

TRAFFICKING AND TRADE: HOW REGIONAL TRADE AGREEMENTS CAN COMBAT THE TRAFFICKING OF PERSONS IN BRAZIL

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“Human trafficking is a modern-day slave trade. It violates fundamental human rights and exploits innocent people.” --
Sheikha Haya Rashed Al Khalifa, President of the UN General
Assembly

I. INTRODUCTION

The crime of trafficking in persons, or human trafficking, has been condemned worldwide, but is one of the fastest-growing international crimes. Victims may be women or children trafficked into prostitution or domestic work, or men trafficked into slave labor and sometimes prostitution. After traveling long distances to pursue false promises of opportunity, victims are enslaved far from home, often lacking the resources or information to change their situation or to prosecute their trafficker. Their situation is compounded by societal attitudes that stigmatize people of their race, social class, or occupation; indeed cultural disagreement on how to regard those trafficked into prostitution has hampered the assistance available to victims.

This paper introduces the problem of trafficking in persons globally, and then explores Brazil as a case study in anti-trafficking efforts. Brazil, one of the most prominent countries in the international network of trafficking in persons, has taken efforts to combat trafficking through three frameworks: changing legal standards through a law-enforcement approach; increasing social and psychological support services through a human-rights approach; and taking action against slave labor conditions in a labor rights approach. None of these tactics alone has proven sufficient.

This note explores a combined approach: supplementing Brazil’s existing anti-trafficking policies with international trade agreements to coordinate a three-pronged attack on human trafficking. Trade agreements provide international standards for goods, but by incorporating language guaranteeing rights for workers,

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they have the potential to simultaneously spur the economic growth necessary to improve living standards, and to reorient society to combat trafficking in the long term. With a growing international economic presence and a reform-minded government, Brazil is poised to implement these changes for the benefit of her citizens and the region.

A. Overview of Human Trafficking Internationally

Throughout the world, the most common recruiting method for adult human trafficking victims consists of promises of employment opportunities, either in service or entertainment industries, or as domestic servants.² Upon reaching his or her destination, the victim is typically subjected to coercion, violence, or threats of violence under exploitative circumstances.³ Martti Lehti, a researcher in the National Research Institute of Legal Policy in Helsinki, and Kauko Aromaa, director of the European Institute for Crime Prevention and Control, note that a large percentage of victims know there is a substantial risk they may end up in prostitution.⁴ Nevertheless, faced with the need to support themselves, victims subject themselves to these risks to leave their less-developed communities for more prosperous areas.⁵

Victims often find the employment contract they were promised is fraudulent, suffer physical and verbal abuse, and/or are held captive (or perceive themselves as being held captive).⁶ Traffickers often deceive their victims into believing they are responsible for the costs associated with their transportation, food, and lodging and may use violence, force, or the threat of violence to prevent the victims from reneging on their “debt.”⁷ Traffickers may try to control workers through isolation, deny them medical care, place security guards in front of their places of “employment,” withhold wages, or invoke their fear of arrest or deportation.⁸ Victims remain vulnerable after reaching their destinations because they generally do not speak the language, are unfamiliar with the environment, and

2. Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 *CRIME & JUST.* 133, 157 (2006).

3. Aiko Joshi, *The Face of Human Trafficking*, 13 *HASTINGS WOMEN’S L.J.* 31, 32 (2002).

4. Lehti & Aromaa, *supra* note 2, at 157, 227 n.a.1.

5. *See generally id.* at 157.

6. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 19 (2007)*, available at <http://www.state.gov/documents/organization/82902.pdf> [hereinafter *TRAFFICKING IN PERSONS REPORT*].

7. Joshi, *supra* note 3, at 47.

8. *Id.*; see Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 *BERKELEY WOMEN’S L.J.* 29, 35 (2001).

have an illegal or non-national status.⁹ The lack of a legal identity serves to block the victims' access to justice.¹⁰

Trafficking in persons is a rapidly expanding international crime that violates border, immigration, and labor laws.¹¹ The United Nations estimates that human trafficking generates over nine billion dollars in annual revenue worldwide.¹² While drug dealers can sell their commodities only once, trafficking victims are considered cheap products that can be reused. Thus, human traffickers get a continuous return on their investment.¹³ Given the low overhead and high profitability, human trafficking is quickly becoming the transnational criminal enterprise of choice.¹⁴

B. Why the Definition of Human Trafficking Matters

“Trafficking” is an umbrella term encompassing multiple acts.¹⁵ It begins with the recruitment or transportation of persons through some form of fraud, force, or coercion for an exploitative end purpose, and often results in forced prostitution, agricultural, or domestic work.¹⁶ Because of the variety of ways in which the rights of victims are violated, it is appropriate to consider different definitions of trafficking in different contexts. However, definitions with differing contextual meanings make researching and discussing the problem more difficult.¹⁷

The definition of “human trafficking” influences the response to the problem in terms of what conduct is proscribed, what rights are protected, and how

9. Claudine Chastain, *The Nexus Between Free Trade Agreements and the Trafficking of Human Beings*, 5 WASH. U. GLOBAL STUD. L. REV. 587, 607 (2006); see generally Ali Miller & Alison N. Stewart, *Report from the Roundtable on the Meaning of “Trafficking in Persons”: A Human Rights Perspective*, 20 WOMEN'S RTS. L. REP. 11, 15-16 (1998).

10. Chastain, *supra* note 9.

11. Chastain, *supra* note 9, at 606 (citing LeRoy G. Potts, Jr., Note, *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 GEO. WASH. INT'L L. REV. 227, 228-30 (2003)).

12. *Id.* at 605 (citing TRAFFICKING IN PERSONS REPORT, *supra* note 6).

13. *Id.* at 605-606.

14. *Id.* at 606-607; see also Jennifer L. Enck, Note, *The United Nations Convention Against Transnational Organized Crime: Is It All that It Is Cracked up to Be?*, 30 SYRACUSE J. INT'L L. & COM. 369, 375 (2003) (“Thus, this transnational criminal activity has become a huge business network contributing to an illegal economy, which the International Monetary Fund estimates at between three and five percent of the world's gross national product.”).

15. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 443 (2006).

16. See *id.*

17. See Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT'L L. 1, 38 (2004).

victims are identified.¹⁸ Therefore, constructing a trafficking definition requires complicated choices about component acts, which then triggers other legal regimes, such as immigration or criminal law, as well as moral and political decisions.¹⁹ Historically, discussions on human trafficking focused on the “innocent victims” and often ignored laborers, migrants, and sex workers.²⁰ The result of this complex interplay of biases and definitional confusion is an emphasis on victimization, “a fruitless cycle of debate on the role of prostitution, . . . and a process of decision-making that excludes critical voices.”²¹ The many women who are trafficked into prostitution face hardships and a loss of liberty and dignity equal to other individuals trafficked into forced labor, yet the international community has struggled with whether an international definition should include women trafficked into prostitution as victims.

The first generally agreed-upon international definition was adopted in the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (the “2000 Protocol” or the “Palermo Protocol”).²² The 2000 Protocol defines “trafficking in persons” as:

[T]he recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour [sic] or services, slavery or practices similar to slavery, servitude or the removal of organs.²³

18. *Id.*

19. See Chuang, *supra* note 15.

20. Bruch, *supra* note 17, at 3.

21. *Id.*; see also BRIDGET ANDERSON & JULIA O’CONNELL DAVIDSON, INT’L ORG. FOR MIGRATION, NO. 15, IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN? A MULTI-COUNTRY PILOT STUDY 7 (2003), available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/mrs_15_2003.pdf.

22. See Kevin Bales, *International Labor Standards: Quality of Information and Measures of Progress in Combating Forced Labor*, 24 COMP. LAB. L. & POL’Y J. 321, 351 (2003) (noting that the definition in the Protocol may reflect “political compromises, rather than simply the search for precision in exploration.”); see generally 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, Annex II, U.N. Doc. A/RES/55/25/Annex II (Nov. 15, 2000) [hereinafter 2000 Protocol].

23. 2000 Protocol, *supra* note 22, art. 3(a).

Another difficulty in addressing international trafficking regards the victim's consent, particularly when women consent to travel and know they will be engaged in some form of sex work.²⁴ Because prostitution is both criminalized and stigmatized in many societies, there is debate about whether the definition of trafficking should include individuals who are trafficked into prostitution, especially if the prostitution is voluntary.²⁵ Some governments criminalize all aspects of prostitution, while others criminalize only certain aspects, and the international approaches to combating trafficking have struggled to reconcile whether to exclude those who engage in prostitution from human trafficking protection.²⁶ For instance, many of the existing support networks in Brazil accept only children and adolescents (who are presumed unable to consent to prostitution under Brazilian law) due to the condition on USAID funding that requires countries to criminalize commercial sex work.²⁷

The 2000 Protocol "eliminates the issue of consent, includes all forms of prostitution, and focuses primarily on sexual exploitation."²⁸ It also expands "the list of end purposes that are covered to include forced labor, servitude, and slavery-like practices."²⁹ This allows prosecution of those who traffic workers for domestic work, sweatshop labor, migrant labor or other work in the informal economy.³⁰ The expanded definition offers protection to many more victims, but with the consequence that estimating the extent of the problem is more complicated.

C. The Extent of Human Trafficking

1. Problems with Data Collection

Analyzing the extent and patterns of global trafficking in persons is difficult because international and national data is generally scarce and unreliable,

24. See Bruch, *supra* note 17, at 18.

25. See *id.* at 18-19.

26. *Id.*

27. See Frans Nederstigt & Luciana Campello R. Almeida, *Brazil*, in COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 87, 103 (Mike Dottridge ed., 2007), available at http://www.gaatw.net/Collateral%20Damage_Final/CollateralDamage_BRAZIL.pdf; see also Michael M. Phillips & Matt Moffett, *Brazil Refuses U.S. AIDS Funds Due to Antiprostitution Pledge*, WALL ST. J., May 2, 2005, at A3, available at 2005 WLNR 7012219 (Brazilian officials said that the country has refused \$40 million in USAID grants because of a Bush administration requirement that HIV/AIDS organizations seeking funding to provide services in other countries must pledge to oppose commercial sex work).

28. Bruch, *supra* note 17, at 20 (footnote omitted).

29. *Id.*

30. *Id.*

and because of “the inconsistent uses of the concept of trafficking in women and persons in international and national contexts.”³¹ Also, surveyors rarely state whether the figures refer to the number of persons or the number of border crossings.³² If one person crosses in and out of the country several times, this person may be miscounted as several victims.³³ There is usually no indication of whether statistics include only those trafficked across international borders or also encompass the victims trafficked within a country.³⁴ Figures may include new recruits only, or they may include victims of earlier years whose exploitation continues.³⁵ Further, there are diverse ways of characterizing the criminal acts of trafficking in the legislation of different nation-states, “which result[s] in a high level of uncounted crimes . . . and make[s] trafficking hard to identify, control, and prevent”³⁶ Victims of trafficking have a precarious legal status in most countries, “which contributes to their reluctance to report crimes or to cooperate with investigations and court proceedings”³⁷

“The most extensive global database is that of the U.N. Global Program against Trafficking in Human Beings” (hereinafter GPAT), which includes data on trafficking between 1996 and 2003 from 161 countries and territories.³⁸ However, because the quality of data from the original sources varies, the usefulness of the entire database is limited.³⁹ In addition, the annual “Trafficking in Persons Report” of the U.S. State Department “estimates global, regional, and national numbers and assessments of the crime prevention activities of nation-state governments.”⁴⁰ The Trafficking in Persons Report is widely used, but data are of uneven quality because it utilizes local contacts and sources of varying quality in each country to compile the report.⁴¹

31. Lehti & Aromaa, *supra* note 2, at 142.

32. *See id.* at 186.

33. *See id.* at 187.

34. *Id.* at 186.

35. *Id.*

36. Lehti & Aromaa, *supra* note 2, at 142.

37. *Id.*

38. *Id.* at 143; *see* U.N. Office on Drugs & Crime, Database of the Global Program Against Trafficking in Human Beings; *see generally* KRISTINA KANGASPUNTA, U.N. OFFICE ON DRUGS & CRIME, VOL. 3, NOS. 1-2, MAPPING THE INHUMAN TRADE: PRELIMINARY FINDINGS OF THE DATABASE ON TRAFFICKING IN HUMAN BEINGS (2003) (overview of the GPAT Database collection methods and preliminary findings), *available at* http://www.unodc.org/pdf/crime/forum/forum3_note1.pdf.

39. Lehti & Aromaa, *supra* note 2, at 143.

40. *Id.* at 145; *see* TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 36-212.

41. Lehti & Aromaa, *supra* note 2, at 145; *see also* Chuang, *supra* note 15, at 474-83 (assessing the credibility and methodology of Trafficking in Persons Reports); *see generally* TRAFFICKING IN PERSONS REPORT, *supra* note 6.

2. The Human Trafficking Data

Estimates of the number of people trafficked each year worldwide for sexual or economic exploitation vary between 600,000 and up to 6,000,000.⁴² The U.S. State Department estimates that 600,000 to 800,000 persons are trafficked across international borders annually, fifty percent of whom are children and eighty percent of whom are female.⁴³ A majority of long-distance trafficking victims come from Brazil, the Dominican Republic, Russia, Sri Lanka, China, Thailand, the Philippines, and Nigeria.⁴⁴ Trafficking flourishes in these countries because there is either strong domestic organized crime with extensive global connections, and/or a tradition of female economic emigration with well-established global migration networks and immigrant communities.⁴⁵ The total volume of trafficking for sexual exploitation in the Americas is estimated at 400,000 to 2,500,000 victims annually.⁴⁶ Most of the trafficking in North and South America either takes place within or originates from Brazil; Brazil and the Dominican Republic are the Americas' main recruiting areas for prostitution-related trafficking for Europe and to a lesser extent for Asia, the Middle East, and South Africa.⁴⁷ Despite the difficulties in estimating the volume and location of trafficked persons, the fact remains that there is an extensive global problem.

II. HUMAN TRAFFICKING IN BRAZIL

A. Scope of Human Trafficking in Brazil

According to the United Nations, Brazil is the largest exporter of women in South America and one of the most important players in the global trafficking networks.⁴⁸ Brazilian women and children are trafficked internationally for sexual exploitation to destinations in South America, the Caribbean, Western Europe (Germany, Italy, Portugal, and Spain), Japan, the United States, and the Middle

42. See U.N. OFFICE ON DRUGS & CRIME, *TRAFFICKING IN PERSONS: GLOBAL PATTERNS* 45 (2006), available at http://www.unodc.org/pdf/traffickinginpersons_report_2006-04.pdf (citing U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* 46, 54 (2005)), available at <http://www.state.gov/documents/organization/47255.pdf>.

43. See *TRAFFICKING IN PERSONS REPORT*, *supra* note 6, at 8.

44. Lehti & Aromaa, *supra* note 2, at 219.

45. See *id.* (citing *GLOBAL WOMAN: NANNIES, MAIDS AND SEX WORKERS IN THE NEW ECONOMY* (Barbara Ehrenreich & Arlie Russell Hochschild eds., 2003); Louise Shelley, *Russian and Chinese Trafficking: A Comparative Perspective*, in *HUMAN TRAFFIC AND TRANSNATIONAL CRIME: EURASIAN AND AMERICAN PERSPECTIVES* (Sally Stoecker & Louise Shelley eds., 2004)).

46. Lehti & Aromaa, *supra* note 2, at 199.

47. *Id.*

48. *Id.* at 202.

East.⁴⁹ Paulo Marchins da Cunha, the chief of the policing section of Sao Paulo's Federal Highway Police, explains that recruiters convince poor women to go abroad with false promises of work, prosperity, and sometimes even promises of marriage.⁵⁰ Some women, facing desperate economic circumstances at home, know they will work as prostitutes, but do not realize the extent to which they will be forced to work under threat of bodily harm after they arrive.⁵¹ Others leave Brazil voluntarily to seek better employment, but lack documentation to work abroad and turn to prostitution.⁵² Brazil is also a major destination country for trafficking, where women and children are relocated for sexual exploitation and men for forced labor.⁵³

There is no centralized collection and reporting system for anti-trafficking law enforcement data in Brazil.⁵⁴ However, estimates by the Joint Legislative Inquiry Committee of the National Congress (Comissão Parlamentar Mista de Inquérito (CPMI)) suggest that between 500,000 and 800,000 girls are being exploited (even without including exploited men, this is a significant number in light of the U.S. estimate of an annual total volume between 400,000 and 2,500,000 trafficked persons)⁵⁵ and that 241 human trafficking routes exist.⁵⁶ According to CPMI, sex trafficking predominantly affects:

black and “dark” women and girls between the ages 15 and 27, generally from poorer classes, with low levels of education, who live on the margins of urban areas with lack of sanitation and transportation (among other community social goods), who live

49. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 67; see U.N. OFFICE ON DRUGS & CRIME, COMBATING TRAFFICKING IN HUMAN BEINGS IN BRAZIL 2-3 (2003), available at http://www.unodc.org/pdf/brazil/folder_tsh_ing_port.pdf [hereinafter COMBATING TRAFFICKING UNODC] (illustrating that the largest destination countries are Spain (thirty-six percent) and Portugal (twenty percent)); see also PESTRAF – BRAZIL, STUDY OF TRAFFICKING IN WOMEN, CHILDREN, AND ADOLESCENTS FOR COMMERCIAL SEXUAL EXPLOITATION: NATIONAL REPORT BRAZIL 80-81 (2002), available at http://www.childtrafficking.com/Docs/pestraf_2002_trafficking_brazil.pdf [hereinafter PESTRAF] (detailing major international routes, including the Netherlands and Venezuela).

50. Jen Ross, *Brazil Tries to Stem Tide of Sex Slavery*, WOMEN'S ENEWS, June 19, 2005, <http://www.womensenews.org/article.cfm/dyn/aid/2342/context/archive>.

51. *See id.*

52. *See id.*

53. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 67.

54. *Id.* at 68.

55. ORG. COMM., CIVIL SOCIETY, BRAZIL AND COMPLIANCE WITH CEDAW: SHADOW REPORT OF CIVIL SOCIETY 20 (2007), available at <http://www.agende.org.br/home/BRAZIL%20SHADOWREPORT%20CEDAW%20-13%20julho07.pdf> [hereinafter CIVIL SOCIETY SHADOW REPORT].

56. *Id.*

with some type of relative, has [sic] children, and engage[] in low-wage work activities.⁵⁷

Children are particularly vulnerable, with an estimated 3,500 young people trafficked for sexual exploitation or labor purposes, as well as a trade in babies for adoption.⁵⁸ In addition, there are close to 502,000 children and adolescents in domestic work positions, even though the legal working age is sixteen.⁵⁹ According to the International Organization for Migration (IOM), an inter-governmental organization dedicated to promoting humane and orderly migration, many of the at-risk children either live on the street or come from impoverished families.⁶⁰ Further exacerbating the problem is a strong culture of machismo upholding sex with underage girls as safer and a sign of male virility.⁶¹ Families may refuse to recognize the problem, as mothers of trafficked children are frequently victims of abuse themselves or involved with prostitution.⁶²

Child prostitution in Brazil is a growing problem, with child prostitution rings throughout the country, especially in the northeast.⁶³ Police in various tourist towns have conducted a number of investigations into the sexual exploitation of Brazilian children by foreign pedophiles, largely from Europe and North America.⁶⁴ The National Foundation on Indigenous Issues and the National Health Foundation have recently raised the issue of sexual exploitation and prostitution of young women and adolescent Indians along the inland borders, touching almost all of the

57. *Id.*; see PESTRAF, *supra* note 49, at 43-44 (detailing case studies on the characteristics of adult and adolescent women trafficked from Brazil as two opposite types of women: (1) those who are naïve, suffering financial difficulties, and are easily deceived; and (2) those “in ‘control of the situation’” who evaluate the risks and decide to take on the risk in order to earn money).

58. Oliver Balch, *Latin America's Secret Slave Trade*, GUARDIAN UNLIMITED, Dec. 20, 2006, <http://www.guardian.co.uk/argentina/story/0,,1976028,00.html?gusrc=rss&feed=12>.

59. CIVIL SOCIETY SHADOW REPORT, *supra* note 55, at 21.

60. Balch, *supra* note 58; see generally Int'l Org. for Migration, *The Nature of Human Trafficking*, <http://www.iom.int/jahia/Jahia/pid/676> (last visited Mar. 3, 2008).

61. Balch, *supra* note 58.

62. *Id.*; see Regional UN.GIFT Meeting, Brasilia, Braz., Oct. 2-4, 2007, *Challenges to the Implementation of the National Plan of Action Against Trafficking in Persons*, 1 [hereinafter Regional UN.GIFT Meeting] (some studies show that while street children and orphans are particularly vulnerable to trafficking, a large percentage of child victims remain living with their families, engaging in commercial sex to supplement the family income).

63. THE PROTECTION PROJECT, JOHNS HOPKINS UNIV., HUMAN RIGHTS REPORT: BRAZIL 2, *available at* http://www.protectionproject.org/human_rights_reports/report_documents/brazil.doc (last visited Sept. 7, 2008) [hereinafter HUMAN RIGHTS REPORT: BRAZIL]; see also Lehti & Aromaa, *supra* note 2, at 202.

64. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

South American countries.⁶⁵ In the center-east region of Mato Grosso do Sul, indigenous women and girls are being prostituted and used for international drug smuggling.⁶⁶ Unfortunately, the extent to which members of indigenous communities have been exploited has not been the subject of specific research, likely because “the issue is just as marginalised [sic] as the indigenous communities themselves are within Brazil.”⁶⁷

In the “triple frontier,” where Brazil, Argentina, and Paraguay meet, there are about a dozen unofficial crossing points where smugglers traffic people for the illegal labor markets in Brazil and Argentina.⁶⁸ A large proportion ends up as sex workers, either in brothels, or in the sex industry in the triple frontier area.⁶⁹ The victims often know their recruiter, who lures them with promises of work across the border.⁷⁰ After crossing, the victims find themselves trapped and unable to return home.⁷¹ Argentina, Brazil, and Paraguay each have separate legal processes, as well as a variety of municipal, provincial and national legislation, and several security agencies operating in the border zone.⁷² The Mercado Comum do Sul regional trading block (MERCOSUR in Spanish, and MERCOSUL in Portuguese) has made some efforts to address labor and law enforcement practices in the triple-frontier area, which is discussed in the following sections.

B. Three Approaches to Combating Human Trafficking

There are three main approaches to combating human trafficking.⁷³ The most predominant is the law enforcement approach, but the human rights and labor approaches have been increasingly active in recent years.⁷⁴ After examining the

65. Nderstigt & Almeida, *supra* note 27, at 104; *see also* Regional UN.GIFT Meeting, *supra* note 62, at 3 (noting that Brazil’s land border of more than 8,000 kilometers makes it difficult for authorities to enforce border controls).

66. Nderstigt & Almeida, *supra* note 27, at 104.

67. *Id.*; *see also* Regional UN.GIFT Meeting, *supra* note 62, at 26 (concluding that, “[i]n the Amazon region the state is to blame for the occurrence of trafficking and other forms of human rights violation[s], since it has historically ignored the existence of the locals when designing and financing development projects for the region.”).

68. Balch, *supra* note 58; *see also* Luz Estella Nagle, *The Challenges of Fighting Global Organized Crime in Latin America*, 26 *FORDHAM INT’L L.J.* 1649, 1664 (2003); *HUMAN RIGHTS REPORT: BRAZIL*, *supra* note 63 (“It is estimated that close to 3,500 children and adolescents under the age of 18 are victims of commercial sexual exploitation in the region.”).

69. Balch, *supra* note 58.

70. *Id.*

71. *Id.*

72. *See id.*

73. *See* Bruch, *supra* note 17, at 4.

74. *Id.*

strengths and weaknesses of the individual frameworks, this paper discusses how a fragmented, piecemeal approach marginalizes the interests of those most affected—the trafficked persons—and suggests that further integration of the approaches may combat trafficking without placing victims in the line of fire.⁷⁵

1. The Law Enforcement Approach

A law enforcement approach, through police investigation, arrest, and a criminal trial, is advantageous because traffickers are prosecuted directly.⁷⁶ Theoretically, directly pursuing international law violations will yield concrete results and “traffickers will be caught and punished, and ideally, prevented from trafficking again.”⁷⁷ Proponents also point to the symbolic value of criminalizing trafficking and prosecuting traffickers, because it draws public attention to the problem and its consequences, and reminds society that victims are valuable.⁷⁸ Further, the law enforcement approach allocates financial and training resources into trafficking prevention programs.⁷⁹ In terms of finances, personnel, and enforcement mechanisms, the agencies responsible for law enforcement generally have greater resources than agencies established to address labor or human rights concerns.⁸⁰

In general, there is “a tremendous problem with the implementation of existing” international anti-trafficking laws due to the inadequacy of domestic and regional laws, lack of enforcement, and extensive corruption in many source, transit, and destination countries.⁸¹ “The U.N. Centre for International Crime Prevention (CICP) [is] the office responsible for crime prevention, criminal justice, and criminal law reform [and] is charged with assisting states in the implementation of the various international criminal law conventions and protocols.”⁸² Although the CICP assists states, unless a state supplements the ratification of an international treaty with domestic legislation, there is no agency charged with assuring that the treaty provisions are enforced.⁸³

75. See generally *id.*

76. See *id.* at 17.

77. *Id.*

78. Bruch, *supra* note 17, at 17.

79. See *id.*

80. See *id.*

81. Katrin Corrigan, Note, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 *FORDHAM INT'L L.J.* 151, 209 (2001).

82. Bruch, *supra* note 17, at 14-15.

83. See *id.*

a. Brazil's Application of the Law Enforcement Approach

While Brazil has recently approved a large number of laws combating human trafficking, it was the last country in the world to abolish the practice of slavery, which it did in 1888.⁸⁴ From the sixteenth to the nineteenth century the slave trade exported millions of Africans all over the world, including to Brazil, where the economy became reliant on cheap slave labor.⁸⁵ After "Brazil declared its independence from Portugal in 1822, its main trading partner was Great Britain."⁸⁶ Britain and its colonies, which had abolished slavery in the 1830s, were producing many of the same goods as Brazil and considered Brazil's sugar, coffee and cotton plantations unfair competition.⁸⁷ A number of Brazilian laws were passed under pressure from the British, such as *Lei Euzébio de Queiroz* in 1831, which prohibited slave trafficking.⁸⁸ However, laws prohibiting the slave trade on paper had no effect on slavery in reality.⁸⁹ In fact, after the prohibition of *Lei Euzébio de Queiroz*, the illegal slave trade increased significantly.⁹⁰ In recent years, Brazil has again passed legislation on slave labor that, similar to the *Lei Euzébio de Queiroz*, has been criticized for being "*para ingles ver*" or "for the English to see."⁹¹

In recent years, the Brazilian Government has joined several international treaties regarding trafficking in persons, including The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁹² and the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁹³ CEDAW is "[t]he only major human rights treaty to

84. Luciana Campello & Frans Nederstigt, *Human Trafficking in Brazil: Initiatives to Assist Victims*, in ALLIANCE NEWS (Global Alliance Against Traffic in Women, Bangkok, Thailand), July 2006, at 19, available at <http://gaatw.net/publications/Alliance%20News/July2006/Part%201%20-%20Editorial,%20Essays,%20Interviews.pdf>.

85. *Id.*; Nederstigt & Almeida, *supra* note 27, at 91.

86. Nederstigt & Almeida, *supra* note 27, at 87 (citing BRAZIL, EMPIRE AND REPUBLIC 1822-1930 40, 62, 95 (Leslie Bethell ed., 1989); José Roberto F. Militão, *Estatuto da Igualdade = uma lei para 'Inglês ver,'* AFROPRESS, Jan. 12, 2005 (Brazil)).

87. *Id.*

88. *Id.*

89. *See id.*

90. *See id.*

91. Nederstigt & Almeida, *supra* note 27, at 87.

92. *See* UNITED NATIONS, CONFERENCE OF THE PARTIES TO THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME 3 (2004), available at http://www.unodc.org/pdf/ctoccop_2004/V0455313e.pdf (confirming Brazil's ratification in January 2004); *see generally* 2000 Protocol, *supra* note 22.

93. *See* Office of the U.N. High Commissioner for Human Rights, *Convention on the Elimination of All Forms of Discrimination Against Women New York, 18 December 1979*, <http://www2.ohchr.org/english/bodies/ratification/8.htm> (last visited Sept. 4, 2008) (confirming Brazil's ratification in 1984); *see generally* Convention on the Elimination of All

address trafficking specifically.”⁹⁴ It requires parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁹⁵ Brazil is also a party to the regional Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.⁹⁶ Children in Brazil are protected by the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.⁹⁷

Other aspects of human trafficking are addressed in the Universal Declaration of Human Rights,⁹⁸ which includes prohibitions against slavery, involuntary servitude, and forced labor and in the International Covenant on Civil and Political Rights,⁹⁹ although neither treaty mentions human trafficking specifically.¹⁰⁰ In addition, Brazil has ratified the ILO Abolition of Forced Labor

Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) [hereinafter CEDAW].

94. Bruch, *supra* note 17, at 29 (citing CEDAW, *supra* note 93, art. 6).

95. *Id.*

96. See Org. of Am. States, *A-61: Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women Convention of Belem do Para*, <http://www.oas.org/juridico/english/sigs/a-61.html> (last visited Sept. 10, 2008) (confirming Brazil’s ratification in 1995); see generally Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534.

97. See Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, U.N. Doc. A/RES/54/263/Annex II (May 25, 2000); see also Office of the U.N. High Commissioner for Human Rights, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography New York, 25 May 2000*, http://www2.ohchr.org/english/bodies/ratification/11_c.htm (last visited Sept. 10, 2008) (confirming Brazil’s ratification in 2004).

98. See Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

99. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966).

100. Bruch, *supra* note 17, at 29; see Universal Declaration of Human Rights, *supra* note 98.

Convention;¹⁰¹ the ILO Convention on the Worst Forms of Child Labor;¹⁰² and the Inter-American Convention on International Traffic in Minors.¹⁰³

It follows that while Brazil has entered into numerous international conventions, these agreements do not have the power to modify the domestic legal code, which can only be accomplished by the legislative process.¹⁰⁴ Despite recent changes in legislation, the behavior of aggressors in human trafficking is evolving so quickly that policy makers have been unable to adequately characterize the crime.¹⁰⁵ According to the principle of legality in Article XXXIX of the Federal Constitution,¹⁰⁶ defendants can only be charged under laws that have been fully elaborated and deemed constitutional, making enforcement more difficult.¹⁰⁷

In December 2001, the government of President Fernando Henrique Cardoso signed an agreement with the UNODC to implement the Global Program against Trafficking in Human Beings (GPAT)¹⁰⁸ in order to combat international trafficking in women for sexual exploitation.¹⁰⁹ In 2002, the Federal Government created State Committees to Prevent and Combat Human Trafficking in five

101. See Int'l Labour Org., *Ratifications for Convention No. C105*, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C105> (last visited Sept. 4, 2008) (confirming Brazil's ratification in 1965); see generally *Abolition of Forced Labour Convention* (No. 105), June 25, 1957, 320 U.N.T.S. 291.

102. See Int'l Labour Org., *Ratifications for Convention No. C182*, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182> (last visited Sept. 9, 2008) (confirming Brazil's ratification in 2000); see generally *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor* (No. 182), June 17, 1999, 2133 U.N.T.S. 161.

103. See Org. of Am. States, *B-57: Inter-American Convention on International Traffic in Minors*, <http://www.oas.org/juridico/English/sigs/b-57.html> (last visited Sept. 9, 2008) (confirming Brazil's ratification in 1997); see generally *Inter-American Convention on International Traffic in Minors*, Mar. 18, 1994, 79 O.A.S.T.S.

104. See, e.g., ISADORA MINOTTO GOMES, *INT'L LABOUR ORG./INT'L PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, LAW ENFORCEMENT IN BRAZIL: COLLECTION OF GOOD PRACTICES AND LESSONS LEARNED RELATED TO THE PREVENTION AND ELIMINATION OF COMMERCIAL SEXUAL EXPLOITATION OF GIRLS, BOYS AND ADOLESCENTS* 27, 55 (2005), available at http://white.oit.org.pe/ipecc/documentos/legis_esci_br_eng.pdf [hereinafter *GOOD PRACTICES*].

105. *Id.* at 55.

106. Constituição Federal [C.F.] art. 39 (Braz.).

107. *GOOD PRACTICES*, *supra* note 104, at 55.

108. Nderstigt & Almeida, *supra* note 27, at 92; see also BHAVNA SHARMA, *ANTI-SLAVERY INT'L, CONTEMPORARY FORMS OF SLAVERY IN BRAZIL* 12 (2006), available at <http://www.antislavery.org/homepage/resources/PDF/Contemporary%20Forms%20of%20Slavery%20in%20Brazil.pdf> (noting that the Global Program aims to integrate actions between approximately 288 institutions, whereby during the first nine months of the GPAT, 28 cases and 245 victims were assisted).

109. Nderstigt & Almeida, *supra* note 27, at 92.

Brazilian states (Bahia, Ceará, Pará, Pernambuco and Rio de Janeiro).¹¹⁰ The Cardoso government also enlisted the support of NGOs for back-up and networking facilities.¹¹¹

The GPAT proposed specific actions, focusing on capacity-building among law enforcement professionals (especially the federal police) to educate officials to identify and investigate trafficking victims, institute anti-trafficking advertising campaigns, offer more extensive research, and establish a database of trafficking statistics, which was not completed.¹¹² The first national Research on Trafficking in Children, Women and Adolescents for Commercial Sexual Exploitation, known by the acronym PESTRAF, was not conducted until 2002.¹¹³ It was undertaken jointly by a large group of Brazilian NGOs and universities with substantial international support.¹¹⁴ The study detailed seventy-five criminal proceedings for human trafficking violations in federal courts, which resulted in fourteen convictions.¹¹⁵ However, very little data is available regarding more recent cases.¹¹⁶

When President Luiz Inacio Lula da Silva (President Lula) was elected, he revived the GPAT, choosing the states of Ceará and Goiás as locations for implementation because of intense trafficking activity in those areas, and Rio de Janeiro and São Paulo because their international airports serve as departure points for many trafficked persons going overseas.¹¹⁷ Unfortunately, the notorious human trafficking areas, where the borders of Argentina, Brazil and Paraguay meet, and the route from Belém (capital of the northern state of Pará in the Amazon region) to Surinam, and further on to Europe, were not covered by the first five-year program.¹¹⁸

Under President Lula, the government began implementing international conventions by passing new legislation and allocating money from Brazil, Portugal, and the United Nations Office on Drugs and Crime, to be used in anti-trafficking campaigns between 2005 and 2007.¹¹⁹ The 2000 Protocol was adopted into

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at 91-92; *see also* SHARMA, *supra* note 108, at 9; *see generally* PESTRAF, *supra* note 49.

114. Nderstigt & Almeida, *supra* note 27, at 92.

115. SHARMA, *supra* note 108, at 13.

116. *Id.*

117. Nderstigt & Almeida, *supra* note 27, at 92; *see* COMBATING TRAFFICKING UNODC, *supra* note 49, at 3; *see generally* PESTRAF, *supra* note 49, at 55-85 (discussing trafficking routes).

118. Nderstigt & Almeida, *supra* note 27, at 92.

119. *See* COMBATING TRAFFICKING UNODC, *supra* note 49, at 3 (noting that Brazil allocated \$300,000, and Portugal, a main destination for Brazilian victims, contributed \$100,000).

Brazilian law by Decree No. 5,017 on March 12, 2004.¹²⁰ The 2000 Protocol responds to transnational organized crime as part of an explicit law enforcement regime rather than from a human rights or labor rights approach.¹²¹ The criminal law components obligate signatories “to criminalize trafficking, attempted trafficking, participating as an accomplice, and organizing and directing trafficking.”¹²² States are required to provide training to law-enforcement officers “to help identify potential trafficking victims and organized crime methods used to traffic individuals.”¹²³ In addition, law enforcement and immigration officials must exchange information about “transportation routes, fraudulent documents, and potential traffickers.”¹²⁴ Parties must strengthen “border control measures, such as checking travel documents; boarding vehicles for inspection, and improving the quality of travel documents to reduce fraud.”¹²⁵

Domestic trafficking is covered in Brazil’s domestic legislation by Decree No. 11,106, which introduced Article 231-A, defining domestic trafficking as “promoting, serving as an intermediary, or facilitating, within national territory, the recruitment, transport, transfer, harboring or receipt of a person with the intention to practice prostitution.”¹²⁶ The inclusion of domestic trafficking is an important means of fighting the exploitive practice of sex tourism, where victims are taken from cities in the interior of Brazil to the state capitals and resort towns.¹²⁷ Because transportation is usually over land, both the highway police, who monitor roads and nearby areas, and the state police, who have the authority to investigate domestic trafficking, must be involved.¹²⁸

120. *See* Decreto No. 5017, de 12 de março de 2004, D.O.U. de 15.03.2004. (Brazil); *see generally* 2000 Protocol, *supra* note 22.

121. Bruch, *supra* note 17, at 14; *see* 2000 Protocol, *supra* note 22..

122. SURVIVORS’ RIGHTS INT’L, TRAFFICKING IN PERSONS: LATIN AMERICA AND THE CARIBBEAN 4 (2003), *available at* http://www.survivorrightsinternational.org/ms_word_files/Colombia.doc [hereinafter LATIN AMERICA AND THE CARIBBEAN]; *see* 2000 Protocol, *supra* note 22, art. 5.

123. LATIN AMERICA AND THE CARIBBEAN, *supra* note 122; *see* 2000 Protocol, *supra* note 22, art. 10(2).

124. LATIN AMERICA AND THE CARIBBEAN, *supra* note 122; *see* 2000 Protocol, *supra* note 22, art. 10(1).

125. LATIN AMERICA AND THE CARIBBEAN, *supra* note 122; *see* 2000 Protocol, *supra* note 22, arts. 11-12.

126. Lei No. 11,106, art. 231-A, de 28 de março de 2005, D.O.U. de 29.03.2005. (Brazil), *translated in* Nederstigt & Almeida, *supra* note 27, at 107 n.3.

127. Delegation of Brazil, *Working Document on the Implementation of International Legal Instruments on the Subject*, 2, *presented at the Meeting of National Authorities on Trafficking in Persons* (Mar. 14-17, 2006), *available at* http://scm.oas.org/doc_public/ENGLISH/HIST_06/CP15862E07.DOC [hereinafter *Meeting of National Authorities*].

128. *Id.*

Anti-trafficking Articles 231 and 231-A of the Penal Code do not include the other forms of exploitation mentioned in the 2000 Protocol,¹²⁹ such as forced labor or services, slavery or similar practices, servitude, unlawful organ removal, or even other forms of sexual exploitation in the definition of human trafficking.¹³⁰ However, as of October 2006, Brazil recognizes all the different forms mentioned in the UN Trafficking Protocol in Decree No. 5,948, strengthening Brazil's National Policy to Combat Human Trafficking.¹³¹ In March 2005, Brazil's Penal Code broadened the definition of the crime of international trafficking to include "promoting, serving as an intermediary, or facilitating, within national territory, the recruitment, transport, transfer, harboring or receipt of *a person* with the intention to practice prostitution, or the exit of *a person* with the intention to practice prostitution on foreign soil."¹³² This changed the definition to include men, women, and transgendered persons.¹³³ The penalties for crimes under Article 231 and 231-A are three to ten years of incarceration, penalties commensurate with those for rape.¹³⁴

The fundamental acts of legislation regarding the sexual exploitation of girls, boys, and adolescents in Brazil are the 1988 Federal Constitution (art. 227, caption, §§ 1, 3, IV, V and § 4¹³⁵; art. 228);¹³⁶ the Penal Code (arts. 213 to 229, 233

129. See Lei No. 11,106; *supra* note 126, arts. 231, 231-A.

130. Nederstigt & Almeida, *supra* note 27, at 90.

131. See Decreto No. 5,948, de 26 de outubro de 2006, D.O.U. de 27.10.2006. (Brazil); Política Nacional de Enfrentamento ao Tráfico de Pessoas, Capítulo I, Disposições Gerais [Annex, National Policy for the Combating of Trafficking in Persons, Chapter I, General] ("For the purposes of this Policy, the term 'trafficking in persons' is used as in the Additional Protocol to the United Nations Convention against Transnational Organized Crime Relating to the Prevention, Punishment and Suppression of the Trafficking in Persons, especially Women and Children, which defines 'trafficking in persons' as the recruitment, transportation, transfer, harboring or receipt of persons, resorting to the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of authority or the situation of vulnerability or the delivery or acceptance of payments or benefits to achieve the consent of a person having authority over another for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.") (author's translation); *id.* at 88.

132. Lei No. 11,106, *supra* note 126, translated in Nederstigt & Almeida, *supra* note 27, at 107 n.3.

133. *Meeting of National Authorities*, *supra* note 127; see *id.*

134. See Lei No. 11.106, *supra* note 126, arts. 231, 231-A; TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

135. See Constituição Federal [C.F.] art. 227, §§ 1, 3, 4 (Braz.) ("It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression."), translated in *Brazil Constitution*, <http://www.v-brazil.com/government/laws/titleVIII.html> (last visited

and 234);¹³⁷ the Heinous Crimes Act (arts. 1 and 6);¹³⁸ the Torture Act (arts. 1 and 4);¹³⁹ and the Statute of the Child and Adolescent (*Estatuto da Criança e do Adolescente*, hereinafter “ECA”) (arts. 5; 82 to 85; 149, 238 and 243; 250 and 255¹⁴⁰).¹⁴¹ In November 2003, the ECA augmented the previous statute, which was enacted in 1990, to include more severe penalties for infractions under Articles 240 and 243 of the ECA.¹⁴² It also introduced innovations in typifying:

Sept. 4, 2008).

Paragraph 1 - The State shall promote full health assistance programs for children and adolescents, the participation of non-governmental entities being allowed, and with due regard to the following precepts:
I - allocation of a percentage of public health care funds to mother and child assistance;

Paragraph 3 - The right to special protection shall include the following aspects:

I - minimum age of fourteen years for admission to work, with due regard to the provisions of article 7, XXXIII;
II - guarantee of social security and labor rights;
III - guarantee of access to school for the adolescent worker;
IV - guarantee of full and formal knowledge of the determination of an offense, equal rights in the procedural relationships and technical defense by a qualified professional, in accordance with the provisions of the specific protection legislation;
V - compliance with the principles of brevity, exceptionality and respect to the peculiar conditions of the developing person, when applying any measures that restrain freedom;

Paragraph 4 - The law shall severely punish abuse, violence and sexual exploitation of children and adolescents.

Constituição Federal [C.F.] art. 227, §§ 1, 3, 4 (Braz.), *translated in Brazil Constitution*, <http://www.v-brazil.com/government/laws/titleVIII.html> (last visited Sept. 4, 2008).

136. *See* Constituição Federal [C.F.] art. 228 (“Minors under eighteen years of age may not be held criminally liable and shall be subject to the rules of the special legislation.”), *translated in Brazil Constitution*, <http://www.v-brazil.com/government/laws/titleVIII.html> (last visited Sept. 4, 2008).

137. *See* Decreto-Lei No. 2.848, arts. 213-229, 233-234, de 7 de dezembro de 1940, D.O. de 31.12.1940. (Brazil).

138. *See* Lei No. 8.072, arts. 1, 6, de 25 de julho de 1990, D.O.U. de 26.07.1990. (Brazil).

139. *See* Lei No. 9.455, arts. 1, 4, de 7 de abril de 1997, D.O.U. de 08.04.1997. (Brazil).

140. *See* Estatuto da Criança e do Adolescente, Lei No. 8.069, arts. 5, 82-85, 149, 238, 243, 250, 255, de 13 de julho de 1990, D.O. de 16.07.1990. (Brazil) .

141. GOOD PRACTICES, *supra* note 104, at 27.

142. GOOD PRACTICES, *supra* note 104, at 12; *see* Lei No. 10.764, arts. 3, 6, de 12 de novembro de 2003, D.O.U. de 13.11.2003. (Brazil).

photographic activity or any visual medium that publicizes or contains a pornography scene, of explicit sex or vexatious scene involving girls, boys or adolescents or the exhibition of a child's image in a pejorative way through the world wide web (Internet), or whoever helps, guarantees, facilitates, or assures the means or services and the access to such images through the world wide web.¹⁴³

In March 2004, the government issued Decree 5,007, promulgating the Optional Protocol to the Convention on the Rights of the Child, which criminalized the offer, delivery or acceptance by any means of a child for the purposes of:

sexual exploitation of children; transplantation of a child's organs for profitable purposes; involvement of children in forced labor, undue induction to consent, as middleman, for adoption of a child through the violation of the applicable international legal instruments on adoption; the offer, gain, acquisition, enticement or delivery of a child for child prostitution purposes.¹⁴⁴

The expansion gives police more resources to make arrests and urges judges to apply the maximum sentence of up to twelve years in jail.¹⁴⁵ In 2006, the government released a "code of conduct to combat sex tourism and sexual exploitation," and the states of Pernambuco, Espirito Santo, Amazonas, Parana, and the Federal District enacted laws requiring businesses to display public warnings of the criminal punishments for sexually exploiting children.¹⁴⁶ The states of Rio de Janeiro and Bahia had previously enacted similar legislation.¹⁴⁷

In Brazil, the term "human trafficking" is generally associated with the exploitation of women and children; practices tantamount to slavery (regularly found on isolated soy and sugarcane plantations and in charcoal manufacture) are treated as labor issues and a completely different legal matter from human trafficking.¹⁴⁸ Forced labor is criminalized under anti-slavery statutes,¹⁴⁹ which,

143. GOOD PRACTICES, *supra* note 104, at 12; *see* Lei No. 10.764, *supra* note 142, art. 4.

144. *See* Decreto No. 5.007, de 8 de marco de 2004, D.O.U. de 9.3.2004. (Brazil), translated in GOOD PRACTICES, *supra* note 104, at 13.

145. Ross, *supra* note 50; *see id.*

146. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 69.

147. *Id.*

148. Nederstigt & Almeida, *supra* note 27, at 88.

149. *See* Nederstigt & Almeida, *supra* note 27, at 90-91 (noting that Article 149 of the Penal Code was changed by Law No. 10,803 in December 2003. The scope of Article 149 was narrowed from "reducing someone to a slavery-like condition" to slavery-like *working* conditions. Article 206 of the Penal Code concerns fraudulent recruitment of workers for emigration purposes. Likewise, Article 207 addresses the fraudulent recruitment of workers

according to the U.S. Trafficking in Persons Report (hereinafter U.S. Report), are not sufficiently stringent.¹⁵⁰ Because the laws do not focus on human trafficking, their practical effect is limited, and victims will remain unprotected under the international laws that Brazil has promised to enforce.¹⁵¹

The U.S. Report notes that although the Government of Brazil “does not fully comply with minimum standards for the elimination of trafficking,” it is making significant efforts to do so through increased punishment of internal and transnational traffickers, creation of measures addressing forced labor, the establishment of a national plan of action against trafficking,¹⁵² the coordination of governmental anti-trafficking efforts through the Secretariat of Justice, and the appropriation of funding for these efforts.¹⁵³ However, critics note there will be no investment into specific actions until a budget is approved.¹⁵⁴

b. Enforcement of Legislation

The U.S. Report suggests the government should increase prosecutions and convictions of traffickers and create more effective criminal penalties for forced labor trafficking.¹⁵⁵ While Brazil’s laws on human trafficking have been fortified, a

to transport them elsewhere within national territory); *see also* Decreto-Lei No. 2.848, art. 149, de 7 de dezembro de 1940, D.O.U. de 31.12.1940. (Brazil), *amended by* Lei No. 10.803, de 11 de dezembro de 2003, D.O.U. de 12.12.2003. (Brazil); Decreto-Lei No. 2.848, arts. 206-207.

150. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

151. Nederstigt & Almeida, *supra* note 27, at 90-91.

152. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 67-68; *see* Decreto No. 6.347, de 8 de janeiro de 2008, D.O.U. de 9.1.2008. (Brazil); *see also* SECRETARIA NACIONAL DE JUSTICA, MINISTERIO DA JUSTICA, PLANO NACIONAL DE ENFRENTAMENTO AO TRAFICO DE PESSOAS [National Plan to Combat Trafficking in Persons] 17 (2008), *available at* <http://www.mj.gov.br/main.asp?Team=%7B41BB570D%2D356E%2D4534%2DA090%2D12F4E6F0A592%7D> [hereinafter PNETP] (“One of the essential parts in the design and implementation of the National Plan to Combat Trafficking in Persons is the adoption of mechanisms for monitoring and evaluation of the Plan. This task, according to the Decree No. 6,347, is under the command of The Ministry of Justice, with the assistance of the Advisory Group of Assessment and Dissemination of the Plan.”) (author’s translation).

153. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68; LATIN AMERICA AND THE CARIBBEAN, *supra* note 122.

154. The representative of the Ministry of Justice noted in January 2008 that “at this point there is no budget” and that “for now, there will be no investment in specific actions, since the budget should only be approved in March.” Instituto Brasileiro de Inovações pró-Sociedade Saudável Centro Oeste, *Governo Lança Plano Nacional de Enfrentamento ao Tráfico de Pessoas* [Government Launches National Plan Combating Trafficking in Persons] (Jan. 21, 2008), <http://ibiss-co.org.br/noticia.php?ID=40>.

155. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

major concern is that the laws go unenforced.¹⁵⁶ In many cases, a victim registers a complaint with the Public Prosecution, but is unable to make a full accusation against a sexual aggressor.¹⁵⁷ Effective punishment is also hampered by the difficulty in obtaining material proof of the crime.¹⁵⁸ Further hindering policing efforts is the expense of obtaining witness testimony and other needed proof.¹⁵⁹

The responsibility of enforcing anti-trafficking laws may be assigned to the civil police and the state public prosecutor's office in the state where it is discovered, or to federal police in the case of international trafficking crimes.¹⁶⁰ International trafficking is usually preceded by domestic trafficking, so both agencies may be involved.¹⁶¹ However, a lack of cooperation between the agencies means that the information obtained in transnational cases is difficult to link to internal trafficking investigations, and vice versa, certainly a problem when a victim is exploited within Brazil and then moved out of the country.¹⁶²

Through the judiciary and security systems, the establishment of new bodies and services has intensified the campaigns and service networks near the borders.¹⁶³ The International Labor Organization (ILO) report highlights the implementation of the Specialized Police Station for the Protection of Children and Adolescents (NUCRIA)¹⁶⁴ and the establishment of the Centre for the Defense of the Rights of Children and Adolescents (CEDEDICA).¹⁶⁵ Acknowledging the difficulties women face in the Brazilian court systems, in March 2007 the National Council of Justice adopted a recommendation to organize courts specializing in cases of domestic and family violence against women.¹⁶⁶ The recommendation also suggests that the courts compile statistical data on domestic violence, sponsor multidisciplinary courses on human rights and gender violence for judges, as well as incorporate the judiciary into the pre-existing services available for women.¹⁶⁷

156. Nderstigt & Almeida, *supra* note 27, at 88.

157. GOOD PRACTICES, *supra* note 104, at 55.

158. *Id.* at 56.

159. *Id.*

160. *Meeting of National Authorities*, *supra* note 127.

161. *Id.*

162. Nderstigt & Almeida, *supra* note 27, at 101.

163. GOOD PRACTICES, *supra* note 104, at 18.

164. *Id.* at 53, 100.

165. *Id.* at 18.

166. See U.N. Committee on the Elimination of Discrimination Against Women, *Responses to the List of Issues and Questions with Regard to the Consideration of the Sixth Periodic Report: Brazil*, 13, U.N. Doc. CEDAW/C/BRA/Q/6/Add.1 (May 4, 2007), available at

[http://www.unhcr.ch/tbs/doc.nsf/0/cd50c42929b639d1c125730e002f8ca2/\\$FILE/N0733249.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/cd50c42929b639d1c125730e002f8ca2/$FILE/N0733249.pdf) [hereinafter *Responses to CEDAW*].

167. *Id.*

c. Limitations of the Law Enforcement Approach

A major limitation of the law enforcement approach, particularly in Brazil, is that it only penalizes individual offenders, rather than addressing the role of state or government officials in committing or tolerating trafficking.¹⁶⁸ At times, “[t]he very institutions charged with preventing and fighting corruption are too weak to do so, or compromised by the influence of the transgressors themselves.”¹⁶⁹ “The law enforcement approach does not contemplate holding the state responsible, either domestically or internationally.”¹⁷⁰ The 2000 Protocol lacks language addressing “the role of state or government officials in committing or tolerating trafficking.”¹⁷¹ The 2000 Protocol presumably allows for the prosecution of government officials,¹⁷² since in many cases, trafficking could not occur without officials actually participating in the trafficking process, such as police officers who own brothels.¹⁷³

The PESTRAF study notes that judicial and public safety authorities’ actions in implementing the laws provide an inadequate response to crime.¹⁷⁴ “Corruption runs deep in the fabric of Latin America’s civil societies, and persists due to ‘inadequate laws, irreverence for the law even when it is adequate, and the impunity of those who are corrupt.’”¹⁷⁵ In Brazil, the yearly cost of corrupt transactions, per capita, is US \$6,000.¹⁷⁶ Such conditions have negative repercussions well beyond the borders of the affected State, and have led to widespread distrust of public institutions and officials.¹⁷⁷

In 2006, there were scattered allegations of law enforcement officials being involved in or facilitating human trafficking, however, no investigations or

168. Bruch, *supra* note 17, at 20-21.

169. Nagle, *supra* note 68, at 1686; *see generally* Amnesty Int’l, “*They Come in Shooting*”: Policing Socially Excluded Communities, AI Index AMR 19/025/2005, Dec. 2, 2005, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/BR/AI_BRA_UPR_S1_2008anx_025_2005.pdf (explaining that Brazil’s “prevailing police culture treats anti-crime ‘law enforcement’ as more important than human rights principles, and as a result police practice has become seriously tainted by unethical or unlawful conduct.”).

170. Bruch, *supra* note 17, at 21.

171. *Id.*; *see* 2000 Protocol, *supra* note 22.

172. Bruch, *supra* note 17, at 21; *see* 2000 Protocol, *supra* note 22.

173. *See* Bruch, *supra* note 17, at 21; *see also* Nederstigt & Almeida, *supra* note 27, at 89.

174. PESTRAF, *supra* note 49, at 116.

175. Nagle, *supra* note 68, at 1685 (citing TRANSPARENCY INT’L, GLOBAL CORRUPTION REPORT 2001 168 (2001), available at <http://www.gcr.netscript.kunde.sserv.de/download/gcr2001>); *see also* GOOD PRACTICES, *supra* note 104, at 49.

176. Nagle, *supra* note 68, at 1686.

177. *Id.* at 1685; *see generally* Nancy Zucker Boswell, *Combating Corruption: Focus on Latin America*, 3 SW. J. L. & TRADE AM. 179 (1996).

prosecutions were made.¹⁷⁸ One of the few cases against a public official was brought in 2005 against Federal Senator Joao Ribeiro for forcing thirty-eight workers to live in slavery-like conditions under his employment. In October 2006, the court reduced the fine imposed from \$341,000 to \$35,500.¹⁷⁹ Considering Brazil's recent efforts to place its law-enforcement efforts in the international public eye, it remains to be seen whether there will be an actual reduction in the number of persons trafficked into slavery. Although there is great institutional mobilization by governmental and non-governmental agencies, Brazil still lacks effective nationwide measures for guiding these institutions' responses to the human trafficking problem.¹⁸⁰

2. The Human Rights Approach

The human rights approach is another way of protecting against trafficking that guarantees certain rights by virtue of being human, and centers on the individual as a holder of rights, rather than merely as a victim.¹⁸¹ In contrast to a judicial perspective, where the "victim" is a non-active "object" against whom a crime has been committed, the human rights approach minimizes the idea of victimization and emphasizes the connections and social relationships between people that sometimes result in vulnerable situations.¹⁸² This approach grants trafficked persons rights, such as equal protection under the law and the security of his or her person, simply by virtue of being human.¹⁸³ Given the controversy surrounding the intersection of trafficking and prostitution, the human rights approach disregards moral judgments about whether a person is worthy of protection, maintaining that he/she is no less entitled to human rights guarantees than other persons.¹⁸⁴ Brazil's National Policy against Trafficking in Persons, and the corresponding National Plan, discussed below, attempt to integrate human rights policies such as social assistance, health, education, labor, protection of children, adolescents, and women, and strategies to fight social exclusion.¹⁸⁵

The human rights approach utilizes several treaties and international agreements to hold countries accountable for how they treat both nationals and other individuals under their jurisdiction.¹⁸⁶ The international system for promoting and

178. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

179. *Id.*; see generally S.T.F.J-1, H.C. 85702-P.E., Relator: Min. Sepúlveda Pertence, 13.09.2005, 02208-02 D.J. 07.10.05, 298 (Brazil) (the case remains in the appeals process).

180. GOOD PRACTICES, *supra* note 104, at 20.

181. Bruch, *supra* note 17, at 32.

182. See PESTRAF, *supra* note 49, at 43.

183. Bruch, *supra* note 17, at 32.

184. *Id.* at 31.

185. Regional UN.GIFT Meeting, *supra* note 62, at 14.

186. See Bruch, *supra* note 17, at 32.

protecting human rights is organized into either treaty-based bodies (which are created by particular treaties to monitor compliance by state parties to the instruments), or into U.N. Charter-based bodies, such as the Convention on the Elimination of Discrimination Against Women (“CEDAW”) Committee or the Special Rapporteur on Violence Against Women under the mandate of the Commission on Human Rights.¹⁸⁷

The only major human rights treaty to address trafficking specifically is CEDAW, which Brazil ratified in 1984.¹⁸⁸ CEDAW imposes the requirement that parties must “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁸⁹ “The CEDAW Committee has addressed human trafficking in the context of its General Comment of Violence Against Women and in individual country reports.”¹⁹⁰

In July 2007, non-governmental organizations in Brazil submitted a Civil Society Shadow Report in compliance with CEDAW.¹⁹¹ This was to support the *Sixth Periodic Report*¹⁹² submitted by Brazil in 2005, and outlined the steps taken between 2001 and 2005 to comply with Article 6 – Trafficking of Girls and Women and Sexual Exploitation.¹⁹³ The Civil Society Shadow Report included statistics and tentative steps Brazil has taken to identify and remedy the problems, as well as outlined the CEDAW Committee’s “Suggestions for Recommendations to the State of Brazil.”¹⁹⁴ However, most of these suggestions were little more than restatements of the CEDAW treaty.¹⁹⁵

187. *Id.* at 32.

188. Bruch, *supra* note 17, at 29; *see Meeting of National Authorities, supra* note 127, at 1; *see generally* CEDAW, *supra* note 93, art. 6.

189. CEDAW, *supra* note 93, art. 6; Bruch, *supra* note 17, at 29.

190. Bruch, *supra* note 17, at 31.

191. *See* CIVIL SOCIETY SHADOW REPORT, *supra* note 55, at 1-4; *see generally* Women’s Aid Org., *Holding the Government Accountable: Convention on the Elimination of All Forms of Discrimination Against Women*, <http://www.wao.org.my/news/20030109cedaw.htm> (last visited Sept. 10, 2008) (explaining that a Shadow Report is compiled by non-governmental organizations to give emphasis to the critical issues women in a country face and that the government has downplayed or failed to address).

192. *See* U.N. Comm. on the Elimination of Discrimination Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Sixth Periodic Report of States Parties: Brazil*, U.N. Doc. CEDAW/C/BRA/6 (Aug. 29, 2005) [hereinafter *Sixth Periodic Report Brazil*].

193. *See* CIVIL SOCIETY SHADOW REPORT, *supra* note 55, at 3, 20-21, 45.

194. *See id.* at 20-21.

195. *See id.* at 21. Citing articles 2 and 6, the Report recommends:

that the State Party adopt legislative measures and guarantee their effective implementation to combat the trafficking of persons[,] . . . the formulation of a broad strategy to combat the trafficking of girls and women, which should include approval of an anti-trafficking law to

In contrast, the list of issues and questions submitted by the Committee on the Elimination of Discrimination against Women Pre-session working group were more meaningful because they required the non-governmental organizations that compiled the Shadow Report to provide data about the progress and impact of programs implemented between 2001 and 2005, including Brazil's response to assessments of lack of effective action.¹⁹⁶ The major human-rights-based efforts are outlined below.

a. National Plan of Action against Trafficking

The Joint Legislative Inquiry Committee of the National Congress (Comissão Parlamentar Mista de Inquérito – CPMI) began analysis of the problem in 2003.¹⁹⁷ “The Committee heard 285 persons, analyzed 958 documents, and received 832 complaints from throughout the country.”¹⁹⁸ The findings indicated that many of the networks of exploitation that had been uncovered had links with governmental entities, particularly the police, and were “integrated by influential people in the economic and political sphere.”¹⁹⁹ The findings highlighted the need to dismantle powerful schemes of exploitation.²⁰⁰ The Commission requested that charges be filed against 200 persons, among them politicians, judges, businesspeople, athletes, religious leaders, and police officers.²⁰¹ The Inquiry Committee suggested a new approach to the problem, one that focused on reforming the Penal Code and using the law as a means to treat human trafficking violations as sexual crimes.²⁰²

At the direction of President Lula, the Ministry of Justice's Secretariat was tasked with forming a national committee comprised of fourteen ministries for the purpose of producing a comprehensive national plan of action against trafficking. The plan would include budget allocations for funding anti-trafficking law

investigate and punish the offenders and to protect and support the victims[.] . . . the adoption of measures directed toward reducing the vulnerability of women to traffickers, particularly of young women and girls[.] [and that] the State Party . . . include ample information and data on the issue in its next report, as well as information on the situation of street children and adolescents, and on the policies adopted to specifically address these problems.

Id. at 21.

196. *See id.* at 3-9.

197. *See id.* at 20.

198. *Id.*

199. CIVIL SOCIETY SHADOW REPORT, *supra* note 55.

200. *Id.*

201. *Id.*

202. *Id.*

enforcement efforts and victim protection by the end of August 2007.²⁰³ In addition, the Special Secretariat on Human Rights (SEDH) developed a National Plan to Combat Sexual Violence against Children and Adolescents, which included an analysis of the situation and a determination of agency responsibility for the prevention and care of exploited children.²⁰⁴

b. The Program for Integrated Actions to Confront Sexual Violence against Children and Adolescents (PAIR)

Brazil's government initiated the Program for Integrated Actions to Confront Sexual Violence against Children and Adolescents (PAIR)²⁰⁵ and began analyzing the situation in 2003, studying methods of mobilization, agency responsibility, and possible social awareness campaigns.²⁰⁶ PAIR promotes the participation of children who have been victimized as well as youth activism in the establishment and implementation of Local Operational Plans; it also provides training for the System to Guarantee Rights, and oversees a permanent technical advisory program.²⁰⁷ PAIR has undertaken twelve quantitative and qualitative studies, begun an integrated system of local data on the situation, established fourteen rights and guardianship counsels, and waged awareness campaigns both domestically and in eight South American countries.²⁰⁸ In addition, PAIR has trained 5,000 professionals in prevention, care, defense, and accountability, and begun the qualification of "technical expertise services" in six states to ensure the humane provision of services. PAIR also began training youth groups in seven states to foster a protagonist role by children and adolescents.²⁰⁹ There are now pilot projects in sixty-two municipalities, from which 5,165,621 children and adolescents have benefited.²¹⁰

c. The Program for the Eradication of Child Labor (PETI)

203. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 69.

204. *Sixth Periodic Report Brazil*, *supra* note 192, at 28; *see also* GOOD PRACTICES, *supra* note 104, at 19.

205. PAIR is based on a partnership between the Special Secretariat on Human Rights of the Presidency of the Republic, Ministry for Social Development and the Fight against Hunger (MDS), Ministry of Health, Ministry of Justice, Ministry of Education, Federal University of Mato Grosso do Sul, USAID/Partners, and the International Labor Organization. *Sixth Periodic Report Brazil*, *supra* note 192, at 28.

206. *Id.*

207. *Id.*

208. *Responses to CEDAW*, *supra* note 166, at 8.

209. *Id.*

210. *See id.* at 8-9.

Children living in poverty are susceptible to exploitative employment situations, ranging from household labor to sex work, because families have little option but to have their children make contributions to the family income.²¹¹ The Program for the Eradication of Child Labor (PETI) works for the reduction of extreme poverty and social inequality, the removal of children and adolescents from exploitative labor situations, and the strengthening of family and community ties.²¹² PETI is part of the Unified Social Welfare System, which emphasizes the social and family matrix,²¹³ and includes the Program for the Eradication of Child Labor and the Family Grant Program, *Bolsa Familia*, which has provided monetary assistance to at least 272,701 girls freed from child labor.²¹⁴

d. Toll-Free Numbers

Because persons who have been trafficked do not always self-identify as crime victims, or may fear negative repercussions if they report to the police, the Brazilian government has set up several notification systems that use toll-free numbers to protect victims and assure their rights.²¹⁵ These systems make the government directly responsible for the implementation and monitoring of the entire notification process, for the preparation of statistical reports, and for the daily forwarding of notifications to the State Public Ministries and the Guardianship Councils.²¹⁶ The “Dial 180 S” toll-free service operates twenty-four hours a day, and offers information on legal issues and specialized police precincts, health clinics, and shelters.²¹⁷ The service records calls about physical and psychological aggression, sexual violence, sexual harassment, indecent assault, rape, and trafficking in women for purposes of exploitation.²¹⁸ There is also a Child and Adolescent Sexual Abuse and Exploitation toll-free number, which addresses abuse, injury, sexual abuse, and commercial sexual exploitation, either intra- or extra-familial.²¹⁹ Finally, “National Dial Denunciation 100” is a free telephone service

211. See GOOD PRACTICES, *supra* note 104, at 50-51.

212. Responses to CEDAW, *supra* note 166, at 10.

213. *Id.*

214. See *id.* at 9; see generally Mahmood Monshipouri, *Promoting Universal Human Rights: Dilemmas of Integrating Developing Countries*, 4 YALE HUM. RTS. & DEV. L.J. 25, 49-51 (2001).

215. *Sixth Periodic Report Brazil*, *supra* note 192, at 29.

216. *Id.*

217. *Id.*

218. *Id.*

219. See Responses to CEDAW, *supra* note 166, at 9.

available in all states.²²⁰ “Between May 2003 and December 2006, the direct dial service received over 27,000 denunciations countrywide;” it reported that seventy-two percent of the victims were women, of which fifty-three percent were Afro-descendants and forty-two percent were white.²²¹

e. The Sentinela Shelter Network

In addition, Brazil's federal government funds the "Sentinela" shelter network, which expanded from 400 shelters to 1,104 shelters nationwide in 2006.²²² The Brazilian Ministry of Justice and the UNODC continued to partner with state governments to fund victim-assistance centers in Sao Paulo, Rio de Janeiro, Goias, and Ceara.²²³ The Ministry of Social Development and the Fight against Hunger provided emergency care for children and adolescent victims of sexual abuse and sexual exploitation.²²⁴

Finally, a new program, financed by USAID, began in 2006 with the goal of developing a reference methodology of local service networks in eleven cities. The program provides shelter to victims of trafficking for sexual exploitation under the age of eighteen.²²⁵ The decision to provide shelter to minors only reflects the dilemma with regard to USAID funding for anti-HIV/AIDS and anti-trafficking programs, which are conditional on a country's pledge to oppose commercial sex work.²²⁶

f. Combating Sexual Tourism

220. The program is implemented by the Special Secretariat on Human Rights, in collaboration with Petróleo Brasileiro S.A. (Petrobrás) and the Children and Adolescents Reference, Studies and Actions Center, an NGO. *Id.*

221. *Id.*

222. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 69; *see also Responses to CEDAW*, *supra* note 166, at 9 (asserting that the Sentinela Program spanned 1,114 cities by 2006).

223. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 69.

224. *Id.*; *see Sixth Periodic Report Brazil*, *supra* note 192, at 30-31 (noting that in 2004, the Sentinela program assisted approximately 26,000 children and adolescents despite only having a capacity to assist 17,870 children).

225. Nderstigt & Almeida, *supra* note 27.

226. *Id.*; *see Kaisernetwork.org, Daily HIV/AIDS Report: Brazil Refuses \$40M in U.S. AIDS Grants to Protest Policy Requiring Groups To Condemn Commercial Sex Work* (May 2, 2005), http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=29729 (Brazilian officials stated that the country has refused \$40 million in US AIDS grants because of a Bush administration requirement that HIV/AIDS organizations seeking funding to provide services in other countries must pledge to oppose commercial sex work).

In an effort to combat sexual tourism, which propels trafficking in the interior regions of Brazil, the government entered into an agreement with the Airport Infrastructure Agency to elaborate a tourism code of conduct and to implement a public-awareness campaign to deter international traffickers and increase awareness among potential victim populations.²²⁷ Initiatives include the distribution of media, posters, and folders in airports and border crossings.²²⁸ One example is writing on a woman's bare back that reads: "If someone offers you lodging, food, clean clothes, etc. . . . abroad, be wary."²²⁹ In conjunction with the UNODC, the Secretariat conducted a campaign that included radio ads and large posters around the country stating "first they take your passport, then your freedom."²³⁰ The second phase of that campaign, which included the creation of a separate database and police and prosecutor training, began in late 2006.²³¹

g. Increased Police Training

In the second phase of the Secretariat campaign, police and officials received specialized training, as many lacked understanding in how to respect the human rights of trafficked persons.²³² For example, police often call into question the victim's behavior, reliability, and reason for consenting to travel, and may refuse protection for the victim's family or others who testify on her behalf.²³³

Through the National Plan to Combat Trafficking in Persons, the Brazilian government has been improving efforts to protect victims of sex trafficking.²³⁴ The National Plan endeavors to train law enforcement officials and civil servants "to recognize human trafficking networks and protect potential victims."²³⁵ Educational programs are being incorporated in all of the country's police academies, as part of the National Plan for Public Security to teach the value of diversity in gender, sexual orientation, race, ethnicity, social class, and religious belief.²³⁶ The programs, which feminists have advocated for since the 1980s, encourage public

227. See *Sixth Periodic Report Brazil*, *supra* note 192, at 30; see also *TRAFFICKING IN PERSONS REPORT*, *supra* note 6, at 69.

228. Ross, *supra* note 50.

229. *Id.*

230. *TRAFFICKING IN PERSONS REPORT*, *supra* note 6, at 69.

231. *Id.*

232. See Ross, *supra* note 50; see generally Nderstigt & Almeida, *supra* note 27, at 99-100 (supporting that "authorities and officials show a lack of understanding about what respecting the human rights of trafficked persons entails.>").

233. See Nderstigt & Almeida, *supra* note 27, at 100.

234. See *PNETP*, *supra* note 152; *TRAFFICKING IN PERSONS REPORT*, *supra* note 6, at 67-69.

235. Ross, *supra* note 50.

236. *Sixth Periodic Report Brazil*, *supra* note 192, at 32.

security professionals to be more supportive of women in violent situations.²³⁷ Techniques that pertain to trafficking specifically include training the highway police to read the body language of women travelers, ask the women if they are related to the drivers, and request supporting documentation.²³⁸ A police training course is available as a distance-learning course by phone, mail, fax, and internet and is run through the University of Brasilia.²³⁹

h. Integrated Efforts

The Inter-Sectoral Commission to Combat Sexual Violence against Children and Adolescents operates under the coordination of the Special Secretariat on Human Rights and is responsible for integrating federal public policies, non-governmental organizations, and public participation.²⁴⁰ The Commission unveiled a formal Analytic Study of the Confrontation of Children and Adolescents Commercial Sexual Exploitation in Brazil (ESCCA) in 2005.²⁴¹ The survey contained a geo-social map of exploitation, quantitative and qualitative information about commercial exploitation, current legislation and input for expanding federal public policies.²⁴² The Federal Government is using the information to coordinate with ministries, states, and municipalities in order to reinforce protection and care mechanisms for victims, as well as mechanisms to increase conviction rates and combat impunity.²⁴³

i. Limitations of the Human Rights Approach

237. *Id.*

238. Ross, *supra* note 50.

239. *Id.*

240. The Executive, Legislative and Judicial Powers, as well as the Public Prosecutor, international organizations and civil society organizations, notably the National Council to Combat Child-Youth Sexual Violence and the National Council for the Rights of Children and Adolescents (CONANDA) comprise the Commission. *Sixth Periodic Report Brazil*, *supra* note 192, at 29.

241. See *Sixth Periodic Report Brazil*, *supra* note 192, at 29 (explaining that the Framework was created by the Inter-Sectorial Framework on Sexual and Commercial Exploitation of Children and Adolescents with the support of UNICEF and technical assistance from the Violes Group, of the University of Brasília); see also SAVE THE CHILDREN SUECIA, ESTUDO ANALÍTICO DO ENFRENTAMENTO DA EXPLORAÇÃO SEXUAL COMERCIAL DE CRIANÇAS E ADOLESCENTES NO BRASIL – ESCCA (2005), available at <http://www.seslat.org/web/publicaciones/interna.php?xid=195&xleng=i&xfontmore=3&xopcp=>

242. *Sixth Periodic Report Brazil*, *supra* note 192, at 30.

243. *Id.*

The human rights framework is limited by its focus on violence against trafficked women and children, as opposed to more complex, ongoing human rights violations, such as the right to be educated, the right to work under just conditions, the right to freedom of movement, the right to be free from cruel and degrading treatment, the right to be secure in one's person, the right to health, and the right to equal protection under the law.²⁴⁴ Current efforts focus on the rescue and rehabilitation of "those who have been trafficked," rather than placing value on their contributions as workers or human beings.²⁴⁵

As a case study, consider Frans Nederstigt and Luciana Campello R. Almeida's example of Ana's experience with Brazil's governmental and non-governmental organizations.²⁴⁶ Ana was a woman invited by her aunt to visit Switzerland, where she was promised she would be able to study, have a good job, and send money to sustain her family in the countryside of Bahia, Brazil.²⁴⁷ After arriving, Ana married a Swiss man (probably to arrange a permit to stay), who began exploiting her through forced prostitution and, with the help of her aunt, kept all of her earnings.²⁴⁸ Ana was hospitalized for complications resulting from a forced abortion, and ultimately escaped from the hospital.²⁴⁹ Ana brought charges against her captors through the Swiss NGO FIZ (Women's Information Center for women from Africa, Asia, Latin America and Eastern Europe).²⁵⁰ Ana's mother went to Switzerland to testify against Ana's traffickers and was murdered upon her return to Brazil.²⁵¹ Ana's father was also badly injured in connection with the prosecutorial efforts.²⁵²

The main NGO in Bahia, Centro Humanitario de Apoio a Mulher (Humanitarian Center to Assist Women – CHAME) informed local police that the murder was almost certainly a consequence of transnational trafficking in women.²⁵³ CHAME also contacted the federal police, the Ministry of Justice, and the public prosecutor in order to secure protection for Ana and her family when she returned to

244. See Bruch, *supra* note 17, at 32-33; see generally Universal Declaration of Human rights, *supra* note 98, arts. 3, 5, 7, 13, 23, 24, 25, 26.

245. See Bruch, *supra* note 17, at 39; see generally Liliana Lyra Jubilut, *Refugee Law and Protection in Brazil: A Model in South America*, 19 J. REFUGEE STUD. 22 (2006) (extensive discussion of the rights and protections of refugees, migrants, and immigrants in Brazil).

246. See Nederstigt & Almeida, *supra* note 27, at 100, 109 n.32 (the authors have assigned "Ana" as a fictitious name).

247. *Id.* at 99.

248. *Id.*

249. *Id.*

250. *Id.*

251. Nederstigt & Almeida, *supra* note 27, at 99.

252. *Id.*

253. *Id.*

Brazil.²⁵⁴ The Federal Witness Protection Program, PROVITA, offered to protect Ana upon her return to Brazil.²⁵⁵

The federal police had been assigned to meet Ana at the airport, but on the day before her arrival, the federal police informed CHAME that the genuineness of her case had been called into question and refused to go to the airport until a superior order was issued; the state civil police remained unconvinced that Ana's mother's murder was a trafficking-related crime, indicating the lack of coordination between federal and state authorities.²⁵⁶ As of April 2007, "court proceedings in Brazil are still pending and the murderers of Ana's mother are still at large"²⁵⁷ Only the case against Ana's Swiss captors has been resolved, with minimal penalties for their promotion of prostitution.²⁵⁸ Ana remains traumatized and continues to live in Switzerland with support from FIZ.²⁵⁹

Ana's case illustrates the problems plaguing the Brazilian government's human-rights based programs, including lack of experience and inconsistent and underfunded efforts.²⁶⁰ Offices created by the Ministry of Justice and the UNODC in four states were criticized for failing to provide assistance to trafficked persons or prevent trafficking in the first place.²⁶¹ Unfortunately, the government ignored the reluctance of victims to come forward (for fear of retribution by traffickers as well as their lack of confidence in Brazilian law enforcement officials) as evidenced by its placement of offices near law enforcement buildings.²⁶²

Furthermore, the offices were supposed to provide legal, social, psychological, health, education and social services through a network of local service organizations. However, evidence suggests that the offices lacked a clear strategy on how to adequately treat victims.²⁶³ Further compounding the problem was a lack of cooperation among the offices, and inadequate community support resources such as public shelters.²⁶⁴

Even if the services available to trafficking victims were improved, there are high socio-cultural barriers that prevent victims from coming forward.²⁶⁵ Forced servitude is rarely the only human right that has been denied to victims of human trafficking.²⁶⁶ Human rights approaches have not yet overcome prevalent societal

254. *Id.*

255. PROVITA guarantees protection and assistance to victims who agree to testify in the course of a prosecution. *Id.* at 100.

256. Nderstigt & Almeida, *supra* note 27, at 100.

257. *Id.*

258. *Id.*

259. *Id.*

260. See TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 67-69.

261. Nderstigt & Almeida, *supra* note 27, at 92.

262. *Id.* at 94.

263. *Id.* at 92.

264. *Id.* at 93-94.

265. *Id.* at 94.

266. See Bruch, *supra* note 17, at 32-33.

views: that justice and safety systems inadequately protect victims; that the victim becomes a “victim of the system”; that there are pending legislation gaps; and that state government and law-enforcement agencies generally fail victims.²⁶⁷

Even more difficult to contend with is the underlying structural inequality of Brazilian society, which is reflected in class, race, and gender discrimination, as well as in the relationship between adults and children.²⁶⁸ The issues of gender and race are demonstrated by the fact that the great majority of victims of sexual exploitation are female, black, and mulatto.²⁶⁹ People who lack social equality, work opportunities, and access to education, health care, and social security are more likely to accept the risks associated with migration in exchange for an opportunity to improve their standard of living.²⁷⁰

3. Labor Rights Approach

The labor rights approach utilizes labor standards as set forth by the ILO and other oversight bodies to address working conditions and the treatment of employees.²⁷¹ By treating sexual exploitation as distinct from forced labor in slavery-like conditions, Brazil, like most of the world, has failed to fully utilize the international labor rights framework to combat human trafficking.²⁷² The advantage of a labor framework is that it avoids “the problematic assessment of the complicity or worthiness of trafficked persons,” as well as the moral dilemmas associated with prostitution and focuses instead on “improving conditions for those who have been trafficked.”²⁷³

Brazil is a destination country for trafficked persons from neighboring countries, particularly Bolivia, Paraguay, Peru, and Chile.²⁷⁴ Undocumented immigrants enter the most productive areas of the MERCOSUL region in search of jobs, but are frequently subjected to exploitive labor conditions.²⁷⁵ Some engage in drug trafficking as a means to pay off their debts.²⁷⁶ Workers migrate to the highly industrialized zones in Sao Paulo or to the *fazendas* (large farms) in rural zones.²⁷⁷

267. GOOD PRACTICES, *supra* note 104, at 14; *see generally* Claudio Grossman, *Moving Toward Improved Human Rights Enforcement in the Americas*, 27 HUM. RTS. 16 (2000) (discussing the protections and limitations of the Inter-American Court of Human Rights).

268. *See* GOOD PRACTICES, *supra* note 104, at 52.

269. *Id.*

270. Nderstigt & Almeida, *supra* note 27, at 104-105; *see also* Regional UN.GIFT Meeting, *supra* note 62, at 10.

271. *See* Bruch, *supra* note 17, at 23-27.

272. *See id.*

273. *Id.* at 26-27.

274. Nderstigt & Almeida, *supra* note 27, at 98.

275. *Id.*

276. *Id.*

277. Campello & Nderstigt, *supra* note 84.

Thousands of impoverished workers become trapped in a system of debt bondage, working under slavery-like conditions.²⁷⁸

Brazil has taken action against companies and individuals who exploit forced labor.²⁷⁹ All members of the ILO have an obligation to “respect, to promote, and to realize in good faith” the core labor standards of freedom of association and the right to organize and bargain collectively, non-discrimination in employment, freedom from forced labor, a minimum age of employment, and ending the worst forms of child labor.²⁸⁰ The ILO members must ensure that their domestic labor legislation protects these core international standards.²⁸¹

Under President Lula’s administration, the ILO has named Brazil as a “reference country” for its exemplary anti-slavery efforts.²⁸² According to the ILO, at least 5,100 people were freed from slavery-like conditions in Brazil in 2003.²⁸³ A new initiative between the ILO and the non-governmental organization Reporter Brasil trains teachers and community leaders to identify labor exploitation.²⁸⁴ The project, called “Slave, never!,” operates in twenty-three municipalities; it requires communities to establish where and why slave labor is occurring, and assists with activities to fight the problem, such as pressuring local governments to address exploitative labor practices and their causes.²⁸⁵ The Ministry of Labor investigated 206 suspected sites of slave labor in 2006.²⁸⁶ During the surprise inspections, the Ministry of Labor’s Special Mobile Enforcement Groups rescued a total of 3,390 victims in 2006; they were provided with immediate medical care, counseling, and limited compensation.²⁸⁷ “Identified victims are not penalized for unlawful acts committed as a result of being trafficked.”²⁸⁸ Article 149 of Brazil’s Penal Code forbids landowners from holding workers’ documents or controlling their transportation to and from remote farms, although the law does not explicitly reference human trafficking.²⁸⁹

Although there were no known criminal convictions of slave-labor offenders, the number of civil actions against exploitative employers rose in 2006.²⁹⁰ In December 2006, the Brazilian Supreme Court ruled that trafficking in forced labor crimes, which is treated distinctly from trafficking women for sexual

278. *See id.*

279. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

280. Chastain, *supra* note 9, at 600-601.

281. *Id.*

282. *See* Campello & Nederstigt, *supra* note 84, at 20.

283. *Id.*

284. Regional UN.GIFT Meeting, *supra* note 62, at 19.

285. *Id.*

286. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

287. *Id.* at 69.

288. *Id.*

289. Campello & Nederstigt, *supra* note 84, at 20; *see* Lei No. 10.803, art. 149, § 1, de 11 de dezembro de 2003, D.O.U. de 12.12.2003. (Brazil).

290. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

exploitation, is under federal jurisdiction and must henceforth be prosecuted in the federal court system, resolving an issue of jurisdiction that had previously hampered the prosecution of such crimes.²⁹¹

Every two years the Brazilian Ministry of Labor issues a “dirty list” or “laundry list” of companies that utilize unacceptable labor practices.²⁹² In 2006 the government began prohibiting State financial institutions from providing services to entities on the “dirty list.”²⁹³ In August 2006, an additional 178 companies and individuals were added to the “dirty list,” including producers of charcoal and pig iron destined for the United States.²⁹⁴

a. Limitations of the Labor Rights Approach

While the labor rights approach makes certain guarantees to workers, it is not without hazards to those who have been trafficked into exploitative labor. Anti-trafficking mechanisms designed to protect migrants from exploitation may nonetheless violate the right to freedom of movement set forth in Article 13 of the Universal Declaration of Human Rights.²⁹⁵ Government officials encourage victims to assist in the investigation and prosecution of traffickers.²⁹⁶ After which, the government generally deports victims to their native countries, where they face economic hardships and/or retribution for participating in prosecutorial efforts.²⁹⁷ The Migrant Support Centre, started in 2005, provides some help for trafficking victims in attaining regular migratory status and receiving assistance from government programs.²⁹⁸ Since 2005, the Migrant Support Centre has helped

291. *Id.*

292. See U.S. Dep’t of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report: Topics of Special Interest* (June 12, 2007), <http://www.state.gov/g/tip/rls/tiprpt/2007/82808.htm>; see also Repórter Brasil, *Laundry List*, <http://www.reporterbrasil.com.br/listasuja/listasuja.php?lingua=en> (last visited Sept. 12, 2008) (“According to Department of Labour’s rules, the perpetrator’s name will only be included after the conclusion of the administrative process determined by the inspection. Its exclusion from the list depends on the transgressor’s monitoring over two years. If the crime is not committed again, and if all the fines and labor and welfare debts are paid within this period, the name is excluded from the list.”).

293. See TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68; see also Reporter Brasil, *supra* note 292 (“The Banco do Brasil will not allow producers listed to sign credit contracts of any sort. The Ministry of the Interior and the Monetary Council have begun to suspend all credit lines, including those supported by private institutions.”).

294. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 68.

295. See Nederstigt & Almeida, *supra* note 27, at 105.

296. TRAFFICKING IN PERSONS REPORT, *supra* note 6, at 69.

297. *Id.*

298. Regional UN.GIFT Meeting, *supra* note 62, at 20.

13,000 people, mainly from Bolivia, Ecuador, and Peru, many of whom were victims of trafficking networks.²⁹⁹

There are an estimated 160,000 Bolivian migrants in Sao Paulo alone; many work in sweatshops under slave labor conditions, are indebted, and fearful of deportation.³⁰⁰ The Federal Ministry of Justice proposed a more progressive Foreigners Statute in September 2005, making it easier to obtain temporary resident status.³⁰¹ However, migrants' organizations and agencies voiced concern that the statute did not go far enough in the protection of human rights. They criticized the statute as being too selective, excluding migrants with low educational levels who are nonetheless productive members of the economy.³⁰²

While countries vigorously endorse laws ensuring good working conditions, for the labor rights provisions to be effective, there must be a supranational system for investigating a country's alleged failure to enforce labor laws.³⁰³ It is crucial to have a mechanism for parties to an international agreement, nongovernmental organizations, trade unions, corporate employers, and other interested members of the public, to submit allegations of non-compliance to an independent, non-political oversight body.³⁰⁴

b. International Trade Agreements Integrate Labor Standards and Other Protections

Free trade agreements may provide an innovative fourth approach to combating human trafficking. The primary advantage of this approach is its potential to incorporate the most successful elements of the other three approaches. Two additional benefits are the ability to hold governments accountable and the ability to change the underlying economic conditions that drive human trafficking. The goals of furthering democracy, upholding the rule of law, and raising living standards are long-term objectives.³⁰⁵ However, while free trade agreements may have the power to raise standards of living, to improve working conditions, and to

299. *Id.*

300. *See id.* at 21.

301. Nderstigt & Almeida, *supra* note 27, at 98; *cf.* UNHCR, *The Refugee Situation in Latin America: Protection and Solutions Based on the Pragmatic Approach of the Cartagena Declaration on Refugees of 1984*, 18 INT'L J. REFUGEE L. 252, 255 (2006) (explaining that in the spirit of international solidarity and shared responsibility, Chile and Brazil are setting themselves up as resettlement countries).

302. Nderstigt & Almeida, *supra* note 27, at 98.

303. Chastain, *supra* note 9, at 602.

304. *Id.*

305. *Id.*; *cf.* William Onzivu, *Globalism, Regionalism, or Both: Health Policy and Regional Economic Integration in Developing Countries, an Evolution of a Legal Regime?*, 15 MINN. J. INT'L L. 111 (2006) (regional frameworks encompass health and social policies and security cooperation along with core integration measures).

increase environmental protections, they also have the potential to exacerbate existing inequities in developing nations and further expose workers to exploitation.³⁰⁶

In areas where there is an abundance of labor and a lack of government regulation, workers receive low wages for long hours in unsafe conditions and their rights to associate and organize are discouraged.³⁰⁷ Women often receive lower pay than men for the same work and may be laid off in times of economic difficulty.³⁰⁸ Further, they may be subject to sexual predation and gender violence.³⁰⁹ In order to offset such inequities, protections for the enforcement of labor standards, implementation and enforcement of anti-trafficking laws, and enforcement mechanisms to adequately deal with violations need to be built into free trade agreements.³¹⁰

c. Human Rights and Labor Standards within the MERCOSUL Trade Agreement

In general, free trade agreements are mutually beneficial when the parties entering into the agreements enjoy equal social, economic, political, and legal footing.³¹¹ The South American regional trading block MERCOSUL is notable in that founding countries Brazil, Argentina, Paraguay and Uruguay have comparable social, economic, and political frameworks.³¹² In addition, MERCOSUL has incorporated social and human rights protections into the trade agreement through supplemental decrees.³¹³

306. Chastain, *supra* note 9, at 588; *see also* Monshipouri, *supra* note 214, at 43-47.

307. *See* MARIA LÚCIA PINTO LEAL, SAVE THE CHILDREN SWEDEN, GLOBALIZATION AND THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS 7-8 (2003); *see generally* Heidi S. Bloomfield, "Sweating" the International Garment Industry: A Critique of the Presidential Task Force's Workplace Codes of Conduct and Monitoring System, 22 HASTINGS INT'L & COMP. L. REV. 567, 580 (1999).

308. Bama Athreya, Policy Brief, *Trade is a Women's Issue*, FOREIGN POL'Y IN FOCUS, Dec. 1, 2002, available at <http://www.fpiif.org/fpifxt/1037>.

309. *Id.*

310. Chastain, *supra* note 9, at 588.

311. *Id.* at 609-610.

312. *Id.*; *see* Adelle Blackett, *Toward Social Regionalism in the Americas*, 23 COMP. LAB. L. & POL'Y J. 901, 942-943 (2002) (noting that the members of MERCOSUR are profoundly linked by history and geography, and there is a sense of "regional identity" and "common destiny" rendering the regional integration and its social dimensions "less than wholly 'new.'").

313. *See* Protocol of Accession of Venezuela to MERCOSUR, July 4, 2006; Economic Complementarity Agreement No. 58, MERCOSUR-Peru, Aug. 25, 2005; Framework Agreement Towards the Creation of a Free Trade Area Between the Andean Community and MERCOSUR, Apr. 16, 1998, AAP.14TM No. 11; Treaty Establishing a Common Market

The Treaty of Asunción, which created MERCOSUL in 1991, provides that “the expansion of [Member States’] domestic markets, through integration, is a vital prerequisite for accelerating their processes of economic development with social justice.”³¹⁴ In 1998, MERCOSUL signatories adopted the Social Labor Declaration of MERCOSUR, which included “all of the individual and collective rights of workers that are believed to be fundamental.”³¹⁵ In addition, the Social Labor Declaration established the Social Labor Commission (comprised of government, labor, and business representatives), which makes recommendations and reports on the signatories’ compliance with the declaration and promotes workers’ rights.³¹⁶ Moreover, the MERCOSUL free trade agreement includes the Tripartite Multilateral Social Security Treaty, which created a floor for social security rights and guidelines for national action.³¹⁷ In addition, the agreement provides for a Labor Observatory body to promote employment, set up areas of present and future research, provide institutional and statistical information, disseminate information, and centralize all information on active labor market policies in the region.³¹⁸

The substantive content of the Declaration incorporates human rights instruments and displays sensitivity to the broader social issues that influence the overall regional integration process.³¹⁹ The Declaration seems to signal agreement by Member States “irrespective of whether the incorporated texts have been ratified

Between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay, Mar. 26, 1991, 30 I.L.M. 1041 [hereinafter Treaty of Asunción]; see, e.g., GOOD PRACTICES, *supra* note 104, at 12.

314. Blackett, *supra* note 312, at 941-942 (alteration in original); see generally Treaty of Asunción, *supra* note 313.

315. Maria Carmen Ferreira, National Director of Employment, Ministry of Labour, Uruguay (MERCOSUR), Remarks at the ILO Global Employment Forum: Regional Groupings and Their Role in Employment Policy Session (Nov. 2, 2001), available at <http://www.ilo.org/public/english/employment/geforum/grouping.htm> [hereinafter Ferreira]; see also Cinterfor/Int’l Labour Org., *Reference Paper No. 3 on Main MERCOSUR Standards on Vocational Training*, 5, delivered to the 36th Technical Committee Meeting of Cinterfor/Int’l Labour Org. (July 28-30, 2003), available at http://www-ilo-mirror.cornell.edu/public/english/region/ampro/cinterfor/tcm/36tcm/doc_ref/3/ref_pap3.pdf.

316. See HUMAN RIGHTS WATCH, VOL. 13, NO. 2(B), CANADA/MEXICO/UNITED STATES TRADING AWAY RIGHTS: THE UNFULFILLED PROMISE OF NAFTA’S LABOR SIDE AGREEMENT, PART III: LABOR RIGHTS AND TRADE (Apr. 2001), available at http://www.hrw.org/reports/2001/nafta/nafta0401-03.htm#P323_39018 (citing Lance Compa, *Works in Progress: Constructing the Social Dimension of Trade in the Americas*, 21, paper delivered at the U.S.-E.U. Seminar on the Social Dimension of Economic Integration (Oct. 14-15, 1999)); see also Creación de la Comisión Sociolaboral del MERCOSUR [Social Establishment of the Commission of MERCOSUR], MERCOSUR/GMC/Res. No. 15/99 (Dec. 10, 1998) (resolution establishing the Social Labor Commission).

317. Ferreira, *supra* note 315.

318. *Id.*

319. See Blackett, *supra* note 312, at 951-953.

by each Member State.”³²⁰ Even though the declaration created a committee to research the social consequences of trade, the committee only meets once a year.³²¹ Accordingly, the committee’s reach is limited.³²²

In December 2002, Brazil, Argentina, Paraguay, Uruguay, Bolivia, and Chile signed two agreements pertaining to workers: Residence for Nationals and Regulating the Migration of MERCOSUL Citizens.³²³ The first provides that workers from one country who acquire a temporary or permanent residence visa in another MERCOSUL country will receive the same treatment as the country’s nationals.³²⁴ The two agreements, however, will only enter into force after ratification by all six signatories, which is unlikely to occur until labor markets improve.³²⁵

In 2005, the original MERCOSUL countries, together with Chile, Bolivia, Peru, Venezuela, and Ecuador, signed the Montevideo Declaration Against Human Trafficking, requiring police cooperation and collaboration with regard to human trafficking, especially trafficking linked to prostitution.³²⁶ In 2006, the MERCOSUL bloc adopted the Plan of Action to Combat Human Trafficking, making signatories more accountable for the plan’s implementation and also foreseeing “informative campaigns, exchange of information, training of governmental and non-governmental actors, and assistance for victims of human trafficking.”³²⁷

A study of the gaps in Brazilian legislation relating to the sexual exploitation of children, notes that “the installation of free transit of people and merchandize has caused criminal actions to become more elaborate, promoting them to the transnational level, moving beyond the concept of national sovereignty and hampering the application of a country’s legislation in the other country, based on the principle of territoriality.”³²⁸ The most advanced instrument available with

320. *Id.* at 952.

321. *See id.* at 954.

322. *See* Blackett, *supra* note 312, at 954.

323. Nderstigt & Almeida, *supra* note 27, at 97; *see* Acuerdo Sobre Residencia para Nacionales de los Estados Partes del MERCOSUR, Bolivia y Chile [Agreement on Residence for the National Party States of Mercosur, Bolivia and Chile], Dec. 6, 2002, MERCOSUR/RMI/CT/ACTA No. 04/02; MERCOSUR REPORT No. 9 2003-2004 69 (2004), available at http://www.iadb.org/Intal/aplicaciones/uploads/publicaciones/i-MERCOSUR_Report_9.pdf.

324. Nderstigt & Almeida, *supra* note 27, at 97 (citing MERCOSUR REPORT No. 9 2003-2004, *supra* note 323).

325. *See id.* at 97-98.

326. *Id.* at 98.

327. *Id.*

328. GOOD PRACTICES, *supra* note 104, at 19 (citing MÁRCIA A. SPRANDEL, INT’L LABOUR ORG., A EXPLORAÇÃO SEXUAL COMERCIAL DE CRIANÇAS E ADOLESCENTES NA LEGISLAÇÃO BRASILEIRA – LACUNAS E RECOMENDAÇÕES (2002), available at http://white.oit.org.pe/ipecc/documentos/a_exploracao_sexual_comercial.pdf).

regard to legal collaboration among Argentina, Brazil and, Paraguay is the Protocol on Mutual Legal Assistance in Criminal Matters, signed in 1996, which attempts to harmonize legislation among member countries and articulate common objectives.³²⁹ In 2002, a supplementary agreement added that any judicial authority may request legal assistance from a member country, assistance that may include exchanging information, investigative acts, or the temporary transfer of persons for criminal proceedings.³³⁰ Since then, member states have committed to responding to pending judicial proceedings and to extraditing persons wanted for trial or to serve their jail sentences.³³¹

MERCOSUL adopted far-reaching operational measures before the parties were able to completely harmonize their underlying criminal laws.³³² Despite the promulgation of multilateral mechanisms such as those outlined in MERCOSUL, the rigidity of national laws and variations among laws from one jurisdiction to another pose incredible obstacles to fighting organized crime in Latin America.³³³ Moreover, regional security increasingly requires collaboration by diverse actors, from state or local governments to multinational corporations, non-government organizations, lending institutions, families, and individuals.³³⁴ Combined with a lack of cooperation in the investigation, prosecution, and/or extradition of organized

329. GOOD PRACTICES, *supra* note 104, at 27; see Protocolo de Asistencia Jurídica Mutua en Asuntos Penales [Protocol on Mutual Legal Assistance in Criminal Matters], June 25, 1996, MERCOSUR/CMC/DEC. No. 2/96; John A.E. Vervaele, *MERCOSUR and Regional Integration in South America*, 54 INT'L & COMP. L.Q. 387, 402 (2005).

330. Vervaele, *supra* note 329; see Acuerdo de Asistencia Jurídica Mutua en Asuntos Penales entre los Estados Partos del MERCOSUR, la Republica de Bolivia y la Republica de Chile [Supplementary Agreement to the Agreement on Mutual Legal Assistance in Criminal Matters Between the Member States of MERCOSUR and the Republics of Bolivia and Chile], Dec. 5, 2002, MERCOSUR/CMC/DEC. No. 27/02(exchange of information concerning investigation of crimes and cooperation in judicial procedures related to criminal matters), summary in Paraguay's approval of the Agreement *available at* <http://www.glin.gov/view.action?glinID=89869>.

331. GOOD PRACTICES, *supra* note 104, at 12.

332. Vervaele, *supra* note 329, at 406; see generally David P. Warner, *Law Enforcement Cooperation in the Organization of American States: A Focus on REMJA*, 37 U. Miami Inter-Am. L. Rev. 387, 396-397 (2006).

333. Nagle, *supra* note 68, at 1652; cf. Bruce Zagaris, *Developments in the Institutional Architecture and Framework of International Criminal and Enforcement Cooperation in the Western Hemisphere*, 37 U. Miami Inter-Am. L. Rev. 421, 446 (2006) (explaining that newly considered security concerns, such as terrorism, international drug trafficking, and human trafficking pose differing compositions of threats to countries with different resource limitations, resulting in different security priorities, whereby the changing nature of the international environment necessitates new mechanisms of conflict resolution).

334. See Zagaris, *supra* note 333.

crime, it seems that Latin America is in a situation where organized crime can overwhelm the rule of law.³³⁵

Because the MERCOSUL countries have failed to fully implement international instruments and harmonize relevant criminal codes, international crimes often go unpunished.³³⁶ In order to create a legal environment that is effective against sexual exploitation and trafficking, Brazil must alter its Penal Code to comply with MERCOSUL protocols.³³⁷

III. CONCLUSION

Brazil has begun taking steps to combat human trafficking, through the law-enforcement approach by passing stricter laws against both international and domestic human trafficking. However, due to corruption and poorly-trained officers, legislation and penal consequences have failed to protect trafficked persons.³³⁸ The government has also initiated human rights efforts to assist victims with health, shelter, and legal services, although, services are uncoordinated, underfunded, and do not address the underlying social iniquities that put victims at risk in the first place. While Brazil has made strides in combating the widespread problem of slave labor, the labor framework falls short of addressing the issues of freedom of movement, security of the person, and cruel and inhuman treatment, and is limited in the enforcement of existing standards.

Clearly, assimilating the best practices from each framework would improve the overall approach. However, difficulties in identifying the best practices and, ultimately, in coordinating an integrated methodology among diverse agencies, actors, and locales, would likely magnify the difficulties already present in each framework. In order to prevail in the long-run, Brazil must address pervasive cultural norms that foment trafficking. By increasing the opportunities available to those who have historically been on the margins of society, these individuals will be empowered to make safer and more positive decisions about their destiny.

The Brazilian government should encourage the MERCOSUL bloc to adopt provisions for the fair treatment of workers similar to what Brazil has passed in recent national legislation. Supra-national monitoring of labor standards, through MERCOSUL or through future trade agreements, has the potential to alleviate the corruption in Brazilian society.³³⁹ Brazilians will also benefit from the fact that

335. Nagle, *supra* note 68, at 1652; *see also* Corrigan, *supra* note 81 (“Anti-trafficking laws cannot succeed until the extensive corruption associated with the sex trafficking industry in many source, transit, and destination countries ceases.”).

336. *See* Corrigan, *supra* note 81.

337. *See id.*

338. *See generally* Nagle, *supra* note 68; Amnesty Int’l, *supra* note 169.

339. In 1996, a survey by one of Brazil’s credible pollsters revealed that eighty-eight percent of the residents of Rio de Janeiro believed that local police had connections to

governments are increasingly subject to oversight by the international media, watchdog groups and labor organizations.³⁴⁰ Regional monitoring bodies provide added protection by ensuring that trade agreements are enforced and that countries comply with human rights standards.

Trade agreements between countries with similar cultural, political, and economic situations have the potential to improve the economies and provide stable and legal job opportunities. Those with increased economic power have more power to challenge long-held stereotypes and are less likely to take risks to support their families. The MERCOSUL trade agreement is innovative in that it encompasses labor, human rights, and enforcement provisions, while focusing on economic stimulus for South America. Brazil has the opportunity to affirm its commitment to reduce trafficking in persons by ensuring compliance with these MERCOSUL provisions, and fortifying the MERCOSUL bodies charged with enforcing the Social Labor Declaration. By integrating human rights, workers' rights, and enforcement language into MERCOSUL and future international trade agreements, Brazil can create local job opportunities with fair wages and working conditions and alleviate the economic and social pressures that lead to trafficking.



organized crime. See Monshipouri, *supra* note 214, at 31.

340. *See id.*