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**DRAFT**

**CRIMINAL TRAFFICKING AND SLAVERY IN LATIN AMERICA**

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Criminal trafficking and slavery in Latin America is, all acknowledge, a significant and long-standing problem. The problem of the trafficking of women and children for purposes of commercial sexual exploitation within the region, for example, was recognized as early as 1928 by the League of Nations. As the result of a three year study of sex trafficking throughout the world, it was noted that “Latin America is the traffic market of the world.”<sup>1</sup> While current estimates suggest that South and Southeast Asia and the former Soviet Union respectively represent the largest sources of trafficking victims, the problem appears to be growing in Latin America and the Caribbean.<sup>2</sup>

The problem of trafficking has received enormous attentions since the late 1990s, driven in particular by the United States initiatives under the Trafficking Victims Protection Act of 2000,<sup>3</sup> and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)<sup>4</sup> (commonly known as

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<sup>1</sup> H. WILSON HARRIS, HUMAN MERCHANDISE: A STUDY OF THE INTERNTIONAL TRAFFIC IN WOMEN 187 (1928).

<sup>2</sup> Clare Ribando, *Trafficking in Person in Latin America and the Caribbean* CRS REPORT FOR CONGRESS 1 (2005).

<sup>3</sup> Victims of Trafficking and Violence Protection Act of 2000 P.L. 106-386.

<sup>4</sup> G.A. Res. 25, U.N. GAOR, 55<sup>th</sup> Sess., Annex II, Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001)

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the Palermo Protocol.) Trafficking has been the subject of growing media attention throughout the world, drawing attention to the horrors of this problem. Nonetheless, the problem remains ill defined and efforts to combat it have floundered.

The difficulties in assessing the scope of the problem is not unique to Latin America, although I will focus my attention there. In order to highlight the overall problem of trafficking, I will begin by identifying the definitional, sociological and legal problem that hinders the development of an accurate assessment of the problem. I focus not upon the empirical problems of research and assessment, an area addressed by others more qualified to do so,<sup>5</sup> but rather upon those issues within the compass of policy makers and advocates. I will then describe the basic features of trafficking in Latin America, identify efforts to address the problem and suggest appropriate methods for assisting the victims.

### **Assessment Problems**

It is virtually impossible to obtain reliable data on trafficking in Latin America – or indeed anywhere else in the world. Obviously, being an illegal enterprise plays a part in this difficulty – but reasonably reliable statistics can be found in many aspects of organized crime. Nor is it adequate to blame the region, with its lack of resources and sophistication (though those play a part.) One needs only to look at the somewhat embarrassing assessments within the United States where estimates of the number of trafficking victims has drastically fallen from the 1999 Central Intelligence Agency

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<sup>5</sup> Guri Tyldum and Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking* in Laczko & Gozdzik eds DATA RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY (IOM, 2005).

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estimates of 45,000 to 50,000 victims to the current estimates of 18,000 to 20,000 (figures that some still believe are merely best “guesstimates”).<sup>6</sup>

The problems are more structural and systemic. Factors that impede the collection and analysis of data in this area include basic controversies over the definition of the crime, sociological factors inhibiting data collection and legal/logistical obstructions.

### *Definitional problems*

The problem of trafficking and slavery has long been recognized throughout Latin America and has received regional and international condemnation.<sup>7</sup> Many felt that particular progress had been made with the adoption of the Palermo Protocol on Trafficking, which, it was hoped, would provide a comprehensive definition of the problem upon which all could agree. Eighteen out of the twenty-three countries of Latin America have adopted the protocol, with two other having signed but not ratified, thus giving the definition legal standing throughout the region.<sup>8</sup> Specifically, the Palermo Protocol provides that:

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<sup>6</sup> Godzdiak and Collett, *Research on Human Trafficking in North America: A Review of the Literature*, in DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY (IOM) 2005.

<sup>7</sup> The international community has repeatedly condemned forced slavery, violence against women and other trafficking elements, through declarations, treaties, resolutions and United Nations reports, including the Universal Declaration of Human Rights (G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) , the Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Similar Practices, in 1956; the North American Declaration of the Human Rights and Duties, 1948; ILO Convention No. 105 concerning the Abolition of Forced Labor, in 1957; International Covenant on Civil and Political Rights; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Resolutions 50/167, 51/66 and 52/98 of the United Nations General Assembly; First World Congress Report Against Commercial Sexual Exploitation of Children, 1996; IV World Conference on Women (Peking 1995); Moscow Document on the Organization for Security and Co operation in Europe, in 1991.

<sup>8</sup> See Table 1.

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Trafficking in persons shall mean recruiting, transporting, transferring, harboring or receiving persons, by means of threat or physical force, or other forms of coercion, abduction, fraud, deception, abuse of power or the person's vulnerable position, as well as giving or receiving payments or benefits to get a person's consent and having control over another person, for the purpose of exploitation.<sup>9</sup>

While this definition did resolve a number of disputes within the field as to what qualifies as trafficking, two significant features of this definition are troubling. First, the Palermo Protocol assumes that trafficking involves the movement of persons from one state to another. Research clearly indicates, however, that trafficking is a fluid market in which trafficking can occur within individual countries and that often, being trafficked in-country may be the first step in joining the larger stream of international trafficking.<sup>10</sup> Second, the Palermo Protocol is part of the larger United Nations Convention on Transnational Organized Crime. While it is true that many organized crime groups are active in trafficking, significant parts of the trafficking networks are the products of ad hoc activities of individuals and small groups.<sup>11</sup>

These definitional problems have not proven problematic within the overall effort of assessment. In almost all assessment reports, such as the US State Department's *Trafficking in Persons* (TIP) annual reports, analysts include in-country trafficking as a part of the larger trafficking problem and do not confine their analysis to trafficking activities involving organized crime. Nonetheless, even this apparent consensus in turn

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<sup>9</sup> UN Protocol, supra n 4, Art. 3(a).

<sup>10</sup> See Leal & Leal ; Guinn and Steiglich. N.B. In general, unless otherwise cited, references to information about specific country or general research findings are based upon the International Human Rights Law Institutes research on trafficking, reported in the foregoing two works, or upon the United States Department of State Trafficking in Persons Reports.

<sup>11</sup> David A. Feingold, *Human Trafficking* FOREIGN POLICY (Sept/Oct. 2005); Guinn and Steiglich

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masks a deeper failure to establish an effective means of studying and identifying the problem.

The Palermo Protocol provides one overall definition of trafficking. The working elements of the definition include (1) the individual being subjected to (2) force or coercion into (3) a situation of unlawful exploitation. This would clearly cover any type of trafficking for sexual exploitation or labor exploitation/slavery. However, in practice, the operational understanding of trafficking are of three types: child trafficking; trafficking in women for purposes of sexual exploitation; and trafficking for purposes of labor exploitation/slavery. This tri-part categorization in large part grows out of the fact that outrage over the sexual exploitation of trafficked women and, especially, children<sup>12</sup> has provided the initial and primary political impetus to attack this problem within the region. Specifically, beginning in the nineties, NGOs and intergovernmental organizations mobilized to work against commercial sexual exploitation (i.e. trafficking for sexual exploitation; pornography; sex tourism; and prostitution) of children and youth. This resulted in a series of international events including: Fourth World Conference on Women in Beijing (1995); Seminar Against the Sexual Exploitation of Children and Adolescents in the Americas, held in Brasilia (1996); the UN Convention Against Transnational Organized Crime, in Palermo (2000), and the First and Second World Congresses Against the Commercial Sexual Exploitation of Children, held in Stockholm (1996) and Yokohama (2001). Indeed, it appears that this newest effort to address the trafficking of women in fact emerged as simply an ancillary addition to the

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<sup>12</sup> Children are not only protected under the terms of the Palermo Protocol, but also the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Pornography ( ).

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concern over children and adolescents while concerns over forced labor subsequently emerged as an ancillary to the two concerns over sexual exploitation.

These three operational categories are not treated equally and, consequently, assessing the problem as a whole suffers from this disparate treatment. Moreover, each embodies certain internal conflicts on how particular countries treat the problem that can affect data collection and analysis.

### *Child Trafficking*

Out of all forms of trafficking, child trafficking receives the greatest attention and condemnation. Countries that provide practically no programs for trafficking of women and/or for trafficking for labor exploitation nonetheless make some efforts against child trafficking, especially trafficking for purposes of sexual exploitation (as reported in the TIPS report, see, e.g. Jamaica, Nicaragua, Uruguay). Trafficking in children most frequently tends to be reported as trafficking for purposes of sexual exploitation in associated with sex tourism (see, e.g. Brazil, Costa Rica, Dominican Republic, Mexico, etc.) Other forms of trafficking include using children as panhandlers, news agents, garbage recyclers (i.e. sorting through the public dumps for recyclable materials),<sup>13</sup> domestic help (esp. see, Haiti),<sup>14</sup> mining and agriculture (e.g. Bolivia, Brazil) illegal adoption (Costa Rica, Dominican Republic),<sup>15</sup> and child soldiers (Columbia).

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<sup>13</sup> See, Leal & Leal, *supra* n.

<sup>14</sup> See Ribando, *supra* n. , CRS-5

<sup>15</sup> Secretariat Report, Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2005) CTOC/COP/2005/3 (hereinafter cited as CTOC Report), 7.

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Trafficking in children primarily involves in-county exploitation, and in the case of sexual exploitation, may be categorized as trafficking even where the child remains in residence with their parents or close relative.<sup>16</sup> This in-country characterization of child trafficking, however, probably rests on biased data. Because trafficking in children attracts far greater attention and penalties, traffickers and trafficking victims may be expected to lie about their age, including the provision of forged identity papers.<sup>17</sup> Moreover, a significant problem in identifying child trafficking in Latin America arises from the wide discrepancy in the legal “age of consent” for females in these countries, which averages 14 years of age,<sup>18</sup> and the 18 year old age of consent provided under the Palermo Protocol.

#### *Trafficking in Women for Purposes of Sexual Exploitation*

As previously noted, the trafficking in women for purposes of sexual exploitation was recognized as a significant problem within the region as early as 1928 and the topic received significant international attention throughout the twentieth century.<sup>19</sup> This category exists separate from labor exploitation for two reasons. First, the United States and many activists within the United States favor broadening the definition of trafficking in persons to include all forms of prostitution, with the element of force or coercion being implicit within the act itself. They argue that

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<sup>16</sup> Zoila Gonzalez de Innocenti, *Explotación Sexual Comercial de Niñas y Adolescentes: Una Evaluación Rápida* ILO/IPEC, 2002.

<sup>17</sup> Leal & Leal *supra* n. .

<sup>18</sup> Ribando, *supra* n. , CRS-5.

<sup>19</sup> See, e.g. UN Convention for the Suppression of the Trafficking in People and the Exploitation of Prostitution and Others (1949); UN Convention on the Elimination of all forms of Discrimination Against Women (1979); Inter-American Convention of the OAS on Prevention, Punishment and Eradication of Violence Against Women (1994).

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all forms of prostitution are inherently acts of violence against women in which there is no possibility for voluntary consent.<sup>20</sup> Moreover, US government officials argue that:

Where prostitution is legalized or tolerated, this is greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into sex slavery.<sup>21</sup>

In order to encourage this approach, the United States has gone so far as to link HIV/AIDS and anti-trafficking program assistance to groups that explicitly condemn “prostitution and sex trafficking.”<sup>22</sup>

Second, the category exists because, as the adage goes, sex sells papers. One of the principle ways data is collected about trafficking is through media reports.<sup>23</sup> Inevitably, raids on brothels or other sex industry sites will receive greater media attention than other forms of labor abuse.

Complicating enforcement and assessment, despite US objections to the practice, most Latin American countries have legalized prostitution.<sup>24</sup> In addition, given the economic situation, questions arise as to the practices of marriage agencies and the possibilities of coerced or forced marriages (El Salvador).

### *Trafficking for Labor Exploitation*

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<sup>20</sup> See, e.g. Janice G. Raymond, *Sex Trafficking is Not ‘Sex Work’* CONSCIENCE (Spring 2005).

<sup>21</sup> Cited in Ribando, *supra* n. , CRS-19.

<sup>22</sup> See, e.g. President’s Emergency Plan for AIDS Relief, P.L. 108-25 (2003); Trafficking Victims Protection Reauthorization Act of 2003, P.L. 108-193 (2003).

<sup>23</sup> Office to Monitor and Combat Trafficking in Persons and the Bureau of Intelligence and Research, *Seminar on Trafficking in Persons Research* (Nov. 14, 2005). (hereinafter cited TIP Research).

<sup>24</sup> Guinn & Steiglich, *supra* n.

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Trafficking for purposes of labor exploitation is perhaps the most difficult and politically contentious of the three types of trafficking. When practiced domestically, except with respect to children, it is likely to be subsumed under the umbrella of labor law violations that may or may not protect the victim. Once the victim moves into the international movement of trafficking victims, the victim simultaneously becomes and undocumented migrant.

As experience as shown, it is often difficult to ascertain whether a particular case falls under the definition of trafficking in persons or smuggling of migrants, as both activities share some common elements.<sup>25</sup>

Finally, once they are in place in their country of destination, they are undocumented aliens, liable for prosecution as such.

In theory, advocates against trafficking in women and children for purposes of sexual exploitation (largely identified with women's rights movements) should be equally concerned with labor trafficking in which women and female children make up 56% of those trafficked.<sup>26</sup> In practice this does not appear to be the case. Thus, one finds conflicting assertions. Laura Langberg, in a review of OAS research on trafficking, notes that while trafficking for forced labor is recognized as a serious problem in Latin America, trafficking for purposes of sexual exploitation has been perceived as a more widespread and pressing region concern.<sup>27</sup> By contrast, the ILO has reported that sex

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<sup>25</sup> CTOC Report, *supra* n. , 10.

<sup>26</sup> ILO *A Global Alliance Against Forced Labor*, ILO, 2005.

<sup>27</sup> Laura Langberg, *A Review of Recent OAS Research on Human Trafficking in the Latin American and Caribbean Region* in DATA AND RESEARCH ON HUMAN TRAFFICKING; A GLOBAL SURVEY (IOM, 2005).

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trafficking victims represent only 20% (250,000) of the 1.3 million people in Latin America engaged in forced labor.<sup>28</sup>

It should be noted that a number of countries (e.g. Chile, Costa Rica, El Salvador, Mexico etc.) include trading in organs or tissue as a form of trafficking.<sup>29</sup> While justification exists for such a policy, it generally falls outside of most studies on trafficking, normally reported under public health and health law related studies.<sup>30</sup>

### *Social/Economic/Political Concerns*

If this definitional problem were not enough, efforts to assess the problem are further complicated by social, economic, or political concerns affecting the collection and analysis of data.

First, the impetus to combat trafficking did not arise within the governments of the region. Instead, they have been forced to respond to demands by the international community (particularly the United States) to address this problem. While indigenous NGOs have joined in supporting this international effort, it nonetheless remains a programmatic effort adopted under a certain degree of force or coercion. Evidence of this can be found in the practice of many governments to adopt anti-trafficking legislation modeled on the United States' Trafficking Victims Protection Act as opposed to reflecting local concerns and needs.<sup>31</sup> They do so because the United State Department of State, in the TIP report evaluates each country in accordance with how it complies with the requirements of the standards in the Trafficking Victims Protection Act.

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<sup>28</sup> *A Global Alliance Against Force Labor*, (ILO, 2005)

<sup>29</sup> CTOC *supra* n

<sup>30</sup> See, e.g. MICHELE GOODWIN, BLACK MARKETS: THE SUPPLY AND DEMAND OF BODY PARTS (2006).

<sup>31</sup> See, Ribano *supra* n. .

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Second, one of the most significant factors hindering efforts to gather accurate data on the extent of the problem of trafficking and to combat it practice is a lack of resources. Clearly, not having enough governmental investigators (police officers, immigration officials, etc.) will limit the government's ability to identify and prosecute trafficking cases. However, equally significant and less obvious, in a situation of scarce resources, government enforcement officials will have to make tough resource allocation decisions among a variety of deserving causes: whether to pursue drug smugglers or traffickers; violent crimes or brothel owners (in countries where prostitution is legal); or even whether to pursue trafficking or education for women and girls. Adding to this resource concern, trafficking represents a significantly greater commitment of assets than other related crimes. For example, while undocumented aliens can simply be repatriated, if the alien is identified as a trafficking victim, enforcement will require that the victim be offered incentives to cooperate in the prosecution, they will require living assistance and health care in the interim, and potentially, support for retraining and resettlement. In order to avoid the obligation to prosecute, government officials have an incentive to look away and fail to identify the problem.

Complicating these judgments about domestic resource allocation, governments may be concerned that if they aggressively pursue accurate data about the problems, they risk being cited by the US as having a major trafficking problem.<sup>32</sup> While many countries respond to bad ranking in the TIP report based on concerns about their reputation, particularly where tourism is a major industry (e.g. Costa Rica, Jamaica), others will be driven by concerns over possible sanctions being imposed by the US.

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<sup>32</sup> See, Ribano *supra* n. . CRS-3

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Finally, our understanding of the nature of the problem may be being distorted by the resources available to address it. In particular, intergovernmental organizations (such as the Inter-American Commission of Women and the Inter-American Children's Institute of the Organization of American States) charities and NGOs (such as Save the Children, and UNICEF) focusing upon children and women are among the most active in the region both in terms of monitoring the problem and as providers of services for trafficking victims. Insofar as they are among the primary sources of data on the problem, then the problem highlight their concerns. While the ILO and the IOM are very active in this area, it does not appear that they have similar resources.

#### *Legal and Logistical Concerns*

The final challenge in assessing the phenomenon of trafficking arises out of legal and logistical problems in terms of data collection.

First, many countries in Latin America do not have special laws addressing trafficking. Instead, insofar as they address the problem as required, for example, through their ratification of the Palermo Protocol or the CRC Protocol, they do so through other statutes directed against the sexual exploitation of children (e.g. Mexico) or prohibitions against procurement (Brazil.) Thus, insofar as the goal is to assess trafficking as a regional problem, it may be difficult to establish accurate equivalence among the potential criminal charges.

Second, because trafficking is a regional problem, it requires cooperation and collaboration among enforcement agencies throughout the region. This requires not only a shared understanding of how to define the problem of trafficking but also the

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infrastructure to support that exchange of information. In many border areas, immigration and police often do not even have phones or fax equipment capable of contacting their counterparts across the border.<sup>33</sup>

Finally, given the inadequacy of official records on trafficking, most assessments of trafficking are based upon “‘open source data’ (i.e. data generally available to the public in government, NGO, academic, or media reports.)”<sup>34</sup> Given the paucity of governmental data, media data often forms a potentially disproportionate resource, with the potential to induce bias toward the more newsworthy forms of trafficking or to be misleading where the nature of the crime has been obfuscated by government efforts to protect the identity of minors or failure to identify the role of trafficking.

### **Scope of the Problem**

Existing qualitative research on trafficking provides us with a pretty good picture of trafficking: its victims, its perpetrators, and its methods. Indeed, qualitative research exists as a methodology because it is well suited to providing a deeper and more detailed character portrait of those involved in a social phenomena than other types of empirical research. Therefore, we can describe the problem in some detail.

Victims of trafficking are primarily driven by economic need, either due to necessity/survival or the desire for a better life. Thus trafficking follows a path not just towards the obvious destination countries of the United States, Canada and Europe, but from poor area to areas of relative prosperity. This includes movements from rural to

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<sup>33</sup> Guinn & Stieglich *supra* n.

<sup>34</sup> TIP Research *supra* n

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urban areas, then from poorer urban areas to more prosperous areas (within or out of the country of origin.) Contributing to this economic motivation, particularly in the case of women and children, are: conditions of economic discrimination (e.g., as of 2002, women's income averaged one-third of that of men in Latin America);<sup>35</sup> the rising disintegration of traditional family units leaving women as the primary head of household; sexual violence (which contributes in particular to the likelihood that women and children will be trafficked for purposes of sexual exploitation); and the loss of social support networks such as the extended family, schools, or other civil society groups.<sup>36</sup>

The Palermo Protocol is predicated upon the idea that trafficking involves organized crime. However, existing research demonstrates that while traditional organized crime groups such as the Russian Mafia (particularly related to trafficking into the Iberian Peninsula, the Yakuza (Japan), and drug cartels (who often combine drug trafficking with the trafficking of the people that are used to transport the drugs, i.e. the "mules,") significant elements within the trafficking enterprise are the result of informal relationships among individuals arising out of opportunity. For example, many women and children traveling north as part of the undocumented migration towards the United States wind up in trafficking situations through "misadventure." They may hitch a ride with a trucker or hire a taxi who takes advantage of their isolation to hijack them and sell them to the next bar or brothel owner on their route.

Finally, we know that the countries of the region can, simultaneously, function as source, transit and destination countries within the trafficking regime. As noted above,

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<sup>35</sup> COMISIÓN DEONÓMICA PARA AMÉRICA LATINA Y EL CARIBE (CEPAL), STATISTICAL YEARBOOK FOR LATIN AMERICAN AND THE CARIBBEAN 2001 58 (2002).

<sup>36</sup> Guinn & Stieglich *supra* n. ; Leal & Leal, *supra* n.

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since the movement of trafficking follows relative economic difference, even poor countries can have pockets of prosperity or particular industries that draw trafficking victims. Sex trafficking closely follows migratory patterns. Moreover, trafficking does not always involve a single movement, where the victim is recruited and immediately sent to their final destination. Particularly with sex trafficking victims often start via in-country trafficking and are then sold through a string of intermediary stops before reaching a point where they no longer move to another country.

While we can outline this general picture of trafficking, given the definitional, cultural and legal difficulties outlined above, the challenge remains to find ways to quantify the problem. Virtually everyone agrees that trafficking, in all its forms, is a major problem in Latin America. Government officials (whether speaking on the record or off the record), NGOs working in the area, media reports, and academic researchers all agree on this point.<sup>37</sup> Relative assessments suggest that Latin America is the third largest source of trafficking victims (after South and Southeast Asia, and the former Soviet Union).<sup>38</sup> Similarly, under the United States government's assessment under the annual TIP Report, a higher percentage of countries within Latin America fall into the category three ranking (the lowest) than any other region in the world. (This latter assessment, however merely indicates the countries failure to comply with United States requirements regarding efforts to combat trafficking where trafficking is identified as a problem. It does not rank the significance of the problem in terms of the numbers of victims or traffickers involved.)

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<sup>37</sup> See research approach discussed in Guinn & Stieglich *supra* n.

<sup>38</sup> Ribando *supra* n.

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The difficulty arises when one attempts to quantify the problem. To answer this question, three possible approaches present themselves.

### *Legal and Undocumented Migration*

First, many researchers and advocates focus upon general legal and illegal migration, where significant statistics exist. Research amply demonstrates that trafficking is closely related to illegal migration and smuggling.<sup>39</sup> While it may not be possible to quantify the exact percentage of illegal migration/smuggling the ends in an exploitative trafficking position, qualitative research suggests that it is significant.

Thus, one way to quantify the problem draws attention to statistics indicating that Latin America and the Caribbean have the highest rate of movement and out-migration in the world.<sup>40</sup> The movement of undocumented migrants towards the United States is escalating, with Mexican authorities reporting the detention of over 215,695 individuals in 2004, a 15% increase over 2003 while the number of undocumented migrants apprehended along the U.S-Mexico border has tripled.<sup>41</sup> Out of this, the United States estimates that Latin America is the primary source for the estimated 14,500 to 17,500 identified as being trafficked into the United States each year (though it appears that those figures may include victims from other parts of the world for whom Latin America is merely a transit region).<sup>42</sup>

A somewhat analogous approach was taken by the researchers for the country reports on Brazil, Colombia and the Dominican Republic in the 2005 TIP Report which

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<sup>39</sup> *Id.*; CTOP *supra* n . ; Leal & Leal *supra* n . .

<sup>40</sup> See, e.g. *World Migration* (IOM 2005); *Exploratory Assessment of Trafficking in the Caribbean Region* (IOM 2005).

<sup>41</sup> Blas Nuñez-Nieto, *Border Security: Apprehensions of "Other than Mexican" Aliens*, CRS Report

<sup>42</sup> See TIP Report 2005, Chile, Costa Rica etc.

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provided estimates of 70,000 Brazilians, 45-50,000 Colombians, and 50,000 Dominicans being engaged in prostitution in Europe with the assumption that all or most may have been the victims of trafficking. (These figures have been questioned because they have not been confirmed by European police officials.<sup>43</sup>)

To these figures we can add larger estimates provided by organizations such as the ILO that 1.3 million people in Latin America are involved in forced labor, of which 250,000 have been trafficked within the region.<sup>44</sup> It is estimated that 650,000 Haitians have been virtually enslaved in the sugar cane bateaus of the Dominican Republic.<sup>45</sup>

#### *Trafficking Networks or Entry Points*

A second way to suggest the extent of the problem of trafficking is to identify the multiple and diverse ways in which individuals enter the trafficking industry. It can be assumed from the variety and existence of so many entry points, many have entered trafficking through these doorways. Illustrative of these entry points or trafficking networks are those identified in the International Human Rights Law Institute study in Brazil.<sup>46</sup> There different trafficking networks were identified both at the domestic and international levels. They can be roughly subdivided into a number of different categories based upon their principle methods of recruitment (e.g. how they recruit; how they deceive the women/adolescents, etc.) and/or by how they market the subject of trafficking (e.g. marriage brokers; tour agents, etc.). While this division provides some insights,

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<sup>43</sup> Ribando *supra* n .

<sup>44</sup> *A Global Alliance Against Force Labor*, (ILO, 2005).

<sup>45</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2004: Dominican Republic* (2005).

<sup>46</sup> Leal & Leal *supra* n .

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these typologies of networks are not absolute, with individual networks often interacting with or sharing features with networks categorized under a different typology.

(a) *Entertainment network: shopping malls, nightclubs, bars, restaurants, motels, beach tents, fast-food restaurants, show-houses, samba gatherings, brothels, massage parlors...* Trafficking financed by nightclubs, bar owners and other “entertainment” sources constitute the most common type of trafficking network. According to statements provided by their informants, nightclub owners finance the girls' interstate trips, their maintenance in the destination city, and provide them with alcohol and drugs, as well as their first clients. The recruited girls are bonded to them until their debts for transportation and survival are paid off. However, rules change from one nightclub owner to another. Some nightclubs place the girls in a restrained environment, literally locking them up in the nightclub. Others allow the girls to go out, under constant vigilance, as long as they come back on a daily basis and pay for their day's work. They are subjected to physical threats, and were relatively defenseless since they are under 18 and unfamiliar with the city.

(b) *Fashion Market Network: modeling agencies (photography, videos, and movies)* Modeling agencies provide traffickers with great access to particularly attractive or appealing women and girls. Throughout the world, modeling agencies have served as a primary entry point into pornography. They have served a similar purpose for trafficking networks

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(c) *Employment Agencies Network: domestic servants, baby-sitters, travel escort and artistic jobs (dancers, singers...)* given the strong connection between trafficking and economic migration, employment agencies are often used as a front for recruitment.

(d) *Marriage Agency Network* Among all the forms of trafficking networks, marriage agencies are the most difficult to characterize. According to a study conducted by CEAP in 1997, there are at least two types of trafficking through marriage: either the women are attracted by advertisements or by sex tourism.<sup>47</sup> In either case, the foreign man comes to Brazil to pick up the female candidate. She often leaves the country not knowing that there is a contract between the agency and her prospective husband.<sup>48</sup> She is actually put into a three-month "test" period, and he has the right to return the woman in the event he is not satisfied.

(e) *Tourism Industry Network: travel agencies, hotels, health spas/resorts, tourist transportation* Tourism plays two different roles in trafficking. First, tourism, and especially sex tourism (where the object of the trip is to have sex with a local), fuels the demand for women and children who are trafficked to service this demand. While this would most often be the destination for domestic trafficking, it would also be a destination point for international trafficking coming into Brazil. Second, tourist areas often serve as a jumping off point for international trafficking (including marriage brokers) taking advantage of the travel facilities that bring tourists to the resort area to transport women and children overseas.

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<sup>47</sup> CEAP, *Tráfico de mulheres é crime! Um Sonho, um passaporte, um pesadelo*. Universidade do Estado do Rio de Janeiro, 1995

<sup>48</sup> FILHO, Aziz. *Marriage agency in Germany offers Brazilian women for U\$ 5 mil*. Rio de Janeiro, O Globo, 7 Mar 1997; MELAZO, Fernanda. *Brazilian girls are placed for sale in Europe*. Brasília, 7 Mar 1997, p. 9; BORGES, Carla. *Sexual Commerce in Europe exploits Brazilian women*. O Popular, Goiânia, 4 Mar 1997, p. 6.

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(f) *The Taxi Connection* while not a network in themselves (in the sense of a complete connection between recruitment and destination) taxi drivers serve a number of different functions within the broader field of trafficking. First, taxi drivers may serve as recruiters for traffickers by identifying women or children for possible trafficking. This would arise particularly in connection with those women who have already entered the migrant labor movement and find themselves isolated in a new environment. Second, taxi drivers often act as the transporters of trafficked individuals. Finally, taxi drivers may actually link the women or children with the “john.”

(g) *Recruitment Agencies for Infrastructure and Development Projects Network: recruitment for agriculture, highway and waterway construction, gold mining and others.* Large infrastructure projects and mining operations, as well as the 'gold rush' in the South and Southeast part of the State (Carajás and Tapajós), made the State of Pará serve as a shelter to vast amounts of people in the 1980's and 1990's. The prostitution market developed following the same logic: it followed the migratory flow, increasing and decreasing according to construction and gold mining operations.<sup>49</sup>

Similar networks are found throughout Latin America.<sup>50</sup>

### *Trafficking Routes*

A final way to profile the problem is to identify the number of routes and destinations for trafficking. This can again be illustrated drawing upon IHRLI's Brazil

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<sup>49</sup> Dimenstein, Gilberto. *Meninas da Noite: prostituição de meninasescravas no Brasil*. [Girls of the Night] São Paulo: Ática, 1993; Dias, Luiz Carlos de Carvalho ed all. *Prostituição & adolescência: Prostituição juvenil no interior do Pará*. Belém: Cejup, 1997.

<sup>50</sup> Guinn & Stieglich *supra* n.

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research. Trafficking is a complex form of trade involving the movement of significant numbers of people both from region to region within a country (Brazil) and internationally across multiple borders. This presents numerous logistical challenges for traffickers including both the physical demands of moving individuals from place to place and issues of regulatory compliance or avoidance. To answer these challenges, those involved in trafficking develop routinized practices incorporating paths of movement, methods of travel, means of addressing regulatory challenges and so forth. For convenience, collectively these practices can be identified as trafficking routes.

Studying trafficking routes represents a particularly useful and important means by which to research trafficking. First, while there is some evidence that a significant amount of international trafficking is operated by organized crime which controls the process from the woman or child's point of entry into the trafficking system up through their final disposition (either through a one time sale to a "consumer" or placement in a brothel controlled by the criminal organization), it is also possible that a trafficking route may be constituted by a less formal association of unrelated independent agents whose operations are limited to one small segment within the chain. For example, while we know that individuals are passed between internal trafficking networks within Brazil and international networks that move those individuals to foreign countries, the linkage between the two may be nothing more than that of a seller (the internal trafficker) and buyer (the individual or group responsible for introducing the trafficked person into that particular trafficking route at that particular point of contact.)

Second, studying trafficking routes may provide insights as to the points of entry and potential points of vulnerability to legal and/or social intervention. For example, in

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another studies conducted by the International Human Rights Law Institute in Central America, it was found that many women who were economic migrants (following the routes developed for illegal immigrants) became victims of trafficking when they were intercepted within the illegal immigrants system and diverted into the trafficking system.

Third, determining the exact numbers of individuals being trafficked is, of course, quite difficult. It is an illegal activity which has, in many cases, been shielded by governmental complicity. One possible alternative of assessing the magnitude of the problem is to measure the number of routes being used for trafficking. By definition, a route involves multiple transports of individuals. Ergo, the more routes being used—the more victims being trafficked from or through that area.

Fourth, studying trafficking routes allows researchers to discriminate among those being trafficked. That is to say, the type of trafficking route used and its destination often varies according to the type of person being trafficked. For example, the logistics of moving children or adolescents, because it is likely to be more difficult to transport them across borders, will demand a different type of network from that of moving women. Similarly, the end markets for trafficking may prefer one ethnic, racial, cultural or age group over others. That preference would inform the network created to meet that demand.

Finally, identifying the routes of trafficking followed by individuals who have been identified as being trafficked helps guide governmental and non-governmental monitors in the disposition of their limited resources to attempt to and measure the movement of individuals within the trafficking system.

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### *Domestic Trafficking Routes*

As previously noted, one of the reasons for including the Brazil study within the larger program of research on trafficking in the Americas was that Brazil represented a major economic power in the region, with a large population and covering an expansive geographic territory. Prior research had demonstrated that even within some of the smaller countries in Central America, internal trafficking could be observed in the movement of individuals from one part of the country to another for purposes of sexual exploitation. This study has found that internal trafficking represents a major phenomena within Brazil. In order to study it effectively, the country was divided into 5 geographic region and routes were mapped within and between regions.

In studying these routes and characteristics of the individuals trafficked in these routes, many features conform to common sense expectations and the findings of prior research. In Brazil, most trafficking routes originate in rural areas of the states and move towards the large urban centers or international border regions (which serve as either a step off point for international trafficking or as a destination for sex tourism). Similarly, routes develop to serve dramatic changes in the economic environment created by development. For example, in the Northeast region, significant trafficking routes have developed to transport primarily Amer-Indian women to serve the railroads and gold mining zones.

Economic conditions help drive trafficking, with trafficking routes running from economically disadvantaged areas moving towards areas that are, at least relatively, more economically prosperous. Thus the poorest areas, the North (with 36 routes) and the Northeast (with 20) regions have the most domestic trafficking routes, with the South (9),

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Central-West (8) and Southeast (5) having significantly fewer domestic trafficking routes.

Methods of transporting trafficked individuals domestically do reveal some interesting features that might be of use in enforcement. Specifically, while Brazil is a large country with a large navigable system of waterways, the primary method of domestic transport is overland, with taxis and trucks the preferred vehicles for transport, followed by cars and trucks. Interestingly, what limited domestic trafficking occurs utilizing airplanes as the method of transport is used almost exclusively to transport adolescents.

Finally, as previously noted, analysis of the domestic routes reveals that adolescents are the primary subjects of domestic trafficking, followed by women. Data on child trafficking is, unfortunately, extremely limited.

### *International Trafficking Routes*

Researcher were able to identify 131 international trafficking routes to 17 different destination countries for women and children. Here again, certain characteristics are of note. As was the case with domestic routes, those regions under the most economic stress are also the points of origin for the most international trafficking routes. However, the distribution among the regions is less disproportionate, than with domestic routes. For example, while the South has one quarter as many domestic trafficking routes (13) than the North (45), it has half as many international routes (15 vs 31). However, due to geographic considerations, while the North has the most domestic routes (45), the Northeast has the most international routes (35 vs 31.) One can explain

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the proportionate increase of the South, Southeast and Central-West in relation to international routes in two ways. First, the southern 3 territories are more urbanized and have significant international airports and international transportation links to serve in trafficking. Second, it appears that these three regions serve as transit links between domestic routes and international routes. In many cases individuals are domestically trafficked in to serve the demands of these regions and then, given the market demand for “fresh faces,” they are then trafficked out of the region into the international system.

Among the destination countries, Spain is by far the most common destination country for Brazilian women. It is followed by the Netherlands, Venezuela, Italy, Portugal, Paraguay, Switzerland, the USA, Germany, Suriname, Israel, Hong Kong, Bolivia, Japan, French Guiana, Peru, and Taiwan.

Unlike domestic trafficking, where adolescents were among the most frequently trafficked, international routes are primarily allocated to trafficking women. However, once again in evaluating this phenomena, these statistics must be considered in light of the tendency when trafficking older adolescents to identify them as being 18 years old or older.

Finally, the linkage between trafficking and organized crime appears most clearly in connection with international trafficking. For example, trafficking to Spain (the most popular destination) almost always involves the “Iberian Connection,” a collaboration of a number of criminal organizations, of which the Russian Mafia appears dominant. The Russian Mafia is reported to make US\$8 billion per year through its brothels in Portugal and Spain.

[SUMMARY OF REMAINING ISSUES]

**Local and International Efforts to Address Trafficking**

Reponses to the problems of trafficking and slavery throughout the region and, indeed, the world have been primarily driven by the United States under the terms of the TVPA and the TIP Reporting System. There are some virtues to this effort.

- 1) The US has succeeded in calling world attention to the problem.
- 2) It encourages a broad response of all the countries in the region (as opposed to a less effective piecemeal response unsuited to addressing a international problem.)
- 3) US has provided significant financial assistance to help countries address trafficking.

The US leadership has, however also caused problems, both for what it requires and by flaws within its data collection methods.

Data is collected by overworked political service officers within the local embassy on a short deadline. They are forced to draw upon the expertise of local government officials (who often don't know and many have political incentives to distort the information) and available resources in the NGO community (who may be biased or inadequate to the task). Therefore, the easiest quantifiable data is often target: i.e. existence of laws, training sessions for officials, and the numbers of prosecutions. This in turn leads to local governments to target their efforts to satisfy US requirements by:

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- 1) Passing laws specifically drafted to satisfy the TVPA rather than meeting local needs.
- 2) Emphasize easily quantifiable activities such as providing specialized training to a significant number of officials without regard to whether or not those employees actually interact with victims or traffickers.
- 3) Due to lack of resources, trainings are often based upon the availability of training resources from NGOs (influenced by their needs and subject to their quality control.)
- 4) Prosecutions are emphasized (with some concern to have enough prosecutions without having so many that they may arouse additional concerns under TIPs)– though convictions may or may not follow.

Donors provide the secondary drive for enforcement and prevention efforts. While obtaining donor resources are often necessary within the region, this nonetheless potentially biases the enforcement efforts, skewing it to address issues of particular concern to funders, such as favoring efforts to help children or address sex trafficking (issues with strong emotional appeal to donor organizations and their supporters/funders) rather than other issues of labor abuse/slavery that may be far greater in impact. This also impairs the effort to develop a coordinated coherent national and regional plan for the overall effort to address trafficking.

### **Methods to Limit or Eliminate Trafficking**

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The long war on drugs and arms trafficking reveals that efforts focused solely on the criminals involved in trafficking will ultimately fail. While there are some opportunities in this area (especially in terms of attacking criminals through greater attention to money laundering and coordinating boarder protection to address the range of problems from drugs, arms, terrorism and trafficking in people) a more productive way of approaching the problem is to work on “push” problems (those factors that drive a person into the illegal migration/trafficking system) and the demand elements.

Push concerns start with a focus on meeting the fundamental economic needs. Since women and children are the most vulnerable to trafficking, special attention should be given to them to address issues of economic disparity, education, gender discrimination, and violence.

Demand, especially in terms of sex trafficking, is primarily a result of prostitution. Men need to be educated against the abuse of women through prostitution. Legalized prostitution exacerbates the problem. Sex trafficking adds to the problem. Efforts to inform potential sex traffickers of potential sanctions, especially for child prostitution, such as those undertaken in Costa Rica are quite important.

### **Care for Victims**

Meeting the needs of victims falls into two categories. First, how should the victim be handled in the country where s/he is being exploited. Second, how can or should repatriation be handled.

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Country of Exploitation. In the country of exploitation, prosecutions of traffickers require the cooperation of victims. At a minimum, they will need to be allowed to stay in residence (in spite of the obvious undocumented status) for the duration of the prosecution and to be provided with necessary services (food, shelter, health care, possible psychological counseling) for this period. Moreover, to gain cooperation, it may be necessary to provide incentives – including the potential of being granted legal residence. This, in turn will require some coherent approach not only to trafficking, but to the larger issue of undocumented migration.

Repatriation. The most common response to the capture of trafficking victims by government officials is to repatriate them to their country of origin – or the last border that they crossed. Research demonstrates that returning a victim to their country of origin without any further assistance or counseling simply results in their starting the trafficking process all over again. Indeed, repatriated victims of sex trafficking are often in a worse position than they were when they left the first time due to social isolation arising out of disapproval over their status as former prostitutes. Among all trafficking victims, children's programs appear to have received the most attention and funding.

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