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# A Light in the Dark--Creating Hope for Victims of Trafficking with HIV/AIDS

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WRITING COMPETITION 2004-2005

MORGAN HONEYCUTT

*A Light in the Dark – Creating Hope for Victims of Trafficking with HIV/AIDS*

## **A Light in the Dark—Creating Hope for Victims of Trafficking with HIV/AIDS**

There's another humanitarian crisis spreading, yet hidden from view. Each year, human beings are bought, sold or forced across the world's borders. Among them are hundreds of thousands of teenage girls, and others as young as five, who fall victim to the sex trade. This commerce in human life generates billions of dollars each year . . . . There's a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of the sex trade see little of life before they see the very worst of life—an underground of brutality and lonely fear. Those who create these victims and profit from their suffering must be severely punished. Those who patronize this industry debase themselves and deepen the misery of others. And governments that tolerate this trade are tolerating a form of slavery.<sup>1</sup>

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It is nearly impossible to imagine the fear and hopelessness victims of trafficking face. Millions of women, children, and men are enslaved in sexual or labor bondage with no respite in sight all over the world. However, their collective story and rising voice must be heard, and answered. In the ever-evolving world we live in, sex and slavery remain linked together still. Victims of trafficking face many complex social and legal barriers attendant to their slavery experience. Uncertain legal status and inadequate healthcare only scratch the surface of their pain and suffering. Such a complex set of issues demands a truly innovative approach to the age-old tradition of linking slavery and sex.

During the last year, the U.S. government estimated that 600,000 to 800,000 people were trafficked across transnational borders worldwide. This is a conservative

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<sup>1</sup> George W. Bush, Address to the United Nations General Assembly (Sept. 23, 2003), *available at* <http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html>.

estimate, however, as only a very small fraction of cases are discovered and reported.<sup>2</sup> Analyses of the data reveal that 80 percent of the victims trafficked across international borders are female and 50 percent are children—70 percent of those females are trafficked for sexual exploitation.<sup>3</sup>

Estimates of people trafficked into the United States ranged from 14,500 to 17,500.<sup>4</sup> Human trafficking has severe and lasting impacts on both governments and victims. Trafficking is a serious human rights violation and a crime; it promotes social deterioration and endangers public health.

Although some form or another of human trafficking occurs in practically every corner of the world, for the purposes of this paper, I will focus on the ramifications of HIV/AIDS infection in victims of trafficking in the United States. As the HIV/AIDS crisis continues to grow, victims of trafficking face increasingly difficult obstacles to gaining legal status and healthcare in this country. The first portion of this paper will describe the history of trafficking and prostitution and the HIV/AIDS epidemic. The second portion will discuss current legislative action regarding trafficking. The third portion will analyze many of the complex issues victims of trafficking face—principally the effect of HIV/AIDS infection on legal status. The final portion of the paper will consider creating and implementing new legislation to further protect and aid victims of trafficking and HIV/AIDS.

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<sup>2</sup> Amy Sommer, *Modern-day Slavery in America*, 1 ISSUE 7 (Oct. 2004), at <http://www.issueonline.org/files/issue7.pdf>.

<sup>3</sup> U.S. Department of State, *TRAFFICKING IN PERSONS REPORT*, at 15 (June 2004) [hereinafter *REPORT*], available at <http://www.state.gov/g/tip/rls/tiprpt/2004/>.

<sup>4</sup> See *id.* at 9.

## **I. Finding the Nexus: Diagnosing the Link Between Human Trafficking and HIV/AIDS Infection**

Global human security and development is seriously threatened as the HIV/AIDS epidemic steadily spreads within a climate of stigma, discrimination, denial, and ignorance. As HIV and AIDS wreak devastation on the world's population, human trafficking threatens the reverence for human dignity and liberty that governments and individuals around the world have strived to achieve for centuries. HIV/AIDS has a two-tier relationship with development.<sup>5</sup> First, poverty, illiteracy, gender inequality, and unequal access to resources and information enhance the vulnerability of people, particularly women, to infection and reduce their capacity to protect themselves.<sup>6</sup> Second, the economic costs of sickness and death from HIV/AIDS affect individuals, communities, nations, and the world as a whole. This destruction only pushes people further into the cycle of poverty, exploitation, and susceptibility.<sup>7</sup>

As the epidemic continues to spread, the link between trafficking and HIV grows stronger. Among rural and impoverished areas especially, the nexus of poverty, HIV, and trafficking of persons within and across borders creates ever-widening circles of insecurity that disproportionately threaten the lives of women and children and further impoverish individuals through sickness, loss of livelihood and rejection by society.<sup>8</sup> An examination of the socio-economic and developmental impact of trafficking reveals that

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<sup>5</sup> YOUANDAIDS, The HIV/AIDS Portal for Asia Pacific and the United Nations Development Programme (2004), at [www.youandaids.org/Themes/Trafficking.asp](http://www.youandaids.org/Themes/Trafficking.asp).

<sup>6</sup> See *id.*

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

<sup>8</sup> Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime* (Nov. 1999), available at [www.odci.gov/csi/monograph/women/trafficking.pdf](http://www.odci.gov/csi/monograph/women/trafficking.pdf).

trafficked women and girls are most vulnerable to sexual violence based on factors such as poverty and gender inequality.<sup>9</sup>

The vulnerability of women and girls is influenced by many factors. Social inequality dictates women's inferiority throughout their lives. Disproportionate access to opportunities in education, labor, healthcare, and religious and sexual freedom leave women at an immediate disadvantage.<sup>10</sup> Women's knowledge about their bodies and their ability to control sexual behavior both inside and outside marriage directly affects the way in which they view their worth within the context of the social structure. Specifically, this disempowerment filters into every aspect of a woman's life, leaving her with few options and a tremendous sense of powerlessness. Trafficking, gender, and HIV/AIDS are thus related in the following ways:

1. Trafficking is part of a pattern of migration, within and across countries, which removes migrants from the protection of their communities and severs them from their systems of social support. These factors are recognized as heightening vulnerability to HIV/AIDS.
2. Caught in the web of trafficking and sexual abuse, those affected face an increased risk of HIV/AIDS on account of lack of control over their working and living conditions, including sexual relations.
3. Common societal responses to those affected by HIV/AIDS as well as trafficking are strongly impacted by stigmatization, discrimination and further marginalization. These responses in turn undermine the basic rights and freedoms of the affected individuals, including the right to mobility and residence, the right to essential services, right to confidentiality, right to free association, and sexual and reproductive rights.<sup>11</sup>

Women have virtually no alternatives amid widening and deepening cycles of poverty and barred access to information and assistance. Countries in which the social and

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<sup>9</sup> YOUANDAIDS, *supra* note 5.

<sup>10</sup> *See id.*

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

political structures are rooted in patriarchal rule and ideology are hesitant to acknowledge, let alone address, the unequal status of women. Therefore, until the traditional and distressing views of women's worth and alarming poverty rates are attacked, the relationship between HIV/AIDS infection and human trafficking will continue to grow.

## **II. History**

### **A. Prostitution**

Prostitution is often said to be the oldest profession in the world. Indeed, prostitution has been an integral part of civilization throughout recorded history. Prostitution is, in its plainest form, an exchange of sexual services for money or goods. From the harlots of the Old Testament, to the geishas of the Far East, to the courtesans of Venice, prostitution has been a fundamental part of culture and human sexuality for centuries. Although, for many of us, prostitution remains an unseen and perhaps unsightly part of our society, it is inescapable.

The vast majority of women, men, and children engaged in prostitution are driven there by poverty, war, and economic dislocation, or in the case of trafficking, by coercion. . . . [P]eople turn to prostitution when there is no viable alternative to meeting basic needs, such as food, clothing, and shelter for themselves and their families.<sup>12</sup>

Prostitution does not exist, or thrive, because women simply want to trade their flesh and bones and souls for a living. Prostitution exists because of the rapidly expanding power of the global sex industry, disparate economic opportunities, and unending social crises that essentially force women to sell themselves to survive. Poverty

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<sup>12</sup> Center for Health and Gender Equality, *Working with Women in Prostitution: A Critical Dimension of HIV Prevention* (April 2003), available at <http://www.genderhealth.org/pubs/SexWorkersHIVPreventionApr2003.pdf>.

and prostitution are undeniably linked, and prostitution and trafficking are incontrovertibly linked as well.

Historically, the world has viewed prostitutes as women who are unclean, debase, and immoral. Perhaps prostitutes hold the same social value today that slaves have held in the past. However, this notion completely neglects the fact that most prostitutes have been victims their whole lives.

According to a national study, seventy-five percent of all women in prostitution were victims of incest and/or physical abuse as children.<sup>13</sup> Women who fall prey to prostitution may very well be women who have been victims of some form of abuse or another their entire lives. In a study of prostitution in the United States, Thailand, Turkey, Zambia, and South Africa, sixty-two percent reported being raped in prostitution, seventy-three percent reported having experienced physical assault in prostitution, seventy-two percent were currently or formerly homeless, and ninety-two percent said they wanted to escape prostitution immediately.<sup>14</sup> Acknowledgment of these dire statistics and action to ensure true equality for women will help to build a healthier and safer future for women and children everywhere.

It is not the women who turn to prostitution who are the problem; they are not spreaders of disease and moral corruption. It is the sex industry and the mass male consumption of women and children in prostitution that continues the cycle of poverty and violence and thus feeds the burgeoning trafficking industry.

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<sup>13</sup> Veronica's Voice, available at <http://www.veronicasvoice.org/home.asp> (working to help prostituted women).

<sup>14</sup> Melissa Farley et al., *Prostitution in Five Countries: Violence and Posttraumatic Stress Disorder* (1998), available at <http://www.prostitutionresearch.com/factsheet.html>.



## B. Trafficking

According to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, trafficking is,

- (a) The recruitment, transportation, transfer, harboring or receipt of persons, by means of 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.<sup>15</sup>

According to the U.S. Victims of Trafficking and Violence Protection Act of 2000, traffickers lure their victims by promising women and girls jobs as nannies, maids, factory and restaurant workers, sales clerks, dancers, and models.<sup>16</sup> Traffickers also buy young women and children from poor families and then sell them into prostitution and forced or bonded labor.<sup>17</sup> Victims are ripped from their homes and shipped to unfamiliar destinations.<sup>18</sup> They are separated from their family and friends, isolated from their

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<sup>15</sup> *The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, G.A. Res. 55/25, U.N. GAOR, 55<sup>th</sup> Sess., Annex II, Agenda Item 105, at 32, U.N. Doc. A/55/383 (2001) [hereinafter *Protocol*].

<sup>16</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(4) (Oct. 28, 2000) [hereinafter TVPA].

<sup>17</sup> See *id.* § 102(b)(4).

<sup>18</sup> See *id.* § 102(b)(5).

established communities of protection and support, often in foreign countries where they do not speak the language.<sup>19</sup>

Victims trafficked for sexual exploitation suffer physical and emotional damage from premature sexual activity, forced substance abuse, and exposure to sexually transmitted diseases including HIV/AIDS. Traffickers around the world use a common set of tactics to trap their victims in exploitative situations: physical force, threats of physical force, deception, fraud, intimidation, isolation, debt bondage, threats of deportation, and threats to family members.<sup>20</sup>

Human trafficking is increasing at an alarming rate. Today, it is the third largest form of transnational illegal trade after drugs and arms.<sup>21</sup> Corruption in the governments of origin, transit, and destination assists and supports trafficking, which threatens the national and international rule of law.<sup>22</sup> It is vital for the U.S. government to take a global initiative and aggressively address human trafficking in all of its horrific forms immediately.

### **C. HIV/AIDS Infection**

The acquired immunodeficiency syndrome (AIDS) was first reported in the United States in 1981 and is now a major worldwide epidemic.<sup>23</sup> AIDS is caused by the human immunodeficiency virus (HIV), which progressively and systematically destroys

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

<sup>20</sup> Wendy Patten, U.S. Advocacy Director of Human Rights Watch, Testimony before the S. Comm. before the Judiciary Subcomm. on the Constitution, Civil Rights, and Property Rights (July 7, 2004), available at <http://hrw.org/english/docs/2004/07/15/usdom9075.htm>.

<sup>21</sup> Guria, at <http://www.guria.org/> (organization working to combat trafficking and prostitution).

<sup>22</sup> TVPA, *supra* note 16, § 102(b)(8).

<sup>23</sup> U.S. Department of Health and Human Services, *HIV Infection and AIDS: An Overview* (October 2003), available at [www.niaid.nih.gov/factsheets/hivinf.htm](http://www.niaid.nih.gov/factsheets/hivinf.htm).

the body's ability to fight off infection and certain cancers by killing or damaging cells of the immune system.<sup>24</sup>

Individuals with AIDS may get opportunistic infections, which are life-threatening diseases caused by microbes such as viruses or bacteria that are not usually harmful to healthy people. Usually, it is an opportunistic infection, such as pneumonia, that eventually kills individuals living with AIDS. This is because their immune system becomes so compromised from the disease that their bodies cannot fight off infection.

AIDS is pervasive and indiscriminating. Since it was discovered in the early 1980s, more than 830,000 cases have been reported in the United States.<sup>25</sup> Today, there may be as many as 950,000 Americans infected with HIV, and one-quarter of these individuals are unaware of their infection.<sup>26</sup> At the global level, the number of people living with HIV continues to grow—from 35 million people in 2001 to 38 million in 2003.<sup>27</sup> In 2003, almost 5 million people became infected with HIV, and nearly 3 million people died from AIDS.<sup>28</sup> More than 20 million people worldwide have died since the first cases of AIDS were identified in 1981.<sup>29</sup> HIV and AIDS affect people all over the world, in every country and in every walk of life.

### **1. Transmission**

The HIV virus is transmitted through sexual intercourse, blood transfusions, sharing HIV-contaminated needles or syringes, and mother-to-child transmission during birth. The most common mode of transmission is having unprotected sex with an infected

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<sup>24</sup> *See id.*

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

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

<sup>27</sup> Report on the Global AIDS Epidemic, Joint United Nations Project on HIV/AIDS (UNAIDS), at 13 (June 2004).

<sup>28</sup> *See id.*

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

individual. HIV is also spread through contact with infected blood. Before donated blood was screened for evidence of HIV infection and before heat-treating techniques to destroy HIV in blood products were introduced, the virus was transmitted through transfusions of contaminated blood or blood components. Today, because of screening and treatment processes, the possibility of contracting HIV from transfusions is very unlikely.<sup>30</sup>

Additionally, intravenous (IV) drug users often contract HIV by sharing needles or syringes contaminated with blood from infected individuals. However, it is rare for a patient or a health care provider to contract HIV through accidental sticks with contaminated needles or other medical instruments.<sup>31</sup>

HIV may also be transmitted from mothers to their babies during pregnancy or childbirth. Approximately one-quarter to one-third of all babies born to untreated pregnant women infected with HIV will contract the virus.<sup>32</sup> Infected mothers can also transmit HIV to their babies through breast-feeding. If the mother takes the drug AZT during pregnancy, and the baby is delivered by cesarean section, she can reduce the chances her baby will be infected with HIV to a rate of one percent.<sup>33</sup>

## **2. Diagnosing AIDS**

The term AIDS applies only to the most advanced stages of HIV infection.<sup>34</sup> The Centers for Disease Control (CDC) has developed official criteria for the definition of AIDS and is responsible for tracking the spread of AIDS in the United States. The CDC's definition of AIDS includes all HIV-infected individuals with fewer than 200 CD4

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<sup>30</sup> U.S. Department of Health and Human Services, *supra* note 23.

<sup>31</sup> *See id.*

<sup>32</sup> *Id.*

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

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

positive (CD4+) T-cells per cubic millimeter of blood (healthy adults usually have CD4+ T-cell counts of 1,000 or more).<sup>35</sup> Additionally, the CDC definition includes twenty-six clinical conditions that commonly affect people with advanced HIV disease.<sup>36</sup> Most of these conditions are opportunistic infections that do not usually have an effect on healthy people. However, because their immune systems are so ravaged by HIV that their bodies cannot fight off certain bacteria, viruses, fungi, parasites, and other microbes, these infections are frequently severe and can be fatal to individuals living with AIDS.<sup>37</sup>

During the course of HIV infection, most people experience a gradual decline in the number of CD4+ T-cells.<sup>38</sup> However, sudden and drastic drops in CD4+ T-cell counts may occur in others.<sup>39</sup> An individual with CD4+ T-cells above 200 might experience some early symptoms of HIV, while others may have no symptoms even though their CD4+ T-cell count is well below 200.<sup>40</sup>

### **3. Treatment**

When AIDS first surfaced in the United States, there was no medication to combat the underlying immune deficiency and few treatments existed for the resulting opportunistic diseases.<sup>41</sup> But researchers have developed drugs during the last 10 years that fight both HIV and its associated infections and cancers.<sup>42</sup>

Today, a range of drugs has been approved by the U.S. Food and Drug Administration (FDA) for treating HIV infection. The first class of drugs, called

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

<sup>36</sup> *Id.*

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

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

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

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

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

<sup>42</sup> *Id.*

nucleoside reverse transcriptase (RT) inhibitors, or nucleoside analogs, interrupts an early stage of the virus making copies of itself, which may slow the spread of HIV in the body and delay the start of opportunistic infections.<sup>43</sup>

Many HIV/AIDS patients take a variety of drugs, often called a cocktail, to more effectively combat their disease. The FDA has also approved a second class of drugs, called protease inhibitors, which interrupt virus replication at a later step in its life cycle. Health care providers can prescribe non-nucleoside reverse transcriptase inhibitors (NNRTIs), in combination with other antiretroviral drugs.<sup>44</sup> Because HIV can become resistant to any of these drugs, providers must use a combination treatment to effectively suppress the virus.<sup>45</sup> When RT inhibitors and protease inhibitors are used in combination, it is referred to as highly active antiretroviral therapy, or HAART, and may be used by people who are newly infected with HIV as well as people with AIDS.<sup>46</sup>

HAART reduces the amount of virus circulating in the blood to nearly undetectable levels.<sup>47</sup> While it is not a cure, it can greatly improve the health of many individuals with AIDS.<sup>48</sup> However, researchers have shown HIV may remain in hiding places, such as the lymph nodes, brain, testes, and retina of the eye, even in patients who have been treated.<sup>49</sup> HAART has been credited as being a major factor in significantly reducing the number of deaths from AIDS in the United States.<sup>50</sup>

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

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

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

### **III. Current Legislation Impacting Victims of Human Trafficking**

#### **A. International Treaties Designed to Protect Human Rights and Freedoms**

Although the U.S. government, the United Nations, and various other countries around the world have passed legislation against human trafficking, further criminalization and punishment is desperately needed. The United States has taken the lead in drafting and passing comprehensive legislation addressing prevention and protection for victims in addition to prosecution of traffickers.<sup>51</sup> The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) was originally signed by 20 countries in 1985.<sup>52</sup> The Convention, in its preamble, illustrates the international responsibility to protect all humans from inhumane treatment:

The States Parties to this convention,  
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world,  
Recognizing that those rights derive from the inherent dignity of the human person,  
Considering the obligation . . . to promote universal respect for, and observance of, human rights and fundamental freedoms,  
Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.  
Have agreed as follows . . . .<sup>53</sup>

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational

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<sup>51</sup> Secretary of State Madeleine K. Albright, Remarks on *America's Commitment*, Marking International Women's Day and Women's History Month (Mar. 30, 2000), available at <http://secretary.state.gov/www/statements/2000/000330a.html>.

<sup>52</sup> *The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984).

<sup>53</sup> Preamble to *The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984).



Organized Crime (Protocol) was signed in 2000.<sup>54</sup> The Protocol recognized the need for an international response to the significant threat human trafficking poses to victims' human rights:

*The States Parties to this Protocol,*

*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit, and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected . . .<sup>55</sup>

Over eighty signatory nations who created domestic laws in response to the Protocol looked to the United States and its legislation as a model.<sup>56</sup> This means U.S. legislation and action are worthy of extra scrutiny and attention. The United States signed the Convention and the Protocol in December 2000 and President Bush submitted them to the Senate for advice and consent to ratification.<sup>57</sup> The United States ratified the Convention,<sup>58</sup> but has yet to ratify the Protocol.<sup>59</sup> Currently, the United States is taking specific steps to address the gruesome fate of thousands of trafficking victims.<sup>60</sup>

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<sup>54</sup> *Protocol*, *supra* note 15.

<sup>55</sup> *See id.*

<sup>56</sup> Kelly E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 No. 2 Hum. Rts. Brief 30 (2004).

<sup>57</sup> REPORT, *supra* note 3, at 261.

<sup>58</sup> International Rehabilitation Council for Torture Victims, Campaign for the Ratification of the UN Convention Against Torture, available at <http://www.irct.org/usr/irct/home.nsf/unid/BKEN-5YPF3N>.

<sup>59</sup> United Nations Office on Drugs and Crime, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, available at

[http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>60</sup> REPORT, *supra* note 3, at 6.



## **B. Action Taken by the United States to Protect Victims of Human Trafficking**

Slavery and involuntary servitude have been outlawed in the United States since the Thirteenth Amendment to the Constitution was ratified in 1865.<sup>61</sup> Yet covert slavery still exists all around the world, even in the United States.<sup>62</sup> Congress passed the Victims of Trafficking and Violence Act of 2000 (VTVA), in response to the growing number of victims of violence and trafficking.<sup>63</sup> The VTVA included both the Trafficking Victims Protection Act of 2000 (TVPA), giving additional protection to the thousands of victims being imported and exported in the United States, and the Violence Against Women Act of 2000 (VAWA), providing additional assistance to victims of domestic violence, strengthening campaigns to end violence against women and children, and promoting education and awareness.<sup>64</sup>

The TVPA enhanced three specific aspects of federal government activity to combat trafficking in persons: (1) it provided for a range of new protections and assistance for victims of trafficking in persons, (2) it expanded crimes and increased the penalties available to federal investigators and prosecutors pursuing traffickers, and (3) it extended U.S. activities abroad to prevent victims from being trafficked.<sup>65</sup>

Specifically, the TVPA made trafficking victims eligible for federally funded or administered health and other benefits services.<sup>66</sup> It mandated U.S. protection for victims of trafficking, and their families, where applicable, and outlined protections from

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<sup>61</sup> U.S. CONST. amend. XIII, §1.

<sup>62</sup> REPORT, *supra* note 3, at 7.

<sup>63</sup> Victims of Trafficking and Violence Act of 2000, Pub. L. No. 106-386 (Oct. 28, 2000).

<sup>64</sup> *See id.*

<sup>65</sup> U.S. Department of Justice, Assessment of U.S. Government Activities to Combat Trafficking in Persons, at 6 (June 2004) [hereinafter Assessment].

<sup>66</sup> TVPA, *supra* note 16, § 107(B).

removal. The TVPA allowed for nonimmigrant status for certain victims who cooperated with law enforcement officials in the investigation and prosecution of trafficking, and allowed for nonimmigrant status holders to adjust to permanent resident status.<sup>67</sup> Also, it created new crimes and enhanced penalties for existing crimes, criminalized attempts to engage in these practices, and provided for mandatory restitution and forfeiture.<sup>68</sup> Finally, the TVPA provided for assistance to foreign countries in creating laws to prohibit and punish trafficking and to strengthen efforts to prevent trafficking.<sup>69</sup> It created programs to further assist victims and expanded U.S. exchange and international visitor programs.

### **C. Establishment of the T Visa to Rescue Victims of Human Trafficking**

On January 31, 2002, T visa nonimmigrant status, created by the TVPA, became available to victims of trafficking. T visa nonimmigrant status provides a method for individuals who have been trafficked to the United States for illegal purposes to obtain temporary lawful status and remain in the United States for three years. Congress established the classification, in section 107(e) of the TVPA, to create a safe-haven for certain eligible victims of severe forms of trafficking who are willing to assist law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.<sup>70</sup>

The T visa legislation provides that no more than 5,000 T visas shall be administered to victims of human trafficking each fiscal year.<sup>71</sup> The TVPA also provides

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<sup>67</sup> See *id.* § 107(e).

<sup>68</sup> See *id.* § 108 and § 111.

<sup>69</sup> See *id.* § 109.

<sup>70</sup> See *id.* § 107(e).

<sup>71</sup> See *id.* § 107(e)(2).

for the adjustment of status, at the Attorney General's discretion, from T nonimmigrant status to lawful permanent resident (LPR) status for T nonimmigrants who:

(1) Are admissible; (2) have been physically present in the United States for a continuous period of at least 3 years since the date of admission with T-1 nonimmigrant status; (3) throughout such period have been persons of good moral character; and (4) establish either (i) that during such period they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, or (ii) that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The provisions concerning adjustment of status will be the subject of a separate rulemaking.<sup>72</sup>

Realistically, this means many immigrants will still be forced to return to their country of origin after the three-year time period expires. While the law enforcement endorsement is not mandatory, it constitutes primary evidence the applicant is a victim of a severe form of trafficking and has not unreasonably refused to assist an investigation or prosecution.<sup>73</sup>

In addition, immigrants face numerous possible inadmissibility regulations such as criminal grounds, health grounds, public charge grounds, or national security and terrorism threats.

Trafficking victims applying for LPR status must undergo a medical exam.<sup>74</sup>

Medical grounds for inadmissibility are communicable diseases of public health significance, including HIV/AIDS, lack of required vaccinations, physical or mental disorders with harmful behavior, and drug abuse and/or addiction.<sup>75</sup> It is possible to obtain a medical waiver, which would permit an immigrant applicant to remain in the

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<sup>72</sup> 8 C.F.R. § 103 (2000).

<sup>73</sup> National Immigration Law Center, *DOJ Issues Regulations for T Visas, Available to Victims of Trafficking*, 16 IMMIGRANTS' RIGHTS UPDATE 1 (Feb. 28, 2002), available at <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr071.htm>.

<sup>74</sup> U.S. Citizenship and Immigration Services, Application Procedures: Becoming a Permanent Resident While in the United States, available at <http://uscis.gov/graphics/howdoi/LPRApplication.htm> (last modified Aug. 19, 2004).

<sup>75</sup> U.S. Citizenship and Immigration Services, Medical Examinations, available at [http://uscis.gov/graphics/medical\\_exam.htm](http://uscis.gov/graphics/medical_exam.htm) (last modified Nov. 7, 2003).

United States despite having a health condition which renders the applicant inadmissible.

Applicants are eligible for medical waivers if they:

1. Are the spouse or unmarried son or daughter or the minor, unmarried adopted child of a U.S. citizen or LPR; or
2. Have a son or daughter or lawfully adopted child who is a U.S. citizen or LPR; or
3. Are eligible for classification as a self-petitioning spouse or child (including derivative children) because of abuse.<sup>76</sup>

Individuals who test positive for the HIV virus must file a medical waiver application and show that their admission to the United States:

1. Poses minimal public health danger,
2. Holds minimal possibility of spread of infection, and
3. Will not incur costs to any government agency without prior consent from that agency.<sup>77</sup>

Thus, victims of trafficking who are HIV-positive face tremendous limitations on their ability to adjust to LPR status and remain in the United States permanently. This effectively means that they are punished for being the victims of traffickers and the governments who have not yet stopped the trade in human flesh.

In December 2003 the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) was signed into law.<sup>78</sup> In addition to reauthorizing provisions of the TVPA, the TVPRA added responsibilities to the U.S. government's anti-trafficking agenda. It mandated new information campaigns to combat sex tourism,<sup>79</sup> refined the federal criminal law,<sup>80</sup> and created a new civil action provision which allows trafficking

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

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

<sup>78</sup> The Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 (Dec. 19 2003) [hereinafter TVPRA].

<sup>79</sup> *See id.* § 3(e).

<sup>80</sup> *See id.* § 4.

victims to sue their traffickers in federal district court.<sup>81</sup> It also expanded eligibility for certain services to family members of victims of severe forms of trafficking. The TVPRA requires additional research and a report from the Attorney General to Congress every year, beginning May 1, 2004, to provide information on U.S. government action to combat trafficking in persons.<sup>82</sup>

Although the United States has undertaken significant measures to prevent trafficking and aid its victims, the legislation needs some fine-tuning. Victims of trafficking seeking T visa status must pass relatively rigorous standards:

T nonimmigrant status is applicable to victims of severe forms of trafficking in persons who are physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, on account of such trafficking in persons. Applicants for this status must demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States and that they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons.

Principal aliens eligible for T nonimmigrant status may be granted T-1 status, which the TVPA limits to no more than 5,000 each fiscal year.<sup>83</sup>

Because of the “extreme hardship” requirement and the limitation on the number of T visas issued each year, status will not be a viable option for many victims of trafficking.<sup>84</sup>

Some factors the U.S. Citizenship and Immigration Services (USCIS) must consider when determining whether an applicant would suffer extreme hardship upon return to their home country are:

1. Any serious physical or mental illness from which the applicant suffers and whether treatment for such illness is “reasonably available” in the applicant’s country of origin.

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<sup>81</sup> See *id.* § 1595.

<sup>82</sup> See *id.* ch. 77, § 6.

<sup>83</sup> 8 C.F.R. § 103 (2000) (“T” Visa Regulations).

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

2. The nature and extent of any physical or psychological consequences of the applicant's having been the victim of a severe form of human trafficking in persons.
3. The impact on the applicant of losing access to the U.S. courts and the criminal justice system, including access to criminal and civil redress for trafficking crimes of which the applicant was a victim.
4. The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons.
5. The likelihood that the applicant would again become the victim of trafficking, including whether the government of the applicant's country could or would protect the applicant from being revictimized.
6. The likelihood that the trafficker or the trafficker's agents would harm the applicant once the latter was back in his or her country of origin.<sup>85</sup>

In addition, officials involved in the investigations have broad discretionary power when endorsing T visa applications. Because of the way the law is written, even in the face of imminent violence, if a victim cannot unequivocally prove she would suffer severe harm if deported, T visa stipulations deny her asylum.<sup>86</sup> However, INS officials have general authority to waive many grounds of inadmissibility for victims of human trafficking, especially considering that they need waivers because of the very circumstances that make them victims.<sup>87</sup> Alarming, only 297 of the 601 T-visa applicants were approved in 2003.<sup>88</sup> The existing legislation highlights victims' needs, but ultimately fails to place their interests first.

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<sup>85</sup> National Immigration Law Center, *DOJ Issues Regulations for T Visas, Available to Victims of Trafficking*, 16 IMMIGRANTS' RIGHTS UPDATE 1 (Feb. 28, 2002), available at <http://www.nilc.org/immigrationpolicy/obtainlpr/oblpr071.htm>.

<sup>86</sup> Sommer, *supra* note 2, at <http://www.issueonline.org/files/issue7.pdf>.

<sup>87</sup> National Immigration Law Center, *supra* note 85, available at <http://www.nilc.org/immigrationpolicy/obtainlpr/oblpr071.htm>.

<sup>88</sup> Assessment, *supra* note 65, at 21.

#### **IV. Victims of Human Trafficking Face Complex Issues**

##### **A. Impacts of Trafficking and Prostitution on Physical and Mental Health**

Throughout history prostitution has had a devastating impact on women's health. Victims of trafficking who are forced into prostitution not only face repeated exposures to dangerous activities and behaviors, but also suffer countless sexual and physical assaults at the hands of their traffickers, pimps, and clients. Health problems faced by women in prostitution include pelvic inflammatory disease, STDs, HIV and AIDS, vaginal infections, backaches, headaches, stomachaches, eating disorders, cervical cancer, and traumatic brain injury.<sup>89</sup> Anxiety, insomnia, depression, eating disorders, and post-traumatic stress disorder are common psychological manifestations among trafficked victims.<sup>90</sup>

Victims forced into sex slavery are often subdued with drugs and suffer extreme violence. Victims trafficked for sexual exploitation suffer physical and emotional damage from premature sexual activity, forced substance abuse, and exposure to sexually transmitted diseases including HIV/AIDS. Some victims suffer permanent damage to their reproductive organs.<sup>91</sup>

Unawareness of sexual health, practices, and rights compound the seriousness of a victim's plight. Victims who are trafficked have little or no control of the conditions of the services they are forced to offer.<sup>92</sup> They are denied the right to choose their clients and the conditions of selling sex, as well as methods to prevent themselves from

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<sup>89</sup> Melissa Farley, *"Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087, 1097 (Oct. 2004), available at <http://vaw.sagepub.com>.

<sup>90</sup> REPORT, *supra* note 3, at 15.

<sup>91</sup> REPORT, *supra* note 3, at 10.

<sup>92</sup> Carolina J. Wennerholm, *Trafficking in Women and Girls and HIV Prevention*, presented at the Conference "Together Against AIDS" in Malmö (Mar. 8, 2000), available at <http://www.qweb.kvinnoforum.se/./misc/TRAFFICKING%20-HIV%20PREV-text.rtf>.



contracting STDs and HIV.<sup>93</sup> Victims of trafficking are essentially prisoners. They have no voice and, because the possibility of escape is very slim, they have no hope.

Acknowledging the fact that modern-day slavery exists, in practically every corner of the world, is the first step to preventing its continued growth.

Many factors-including death threats to themselves and their families at home; conditions of isolation and confinement; the high mobility of the sex industry, fear of deportation, the lack of acknowledgement within many human rights and refugee advocacy service organizations who are struggling with a range of other problems, and the lack of "safe houses" and shelters-make it nearly impossible for trafficked women to seek assistance and to testify against their traffickers and other exploiters.<sup>94</sup>

Women who are trafficked here, under any pretense, have little hope of ever being free of their traffickers. Fraudulent passports, visas, and letters of employment are commonly obtained for women by traffickers to ease their entry into foreign countries.<sup>95</sup> Often, the large fees that are charged for procuring the documents, the alleged job, and airline tickets are so exorbitant that women can be indentured to the traffickers for years.<sup>96</sup>

Victims are left vulnerable to their traffickers' demands and threats when they are isolated from the support of their family and community.<sup>97</sup> Trafficking undermines social structures by breaking familial ties, interrupting the passage of cultural values and knowledge, and preventing nurturing and development.<sup>98</sup> Loss of education and opportunities further enmeshes women in the cycle of helplessness and increases the

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

<sup>94</sup> Janice G. Raymond et al., *Sex Trafficking of Women in the United States: International and Domestic Trends*, funded by the US National Institute of Justice (2001), available at [www.catwinternational.org](http://www.catwinternational.org).

<sup>95</sup> H. Patricia Hynes & Janice G. Raymond, *Put in Harm's Way: The Neglected Health Consequences of Sex Trafficking in the United States*, in *POLICING THE NATIONAL BODY: SEX, RACE, AND CRIMINALIZATION*, 197, 207 (Jael Silliman & Anannya Bhattacharjee eds., 2002).

<sup>96</sup> *See id.*

<sup>97</sup> REPORT, *supra* note 3, at 12.

<sup>98</sup> *See id.*



likelihood they will be trafficked in the future.<sup>99</sup> Furthermore, victims who return home are often stigmatized and ostracized by the very support system they originally lost, thus requiring further social services and outside economic and emotional support.<sup>100</sup>

### **B. Victims of Human Trafficking Must Overcome Extraordinary Odds**

Although the T visa legislation has been designed to help these victims, the law leaves much to be desired. The current immigration and criminal justice system in the United States is weighted against trafficked victims.<sup>101</sup> The system hampers undocumented victims of trafficking from coming forward for fear of deportation and the lack of INS assurance that they will be allowed to remain in the country if they choose. Because victims are usually trafficked to foreign destinations, they do not speak the language and are completely unfamiliar with their surroundings.<sup>102</sup>

Moreover, the victim is typically trafficked to a location where he or she cannot speak or understand the language, compounding the psychological damage from isolation and domination. Ironically, the human capacity to endure unspeakable hardship and deprivation leads many trapped victims to continue to work, hoping for eventual freedom.<sup>103</sup>

The control traffickers exercise over their victims is absolute, and victims are unaware of the possibility of freedom.

From the very beginning, victims of trafficking are exposed to brutally abusive treatment in order to reinforce the impossibility of escape. Women and children are subjected to treatment worse than one can imagine.

Upon arrival at their destination, women are often initiated into prostitution through gang rapes to teach them what they can expect from

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

<sup>100</sup> REPORT, *supra* note 3, at 13.

<sup>101</sup> H. Patricia Hynes & Janice G. Raymond, *supra* note 95, at 201.

<sup>102</sup> REPORT, *supra* note 3, at 10.

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

their new life. If the women refuse to work as prostitutes, they are raped, gang-raped, drugged, confined and deprived of food, and /or beaten into submission. Many women develop addictions either from being forced to take drugs or from willingly turning to drugs to escape their misery. Some trafficked women have unprotected sex with between ten and twenty men per day, making HIV and other sexually transmitted diseases a constant threat. Victims report forced abortions performed in apartments and basements where women live communally. Many women are denied routine and emergency medical services, while others choose not to see medical professionals because the cost is added to their debt.<sup>104</sup>

Because clients often refuse to wear a condom,<sup>105</sup> victims' exposure to STDs, HIV, and other diseases increases exponentially. Since many traffickers move their victims from brothel to brothel in different cities every few weeks, most victims are often disoriented and may not even know their location.<sup>106</sup> The commodification of human beings is the heart of human trafficking. The horrors trafficking victims are subjected to may only brush on the loss of self-worth, whether it be in the eyes of the victim or their abusers.

## **V. A Light in the Darkness: A New Approach to an Old Problem**

### **A. Examining the Relationship Between Human Trafficking and HIV Infection**

Trafficking is a complex, international problem facing both its victims and the countries they call home. HIV/AIDS infection only compounds the difficulties of the situation. In order to address the plight of HIV-infected victims properly, the solution must be equally multifaceted and aggressive. The United States, and the world as a whole, will have to change the way it has addressed HIV infection in the past.

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<sup>104</sup> Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29 (2001).

<sup>105</sup> Melissa Farley, *supra* note 89, at 1109.

<sup>106</sup> Carolina J. Wennerholm, *supra* note 92, at

<http://www.qweb.kvinnoforum.se/.../misc/TRAFFICKING%20-HIV%20PREV-text.rtf>.

Additionally, gender and race equality issues must be reexamined and brought to the forefront.

The supply of victims is encouraged by many factors including poverty, the attraction of a perceived higher standard of living elsewhere, weak social and economic structures, a lack of employment opportunities, organized crime, violence against women and children, discrimination against women, government corruption, political instability, armed conflict, and cultural traditions such as traditional slavery.<sup>107</sup>

Human rights issues must be considered in conjunction with public health campaigns against STDs. Because women enter prostitution for a variety of reasons, like poverty, rape, infertility, and subsequent abandonment and/or divorce, and force, public health programs must address the social factors that contribute to STDs and HIV.<sup>108</sup> Gender inequality in any culture normalizes sexual coercion, thereby promoting domestic violence and prostitution, and ultimately contributing to women's likelihood of becoming HIV infected.<sup>109</sup>

#### **B. Straight to the Source: Struggling to Eliminate Prostitution and Discrimination of Women**

The deadly link between women's rights abuses and the spread of HIV/AIDS is slowly gaining recognition, but not before millions of women have lost their lives to the disease.<sup>110</sup> Evidence indicates that women especially at risk are those in a heterosexual marriage or long-term union in a society where men commonly engage in sex outside the

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<sup>107</sup> REPORT, *supra* note 3, at 19.

<sup>108</sup> S.O. Aral & J.M. Mann, "Commercial Sex Work and STD: The need for policy interventions to change social patterns," *Sexually Transmitted Diseases*, at 25 (1998).

<sup>109</sup> Melissa Farley, *supra* note 89, at 1111.

<sup>110</sup> Women and HIV/AIDS (2004), at [www.hrw.org/women/aids.html](http://www.hrw.org/women/aids.html).

union and women confront abuse if they demand condom use.<sup>111</sup> Today, women make up nearly half of the 37.2 million adults living with HIV worldwide.<sup>112</sup>

Globally and biologically, young women and girls are more susceptible to HIV than men and boys.<sup>113</sup> In part, such disparities are a reflection of physiological differences: women are as much as 2 to 4 times more likely than men to contract the disease through heterosexual acts.<sup>114</sup> Their vulnerability is due in large part to inadequate knowledge about AIDS, insufficient access to HIV prevention services, and a lack of female-controlled HIV prevention methods, such as microbicides.<sup>115</sup> Female genital mutilation also increases the risk of HIV transmission.<sup>116</sup> Primarily, the high rate of infection among girls also reflects women's powerlessness within and outside of marriage to control the terms of sexual contact.<sup>117</sup>

Every day, in every corner of the world, women and girls are beaten in their homes, trafficked into forced prostitution, raped by soldiers and rebels in armed conflicts, sexually abused by their "caretakers," deprived equal rights to property and other economic assets, assaulted for not conforming to gender norms, and often left with no option but to trade sex for survival. These acts of discrimination and violence are conduits for HIV infection. Women living with AIDS confront not only stigma, but also the deprivations caused by violations of their rights. Relative to the scale and severity of these abuses, laws, policies, and programs to combat HIV/AIDS by protecting the rights of women and girls are negligible.<sup>118</sup>

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

<sup>112</sup> Press Release, UNAIDS, Number of Women Living With HIV Increases in Each Region of the World (Nov. 23, 2004), at [www.unaids.org](http://www.unaids.org).

<sup>113</sup> Holly Burkhalter, Sex Trafficking and the HIV/AIDS Pandemic, Testimony Before the House International Relations Committee (June 25, 2003), available at [www.phrusa.org/campaigns/aids/news062403.html](http://www.phrusa.org/campaigns/aids/news062403.html).

<sup>114</sup> *See id.*

<sup>115</sup> World AIDS Campaign 2004: Women, Girls, HIV, and AIDS, at [www.unaids.org/wac2004/index\\_en.htm](http://www.unaids.org/wac2004/index_en.htm).

<sup>116</sup> Holly Burkhalter, *supra* note 113.

<sup>117</sup> *See id.*

<sup>118</sup> World AIDS Campaign 2004, *supra* note 115.

By changing the way in which the world thinks about women, we can perhaps change the way in which we address the results of human trafficking and subsequent HIV/AIDS infection. Ultimately, the world must change the way it fights AIDS. Without putting women at the heart of the response to AIDS, we will not be able to control the epidemic.<sup>119</sup> As AIDS enters its global phase, it appears increasingly to be taking on a feminine face.<sup>120</sup>

Eliminating human trafficking and its devastating consequences is not something that may be accomplished by compiling statistics and writing reports and drafting ineffective and ambiguous legislation. The eradication of modern-day slavery requires an overhaul of institutions that have been in place for centuries. As a world leader, the United States must instigate an innovative foreign policy and lead an integrated international force against slavery.

Although the existing T visa legislation is an excellent initial step in combating human trafficking, it is insufficient to successfully aid victims. A more succinct and comprehensive set of regulations would help to eliminate unpredictable and possibly inappropriate INS discretion. More inclusive regulations would also facilitate the application process for victims and lessen the residual victimization they typically experience.

Laws need to be written to outline the entire application process. Until the United States can prevent human trafficking altogether, it must be held responsible for what happens to victims. The U.S. government must arrange for access to social programs and aid. Victims need housing, healthcare, social and economic support and assurance of

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<sup>119</sup> *HIV fight 'tied to women's rights'* (Nov. 23, 2004), at <http://www.cnn.com/2004/HEALTH/11/23/un.aids.ap/index.html>.

<sup>120</sup> *See id.*

continued assistance as necessary. U.S. liability simply cannot stop with the issuance of a T visa.

The U.S. legislation includes trafficking prevention measures, including prosecution of traffickers and protection and assistance for victims.<sup>121</sup> However, very few nations have enacted similar laws to combat trafficking.<sup>122</sup> Trafficking is a transnational crime that demands transnational attention and efforts. It is up to the United States to ensure that other countries take comparable actions in order to prevent further devastation.

The world needs to identify the social, economic, and political factors driving human trafficking and systematically attack them. Women must demand that they enjoy the same respect and protection of their male counterparts. Truly sustainable development must be established that will create educational and economic opportunities for women in countries that have previously denied women these rights. Finally, there must be a universal recognition of HIV/AIDS and the extraordinary desolation it is causing and a unified effort to combat further transmission and manage infection. By holding itself accountable for the fate of victims of human trafficking, the United States can institute a common practice of affirmatively and forcefully abolishing human trafficking and slavery.

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<sup>121</sup> Hyland, *supra* note 56.

<sup>122</sup> *See id.*