health or welfare has been significantly harmed.

Since 1994, MRS/USCCB has worked with the federal government to make assessments of potential sponsors of unaccompanied alien children, make placement recommendations, and provide post-release services to those children who most need support and monitoring upon their release. This ongoing support to children and families makes it much less likely that children will leave their sponsors and fall prey to traffickers or enter the local child protective system because of abuse or neglect. These services help the child access services such as counseling and pro-bono legal representation, and stress the importance of attending immigration court appointments. The law now states that these services must be provided throughout the

duration of the child's immigration court proceedings if a placement follows a home study.

HHS is currently interpreting the law too narrowly, due possibly to concerns about resources, and not all vulnerable migrating children are receiving the level of care that would best assist and protect them. In order to provide this safety net for these children as the law suggested, post-release services should be provided and should consist of in-home visits throughout the pendency of the child's removal proceedings.

HHS should also be required to conduct post-release services for all children who are released from their custody. As essential as these services are, HHS is resistant to offering them to all of the children who need them, and they currently provide them to only a small number of children. This will ensure that children who may fall victim to traffickers do not slip through the cracks after they are released from the custody of HHS.

The fact that children with a Special Immigrant Juvenile (SIJ) visa are now eligible for services in HHS' unaccompanied refugee minor (URM) program is a huge step forward. The URM program provides culturally appropriate in-home foster care and support services to some orphaned and abandoned children from other countries who are legally present in the United States. In this setting, children get the nurturing care of a family and community, as opposed to being housed in a detention-like setting. Abused, abandoned and neglected immigrant children who cannot return to their home countries previously fell through a gap in the care continuum, since they were often not accepted into state foster care but became ineligible for federal foster care once they were granted a Special Immigrant Juvenile visa.

However, children who obtain a U visa as a victim of crime are not currently eligible for unaccompanied refugee minor foster care, even if they are a victim of trafficking. Adding this category of children to the list of those eligible for benefits under the URM program would allow this very small number of unaccompanied children, who are in the country legally, to access needed basic services, and would help them integrate into local communities.

Additionally, children with SIJS, while now eligible

for URM foster care, are not able to receive all the benefits to which other unaccompanied refugee minors are entitled. Federal law requires that all legal permanent residents wait five years until they can access certain public benefits. Certain lawfully present children were exempted from this wait period with the passage of the Children's Health Insurance Program legislation in 2009. Child trafficking victims and asylees are exempt since they are eligible for refugee benefits, but this does not include children who are granted SIJS. The intent of section 235(d)(4)(A) of the TVPRA of 2008 was to allow children who have been granted SIJS to be eligible for refugee benefits, including medical care services. However, HHS has interpreted the law more narrowly than Congress intended, leaving those children without access to medical care. The law should be changed so that children with SIJS are entitled to all refugee benefits and these highly vulnerable children can get the care they so urgently need.

Situations of mass displacement, such as refugee crises, present an opportunity for vulnerable individuals, especially unaccompanied children, to fall prey to traffickers. The TVPRA of 2008 directed the United States to work with UNHCR to prevent refugees and internally displaced persons (IDPs) from being trafficked, identify unaccompanied minors at risk of being trafficked, and ensure that Best Interest Determinations (BIDs) are conducted for these children. The law further directed the United States government to facilitate resettlement of unaccompanied trafficked children if resettlement were identified as the durable solution in their best interest. However, we have to date seen no evidence that assessment of this population is underway, and no immigration status mechanism currently exists in the United States which would allow resettlement of these children to take place. This aspect of the law should be fully implemented so that these orphaned or abandoned children can be removed from dangerous situations and receive the protection to which they are entitled.

Provision of benefits to likely child victims before final victim status is determined

Prior to passage of the TVPRA of 2008, the Department of Health and Human Services (HHS) was required to consult with the Department of Homeland Security (DHS) and the Department of Justice (DOJ) and receive a positive determination that the child

was viewed by one of the other agencies as a victim of human trafficking in order for that child to receive benefits. This is a process that can take months during the time when recently discovered child trafficking victims most need support, services, and protection. In some cases which were not thought likely to culminate in successful prosecution of the traffickers, this determination was never made, despite the fact that the child was trafficked. In those cases, a child trafficking victim was never provided any of these critical services.

Section 212 of the TVPRA authorized the provision of interim assistance to child trafficking victims and reaffirms the intent of Congress that HHS not wait for authorization from other federal agencies prior to providing services or determining eligibility for services for children. The TVPRA requires that funding for services now be made available once a child victim is identified but before final eligibility determination by HHS. This is a critical time in the care of a trafficking victim, who is usually traumatized, physically and mentally abused, and insecure. While some child trafficking victims have immediate options for care placements, such as federal custody, many children in this situation do not have a stable living situation or a caretaker. Access to interim benefits allows these vulnerable survivors to receive the care they need immediately after they have left the trafficking situation, instead of having no choice but to return to their traffickers in order to meet their basic needs.

As enacted into law, the TVPRA of 2008 provides for up to 90 days of interim assistance to a child while HHS is determining whether the child is a trafficking victim. The bill provides that this interim assistance could be extended by 30 days. While this is an improvement to previous practice, the expiration of assistance after only four months leaves these children at risk of falling into the hands of traffickers and lacking in basic necessities like shelter. Rather than limiting this interim assistance to a total of 120 days, the Secretary of HHS should be given the discretion to provide that interim assistance until he or she has determined whether or not the child is a trafficking victim. It can sometimes take six months to a year or more for victims to receive a letter of eligibility for treatment as a trafficking victim, thus leaving a huge gap in services for a child victim, who would remain vulnerable to traffickers and who is likely to still be in

desperate need of critical services.

REMAINING CHALLENGES AND RECOMMENDATIONS

Since the enactment of the TVPA in 2000, the Departments of State, Justice, and Health and Human Services have made great strides in implementing the law. Because of their joint and individual efforts, general awareness about the reality of human trafficking has increased, more victims have been identified and referred for services, and more traffickers have been brought to justice. In 2008, the law was strengthened to extend additional protections to victims here in the United States and to fortify the safety net for children who are at risk of being trafficked. It also mandates increases in prevention efforts, both at home and overseas. However, more can still be done to identify, protect, and serve these victims. Based on our years of experience serving foreign born trafficking survivors in the United States, MRS/USCCB makes the following recommendations for filling these gaps and addressing the challenges that remain.

More resources should be devoted to victim identification, especially through the use of task forces and training of state and local law enforcement officials.

Considering how many victims are estimated to be trafficked into the United States each year, it is surprising that so few are identified. This fact points to the biggest challenge and area for improvement with respect to human trafficking in the United States: victim identification. In addition to the training of law enforcement personnel, more needs to be done to educate the general public on this issue. This is especially needed in the case of teachers, medical professionals, clergy, and others who regularly come into contact with, and often have the trust of, people outside of their homes. However, training of law enforcement should be the highest priority. Most victims of human trafficking who have been referred to NGOs and other service providers have been initially identified by Federal and local law enforcement.³⁵

Anyone can come into contact with a victim, but they are often hard to recognize and will generally not self-identify as victims. The methods traffickers use to keep foreign national victims in bondage, such as threats to turn the victim over to immigration authorities or harm the victim or his/her family members,

keep victims in a perpetual state of fear. Victims often are not aware that they have rights and don't trust law enforcement. In other cases, they have developed "Stockholm Syndrome", in which the captive feels loyalty, or even emotional attachment, to the captor, regardless of the danger or risk in which they have been placed. This presents a considerable challenge to victim identification. It is extremely difficult to identify oppressed people who live in the shadows in our communities, not knowing they can be helped. Even more difficult is finding those who are fearful of what will happen to them if they are found.

While the reauthorization of the TVPA in 2003 included a provision which allows referrals by state and local law enforcement authorities of trafficking victims for certification, federal guidance on this provision has not been forthcoming. The TVPRA of 2008 took this a step further by requiring law enforcement to refer child trafficking victims for care. However, we have found that many federal, state and local officials, including Border Patrol agents, are unaware of the certification process and services available to trafficking victims. While we applaud increased efforts in recent years to train Border Patrol agents in victim identification, many agents are still following procedures which would not enable them to recognize a potential trafficking victim. Since state and local authorities as well as U.S. Custom and Border Protection officials often encounter trafficking rings and victims without recognizing them as such, more education should be provided to federal authorities and by the federal government to state and local governments for this purpose.

In addition to a public awareness campaign and training of law enforcement officials, more resources need to be invested in local anti-trafficking task forces. An emerging best practice model, these task forces combine the resources and know-how of local, state and federal law enforcement agencies, local and federal prosecutors, as well as NGOs and victims' service organizations. In fact, the majority of the documented cases of domestic trafficking have been identified as a result of law enforcement task force identifications.³⁶

Services should be made available to victims from the point they are rescued until they are self-sufficient and in good health.

For those who have been identified, it would benefit them greatly to be able to receive survivor services for a longer period of time. It is much more likely that a person who has been trafficked will re-enter an exploitative relationship, face economic hardship, or suffer ongoing medical or mental health problems if their support system. Currently, pre-certified victims are limited to nine months of services, while the service period for certified victims is a mere three months. Support programs provide for initial health screening, health-care, employment referral and other services, but do not follow the victim beyond the initial stages of assistance.

The lack of flexibility in the timing of service delivery is highly problematic. If a victim gets certified quickly, they receive fewer services than those for whom the process takes longer. It would greatly benefit victims if the programs serving them had the flexibility to provide the services when the individual needs them, regardless of whether or not they've yet been certified.

There are a number of reasons certified foreign national trafficking victims would benefit greatly from a longer service period. First of all, participation in the criminal investigation and trial often delays self-sufficiency. Due to the time required of the victim witness by law enforcement and the U.S. Attorney, as well as the anxiety, acute stress, and re-traumatization suffered by the victim as they have to continually re-tell their story and anticipate facing the trafficker, clients are often unable to maintain employment and, therefore, face eviction. Additionally, the lack of a familial and social support network makes it more difficult for the client to quickly secure housing, employment, and medical and mental health services.

The application process for immigration relief via the T visa is lengthy and complex. In many states, U.S. attorneys prosecuting cases have advised immigration attorneys to delay the filing of the T visa until the culmination of the trial to prevent information in the T visa from becoming discoverable. At this point, the client is often no longer eligible for services, increasing the likelihood that the client may not ever apply for the T visa and will thus become undocumented, putting them at risk for trafficking.

While trafficking victims are currently eligible for three months of basic services after victim

certification, the length of the service period should be two to three times longer so that victims can utilize necessary services until they are back on their feet. A longer, flexible service period would better enable them to enter society as healthy, productive individuals. This is their opportunity to start over and make a better life for themselves after suffering unimaginable hardship. The United States has come a long way in protecting these traumatized individuals. It would be a shame not to support them during this essential period of integration into American society.

More funding should be made available to victims of human trafficking.

In the TVPRA of 2008, Congress appropriated funds for services to foreign born trafficking victims through the Department of Health and Human Services and the Department of Justice through 2011, the amount allocated falls far short of the need. In fact, while the TVPRA of 2008 authorized \$12.5 million for foreign born trafficking victims to HHS, only \$9.8 million was appropriated in 2009 and 2010, respectively. That funding level has not risen since ORR first began providing services to human trafficking victims. MRS/USCCB recommends an appropriation of \$17 million for foreign national trafficking survivors, including not less than \$12 million for victim services, an amount which would allow for a longer service period, more intensive public education and training of law enforcement, and the expansion of services to other categories of trafficking victims, namely U visa holders and family member derivatives of T visa holders.

As human trafficking becomes more public and more victims are identified, more funding is needed to provide services to trafficking victims. Due to competing interests and limited funds, HHS is compelled to set limitations on the length of services for foreign national victims, leaving them vulnerable to potential exploitation and undocumented status. Trafficking victims, traumatized by their experience, require comprehensive care, not just emergency assistance and help in finding a job. Because the TVPRA reauthorization of 2005 expanded programs to assist U.S. citizen and permanent resident victims, HHS has needed to serve a higher number of victims in recent years, while the number identified continues to grow.

Passage of the TVPRA of 2008 has again increased the

number of victims served. At the same time, current funding levels are not adequate to serve the number of victims that request them, and those that are being served would benefit greatly from a longer service period. HHS regularly runs out of funding for trafficking services before the service year is over. In fact, during each of the past four years, HHS was unable to serve all the clients who were eligible for services, and ran out of funding before the end of each year. MRS/USCCB, as the sole entity to contract with the federal government to provide these services, covered this shortfall with funding reserved from program efficiencies, thus ensuring that no clients went without services. Over those four years, \$429,000 of USCCB's own funds were used to cover service periods that HHS was unable to pay for.³⁷ Additionally, HHS should direct more of their anti-trafficking funds to services for victims instead of toward infrastructure needs.

U Visa recipients and paroled family members of trafficking victims should be eligible for trafficking victims' services and work authorization.

Currently, trafficking victims who are granted a U visa as a victim of crime are not eligible for trafficking victims' services. While they are legally allowed to work, they cannot access any benefits at all until they are finally granted Legal Permanent Resident status. In some cases, pre-certified trafficking victims who have been enrolled in a victims' services program end up having to leave the program and cease to receive services once they are granted a U visa. These trafficking victims are being unfairly punished for the fact that they have been granted another form of legal relief. This leaves them even more vulnerable to being re-trafficked or exploited, since they may feel they have nowhere else to turn to meet their basic needs.

Family members of trafficking victims must wait until they receive T visa derivative status, which can take over a year, to be eligible for trafficking victims' services and work authorization. These family members are those who are vulnerable in their home countries because of safety concerns and lack of financial support by the family breadwinner, who is often the trafficking victim himself.³⁸ While the U.S. government is able to bring these family members to the United States as humanitarian parolees prior to their receipt of T visa derivative status, these family

members are not eligible for services and do not have the authorization to work legally in the United States.

In order to meet all victims' basic needs and prevent their further exploitation, U visa recipients and trafficking victims' family members who are paroled into the United States should be eligible for benefits to the same extent as trafficking victims, and trafficking victims' family members who are paroled into the United States should receive work authorization.

Federal agencies should better coordinate efforts, especially in the certification, protection, and care of victims.

The creation of a State Department Office to Monitor and Combat Trafficking in Persons in the TVPA has helped focus the efforts of the U.S. government in the last several years. The initiatives undertaken by the office include an interagency task force to coordinate efforts and initiatives to combat trafficking and the sponsorship of conferences to educate the public and others about the issue. The office's annual Trafficking in Persons report, which identifies sending countries and holds them accountable for not addressing the issue in their countries, has also been quite helpful in pressuring other countries to improve their anti-trafficking efforts.

Despite significant progress in this area since 2000, coordination between federal agencies, such as the Department of Homeland Security, the Department of Justice and the Department of Health and Human Services, could be improved. For example, information on victims and prosecutions should be more readily shared between the agencies, and questions about implementation of the law should be jointly considered and addressed. Increased collaboration between these agencies and the non-governmental agencies that serve trafficking victims is also needed.

Federal agencies should homogenize data collection on trafficking victims.

Each federal agency that works to combat human trafficking and serve trafficking victims currently has its own data collection mechanism, and that data collection has been spotty to date. This makes it difficult to correctly assess the number of victims identified, certified and served, and makes protecting victims a

challenge. In terms of service provision, HHS and DOJ programs do not use the same data collection method, and not all survivors are served by these two agencies. In addition, some states fund services for survivors and may have their own data collection mechanisms. For these reasons, HHS should, in conjunction with DOJ and DHS, develop a joint data collection instrument and database for collecting and analyzing data about trafficking victims who are served by their respective programs. At a minimum, the instrument should include a unique client identifier, demographic information, an assessment of the client's needs, information about client expenditures, and information about the outcome of services.

ORR/HHS should continue to utilize NGOs and a centrally coordinated case management model to best serve trafficking victims.

In the realm of service provision, the United States has developed a solid foundation for trafficking victim services. A per-capita mechanism administered through a mission-driven agency with established relationships and expertise allows the federal government to maximize its funds, build a national infrastructure for response, and provide direct service agencies with a national contact for education and consultation. A centrally-administered program ensures efficiency and the ability for national, standardized data collection. By partnering with an NGO with experience in administering and monitoring federal programs, the government ensures accountability of federal funds and the delivery of quality services. In its 30-year history of service provision to vulnerable migrants, MRS/USCCB has found a public/private partnership to be essential in fulfilling its mission to serve vulnerable populations. The government benefits from the unique position of the NGO to identify gaps in service, pool resources and advocate for necessary programmatic and legislative improvements. MRS/USCCB recommends that the government continue to seek the expertise of NGOs as it focuses on improving trafficking victim services.

CONCLUSION

The issue of trafficking in persons is one of the most important human rights issues facing the world today. The United States has taken significant steps in the past several years to address this problem. The historic passage of trafficking legislation in 2000 established the framework for the U.S. response to trafficking, and places the United States as a moral leader in the effort to eradicate the scourge of trafficking from the face of the earth. Victims have been identified and cared for, and traffickers have been deterred at home and overseas. However, there is so much more we can and must do.

The upcoming 2011 reauthorization of the Trafficking Victims Protection Act presents an opportunity to make great strides toward the elimination of human trafficking. The U.S. Catholic Bishops will continue to work toward that goal, and look forward to partnering with the United States government and the international community to put an end to the very worst kind of exploitation: the buying and selling of human beings. No one should have to endure this modern-day form of slavery, and the United States should do everything in its power to put an end to this practice.

ENDNOTES

- ¹ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, otherwise known as the Palermo Protocol, was developed in 2000 and represents the consensus of the international community on the definition of human trafficking. Per the Palermo Protocol, “Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs”. The Trafficking Protocol entered into force on 25 December 2003. By June 2010, the Trafficking Protocol had been signed by 117 countries and 137 parties. – UNDOC – Signatories to the CTOC Trafficking Protocol.
- ² Catholic Relief Services, “Human Trafficking Has Global Reach”. <http://crs-blog.org/human-trafficking/>.
- ³ Ibid.
- ⁴ UN Office on Drugs and Crime, Trafficking in Persons: Global Patterns: April 2006.
- ⁵ USCCB Statement “On Human Trafficking”, 2007.
- ⁶ Paragraph no. 2414, www.ipjc.org.
- ⁷ Guadium et Spes, 1965, www.ipjc.org.
- ⁸ <http://www3.villanova.edu/mission/CSTresource/trafficking/front.htm>.
- ⁹ Letter on the Occasion of the “Twenty-First Century Slavery – The Human Rights Dimension to Trafficking in Human Beings” Conference, 2002.
- ¹⁰ USCCB Statement, “On Human Trafficking”, 2007.
- ¹¹ <http://www.renewamerica.com/columns/kralis/060804>.
- ¹² 2009 Trafficking In Persons (TIP) Report. <http://www.state.gov/g/tip/rls/tiprpt/2009/>.
- ¹³ Based on estimates by the U.S. government of the numbers of all trafficking victims and comparing those figures with widely cited figures of foreign-born children in the sex trade in the United States, MRS/USCCB estimates conservatively that about one-third of foreign born victims trafficked into the country are children.
- ¹⁴ The National Report on Domestic Minor Sex Trafficking. Shared Hope International, 2009. http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf.
- ¹⁵ 2010 Trafficking In Persons (TIP) Report. <http://www.state.gov/documents/organization/142984.pdf>.
- ¹⁶ Ibid.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ In the TVPA, Congress defines severe forms of trafficking in persons 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 (8 U.S.C. § 1101).
- ²⁰ <http://fightslaverynow.org/why-fight-there-are-27-million-reasons/the-law-and-trafficking/trafficking-victims-protection-act/trafficking-victims-protection-act/>.
- ²¹ 2010 TIP report.
- ²² ICF “Prosecuting Human Trafficking Cases” Report <http://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf>
- ²³ <http://www.atg.wa.gov/HumanTrafficking.aspx>.
- ²⁴ 2010 TIP report.
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ Ibid.

²⁹ Ibid.

³⁰ The TVPA originally became law in 2000. It was subsequently reauthorized in 2003, 2005, and 2008.

³¹ Statement of Bishop Nicholas DiMarzio, October 2000.

³² National Report on Domestic Minor Sex Trafficking, Shared Hope International, 2009, http://www.sharedhope.org/files/SHI_National_Report_on_DMST_2009.pdf.

³³ 2010 TIP report.

³⁴ Ibid.

³⁵ Ibid.

³⁶ "Human Trafficking Into and Within the United States: A Review of the Literature", Clawson, Dutch, Solomon and Grace, August 2009; aspe.hhs.gov.

³⁷ "Study of HHS Programs Serving Human Trafficking Victims", <http://aspe.hhs.gov/hsp/07/HumanTrafficking/Final/index.shtml>.

³⁸ MRS Anti-Trafficking Services Reflections Paper, 2010.

³⁹ Ibid.