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## Defining and Identifying Human Trafficking

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### Defining Human Trafficking

**Although activists and policy makers have worked to combat human trafficking for centuries,** and no less than nine international United Nations conventions drafted and enacted between 1904 and 1990 squarely address and prohibit practices of trafficking, until 2000 there was no universally agreed upon definition of trafficking in persons.<sup>1</sup> Elaborated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”), this definition was hammered out during eleven sessions in Vienna, Austria over a two-year period by representatives of over 120 countries and many nongovernmental organizations working to combat human trafficking.<sup>2</sup> In 2005 the United States, which rarely ratifies international conventions, became the 90th country to ratify the Trafficking Protocol and its groundbreaking definition.<sup>3</sup>

The product of the collaboration of representatives of countries around the world and decades of efforts to understand and combat trafficking, the Trafficking Protocol offers the best available definition of “trafficking in persons.” It benefits from the international diversity of its drafters, who brought a range of perspectives reflecting the full variety of forms of human trafficking and who came from countries in both the global North and South. Addressing both sex and labor trafficking, remaining gender neutral while acknowledging the prevalence of trafficking in women and children, and covering trafficking in adults and children alike, the Trafficking Protocol’s definition is remarkably nuanced, comprehensive, and sophisticated. It provides invaluable guidance to countries developing national legislation, as well as to state and local legal and social service professionals assisting victims.

The Trafficking Protocol defines “trafficking in persons” as “the recruitment, transportation, transfer, harbouring 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.”<sup>4</sup> It specifies that “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>5</sup>

Consistent with New York State and federal anti-trafficking statutes, this definition does not require movement of the victim — “recruiting” or “harbouring” a victim for the purpose of exploitation is sufficient to constitute trafficking.<sup>6</sup> This acknowledges that the dynamics of trafficking remain consistent whether the victim is moved across state lines, moved within a nation’s borders, or not moved at all.<sup>7</sup> Traffickers tend to use similar tactics of control and to exploit similar vulnerabilities. Equally important, and distinguishing it from federal and state criminal law, is the definition’s recognition that trafficking can take place even when traffickers do not resort to force or overt coercion but instead subject a victim to exploitation by “the abuse of power or of a position of vulnerability.” In this way the definition acknowledges that human traffickers often exploit political, social, and economic conditions of dire inequality — especially poverty; gender, racial, and ethnic discrimination; gender, racial, and ethnic violence; civil unrest and armed conflict; and natural disasters — to recruit and maintain power and control over trafficking victims.<sup>8</sup> By identifying the exploitation of vulnerabilities in order to extract labor or sex as the true essence of human trafficking, the Trafficking Protocol moves beyond outmoded conceptions that fixate on movement across state lines and the use of explicit force.

The Trafficking Protocol’s definition of sex trafficking is more comprehensive than those of New York State and federal law. It is not limited to trafficking for purposes of prostitution, as is New York State law, or to “commercial sex acts,” the terminology used by federal anti-trafficking law.<sup>9</sup> Instead, the Trafficking Protocol uses a broader formulation: “the exploitation of the prostitution of others or other forms of sexual exploitation.”<sup>10</sup> The Trafficking Protocol thus covers and prohibits sexual exploitation in the context of intimate partner relationships, including marriage, as long as the other elements of the definition of trafficking in persons are met. Internet brides and other victims of marriage trafficking, arguably left unprotected by federal and state anti-trafficking law, are far more likely to be recognized as trafficking victims under the Trafficking Protocol.<sup>11</sup>

The Protocol’s definition of “trafficking in persons” includes a provision that specifies that “the consent of a victim of trafficking in persons . . . [is]

irrelevant where any of these means are used.”<sup>12</sup> The Trafficking Protocol thus acknowledges that it is logically impossible for a person to give meaningful consent to be exploited in situations of abuse.

Recognizing that children subjected to exploitation by an adult are inherently in a situation of “abuse of power or of a position of vulnerability,” the Trafficking Protocol explicitly states that, regardless of the means employed by the traffickers, “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons.’”<sup>13</sup> A child is defined as anyone under the age of eighteen. Unlike the federal anti-trafficking law, which does not protect child victims of labor trafficking unless that exploitation was carried out through force, fraud, or coercion, this formulation extends protection equally to child victims of sex and labor trafficking.<sup>14</sup>

While the penal provisions of the federal Victims of Trafficking and Violence Protection Act of 2000 (“Trafficking Victims Protection Act”) require force, fraud, or coercion for actionable trafficking, the Trafficking Protocol does not provide a “bright line,” forced-based test. It takes into consideration not only violent criminal acts but also the power dynamic employed by the perpetrator. Its definition of trafficking in persons is not unlike the definition of domestic violence developed by victim advocates who eschewed an understanding of domestic violence based on discrete violent acts for one that identifies perpetrators’ on-going tactics of power and control, many nonphysical and not overtly violent.<sup>15</sup> Like the “Power and Control Wheel,”<sup>16</sup> a tool used to analyze the forms of domestic violence, and Amnesty International’s criteria for psychological torture,<sup>17</sup> the Trafficking Protocol reflects the understanding that subtle, largely psychological tactics that emerge from and intensify inequality can be just as, if not more, effective in securing an abuser’s domination and a victim’s submission than overt acts of force.<sup>18</sup> Indeed, many traffickers around the world have embraced this lesson and some — like the pimps of Tenancingo, Mexico — recruit and maintain control over their victims not through traditional tactics of threats of force and violence but through seduction, romance, and promises of marriage and building a family and home together.<sup>19</sup>

Many nongovernmental organizations and policy makers have adopted definitions of human trafficking based on sections of the federal or state penal codes and have attempted to use them in identifying and screening trafficking victims. This is a mistake for several reasons. Penal law definitions are usually narrowly tailored to describe activity that is indisputably criminal in nature, especially when that conduct rises to the level of a felony, as it does in federal and state anti-trafficking statutes.<sup>20</sup> Only a small minority of trafficking victims

participate in the criminal prosecution of their abusers, usually because prosecutions are time barred, because victims are often afraid to cooperate with the prosecution of their abusers, and/or because the prosecutors cannot provide evidence adequate to meet their heavy burden of establishing proof beyond a reasonable doubt.<sup>21</sup>

Furthermore, the primary purpose of criminal statutes is the prosecution of perpetrators, not the provision of assistance to victims. Like victims of domestic violence, victims of human trafficking have a wide array of legal and social service needs that extend far beyond the criminal prosecution of their abusers, including assistance in pursuing immigration remedies, civil protective orders, custody of their children, and public benefits.<sup>22</sup> It makes little sense for legal and social service providers addressing these urgent noncriminal needs to be bound by a restrictive definition embedded in state or federal criminal law. Using narrowly crafted penal laws that do not benefit most trafficking victims as a litmus test necessarily excludes many victims of trafficking who would be recognized under a more expansive definition and are in urgent need of protection and assistance.

Who is not considered a trafficking victim under the Trafficking Protocol? “Exploitation,” by definition, requires a third party exploiter. Any person who is not being exploited by another is not included. This means that the self-employed worker or a person in prostitution independently is not considered a trafficking victim under the Trafficking Protocol. In addition, the exploitation must have been carried out by an individual or group that at a minimum abused its power over the victim or took advantage of the victim’s position of vulnerability. Anyone who is not in a position of vulnerability or subjected to an abuse of power by a third party would not be included as a victim under the Trafficking Protocol’s definition.

Squarely included within the Trafficking Protocol’s definition, however, are individuals who, after having been trafficked into prostitution, remain in conditions of exploitation after they have purchased their freedom or their traffickers have moved on to other victims. Such victims may seem to be voluntary prostitutes or “sex workers” but are, in reality, trapped in dehumanizing conditions because they are deeply traumatized and see no way to exit a system of sexual exploitation. Trafficked people who remain in the sex industry may appear to embrace prostitution as an identity and vocation because they see no alternative and lack the support they need to break free. Under the Trafficking Protocol’s definition, such individuals are trafficking victims and those who abuse their situations of vulnerability are traffickers.

The Trafficking Protocol's definition provides legal service practitioners, *pro bono* lawyers, criminal justice personnel, courts, and service providers and other advocates with a valuable tool to screen for and identify human trafficking. It is sufficiently narrow to exclude those who have freely engaged in work or sexual activities that may simply be unwelcome or unpleasant. At the same time, this definition avoids a far greater danger: that trafficking victims will be denied assistance because those they turn to for help employ a rigid, force-based definition of human trafficking that fails to consider the dynamics with which traffickers secure power and control over their victims.

## Flagging Trafficking and Identifying Victims

### Three Cases<sup>23</sup>

#### *Case 1:*

After a brutal beating, Maria, a Mexican immigrant victim of sex trafficking, fled her abusive boyfriend, a trafficker also from Mexico, into a neighborhood grocery store. There a compassionate customer persuaded Maria to report the crime to the police and accompanied her to the local precinct, where a police officer interviewed her and identified her as a victim of domestic violence. He did not ask Maria any questions about sex trafficking. Several months later, Maria was interviewed by an attorney at the New York Family Justice Center, a program that provides comprehensive services to domestic violence victims. Within fifteen minutes, the attorney identified Maria as a victim of both domestic violence and sex trafficking. Despite repeated calls from Maria's lawyer, the District Attorney's office never interviewed Maria about her history as a trafficking victim. As a result, Maria's batterer/pimp was charged with misdemeanor domestic violence crimes but was never charged with felony sex trafficking.<sup>24</sup>

#### *Case 2:*

Chantal, an African-American woman in her mid-twenties, was arrested more than a dozen times for prostitution. Although each time she was fingerprinted, booked, and arraigned and each time she attended classes as part of her sentence, none of the criminal justice personnel, defense lawyers, judges, or service providers with whom she came in contact inquired about her circumstances. Her former boyfriend, a brutal man who controlled a stable of prostitutes that included Chantal and who went by the name "Obsession," was the father of her little boy and her pimp. Because Chantal was native born and had multiple convictions for prostitution, no one identified her as a victim of sex trafficking.<sup>25</sup>

*Case 3:*

Olga, the Ukrainian mother of two small children, was recruited to work in the United States by an older woman from her village. The woman provided Olga with forged travel documents and tickets to New York City. Once in New York, Olga was forced to work long hours in a grocery store and turn over all of her earnings to the woman's associates. When she resisted, she was told that if she did not continue to give them her earnings her children would be killed and she would be forced to work as a prostitute. Olga tried to commit suicide by swallowing a bottle of aspirin. She was admitted to the psychiatric ward of a local hospital, where an alert social worker became suspicious. She noticed that Olga seemed terrified of the group of "family members" who waited for her to be released. With the help of a Russian-speaking nurse, she interviewed Olga, who told her that the people waiting for her had threatened to harm her and her children. The social worker immediately contacted Sanctuary for Families, a New York City provider of legal and social services to victims of domestic violence and sex trafficking. An attorney from the organization interviewed Olga with the assistance of Sanctuary's Russian-speaking Comptroller. After the attorney informed Olga about protections afforded trafficking victims and promised that everything she said would be kept confidential, Olga described the labor trafficking scheme to which she had been subjected. Olga later decided to cooperate with the federal authorities, who initiated an investigation of her case and identified additional victims. The U.S.-based members of the ring that had trafficked Olga were indicted and convicted under the federal anti-trafficking law. Olga was awarded a T Visa and now has permanent resident status. The legal services program assisting her is in the process of bringing into the United States her two children as derivative beneficiaries of her T Visa.<sup>26</sup>

**Recognizing Warning Signs**

Trafficking victims often come into contact with individuals who, if they were alert to the telltale signs of trafficking like the social worker in Olga's case, could either investigate the situation themselves and provide assistance or make referrals to organizations with the requisite expertise. These individuals include community members, members of community-based organizations, health care providers, educators, police officers, court officers and other criminal justice personnel, judges, prosecutors, defense counsel, and civil legal service providers. Unfortunately, far more often than not, people in these groups, like the law enforcement officials in Maria's and Chantal's cases, fail to spot the hallmarks of trafficking or make false assumptions, and victims are left without protection and assistance.<sup>27</sup>

What are the indicia of human trafficking? How can we identify victims? While each case is different, there are certain patterns and signs that can assist those who want to foil traffickers and help lead their victims to safety. Some of these hallmarks emerge from common features of victim vulnerability, especially a history of gender-based violence, commercial sexual exploitation, poverty, homelessness, youth, substance abuse, mental or physical disability, and lack of legal immigration status. Other telltale signs emerge from traffickers' tactics of isolation and control and efforts to evade scrutiny. Some signs are indicative of either sex or labor trafficking alone while others are warning signs of human trafficking in general.

### **Prostitution and Pimps**

Victim identification starts with the awareness that human trafficking is often a form of gender-based violence. Although men and boys are also subjected to sex and labor trafficking, most victims of human trafficking are female, and of these the majority are trafficked into prostitution or a related form of commercial sexual exploitation.<sup>28</sup> Due to its ubiquity, commercial sexual exploitation should be recognized as a hallmark of trafficking.

The majority of people in prostitution are children or were originally prostituted as children. Experts estimate that the average age of entry into prostitution for females is twelve to fourteen.<sup>29</sup> Anyone prostituted as a child is by definition a trafficking victim under both the Trafficking Protocol and the federal anti-trafficking law.<sup>30</sup> Since most adults in prostitution were initially prostituted as children (age seventeen or younger) and since prostituted children are necessarily victims of trafficking, one could reasonably conclude that the majority of prostituted adults have been subjected to sex trafficking at some point in their lives.<sup>31</sup>

Furthermore, studies have found that the majority of women in prostitution at some point are under the control of a pimp.<sup>32</sup> If the prostituted person is or has been under the control of a pimp or someone functioning as a pimp,<sup>33</sup> she or he is a trafficking victim under the definition in the Trafficking Protocol and is highly likely to have been subjected to the force, fraud, or coercion required by New York State and federal law. Pimps are usually simultaneously sex traffickers and intimate partner batterers and almost invariably enter into sexual relationships with their victims through acts of sexual and physical abuse, promises of protection, devotion, and love, and often through a combination of violence and romance.<sup>34</sup> After they establish their dominance, they "turn out" their victims into prostitution, exploiting them in order to reap large sums of money that support the pimp's often opulent lifestyle.<sup>35</sup>

Pimps “season” their victims into submission by altering their identities, changing their names, isolating them from family and friends, persuading them that they now exist outside of mainstream society, and subjecting them to a brutal and rigid regimen of power and control.<sup>36</sup> Victims are routinely called gender-based slurs like “bitch” and “whore,” are required to behave in a servile and deferential manner, often by referring to their pimps by terms like “Daddy,” and are brutally punished for the slightest infraction of their pimp’s rules.<sup>37</sup> Reducing the women and girls they prostitute to the condition of chattel slaves, some pimps literally mark them as their property by branding them with tattoos that display the pimp’s name, pornographic imagery, the victim’s pimp-assigned moniker, or demeaning slogans like “Daddy’s lil bitch.”<sup>38</sup>

Although little is known about the prostitution of boys and young men, experts increasingly are finding high levels of gender-based violence and exploitation in their histories, which should raise a similar presumption that they are likely to be victims of sex trafficking.<sup>39</sup>

Since the majority of trafficking victims are trafficked into prostitution and/or are sexually exploited, the majority of people in prostitution were originally prostituted as children, and the majority of people in prostitution are subject to the domination and control of pimps or people functioning as pimps, learning that a woman has been in prostitution should create a presumption that she is a trafficking victim. This means that police officers, corrections personnel, judges, health care providers, and all those who come into contact with prostituted women should be on high alert that there is a substantial likelihood that they are dealing with victims of sex trafficking.

### **Sexual Abuse**

Since trafficking victims are disproportionately likely to have been sexually assaulted before being trafficked and suffer an increased incidence of sexual assault after having been trafficked — with traffickers, employers, pimps, and customers as frequent perpetrators — criminal justice personnel and sexual assault providers should be alert to the possibility that a person disclosing a sexual assault or displaying signs of sexual trauma may be a trafficking victim.<sup>40</sup>

Trafficking victims often experience sexual abuse both before and during trafficking. Like those in prostitution, people with histories of sexual and other abuse are especially vulnerable to being trafficked.<sup>41</sup> Once trafficked, victims become even more vulnerable to sexual assault. Due to the sexual nature of the exploitation, victims of sex trafficking are subjected to ongoing sexual abuse. However, it is not only sex trafficking victims who are at increased risk of



sexual abuse. Labor trafficking victims, especially those who are female, are at heightened risk of sexual assault and the threat of sexual assault by their traffickers.<sup>42</sup> In the introductory example, Olga's traffickers first beat her and then threatened to force her into prostitution in order to punish her for leaving her job at a grocery store; while she was being trafficked a member of the trafficking ring attempted to sexually assault her.

### **Domestic Violence**

Domestic violence victims are another group of victims of gender-based violence at high risk of human trafficking. Many traffickers establish intimate partner relationships with their victims to recruit them. To cement their control, they employ all of the classic techniques of domestic violence perpetrators illustrated in the Power and Control Wheel. Their victims may first present as typical victims of domestic violence, as Maria in the introductory example did. Law enforcement officials and domestic violence service providers should be aware of the domestic violence-sex trafficking connection and be sure to ask questions that will elicit information about this dual practice of victimization. For example, Sandra, an immigrant from Latin America, received legal, counseling, and residential services from a domestic violence service provider for years. All this time the lawyers and counselors working with her believed that she was simply the victim of an abusive partner. It was not until her batterer abducted her daughters on a court-ordered visit that she tearfully disclosed that he was part of a Central American organized crime ring that trafficked in drugs and human beings. Had her legal and social service providers fully understood Sandra's history, they could have taken even greater precautions to protect the safety of this client's little girls.<sup>43</sup>

Domestic violence also can be a risk factor for labor trafficking. Victims of domestic violence are usually desperate to escape their abusers and may seek out or respond to what appears to be legitimate employment, unaware that they are being recruited into forced labor.<sup>44</sup> Olga in the introductory example had been abused first by her mother and then by her husband in a marriage arranged by her mother. The offer of work in the United States made to her by an older woman in her village seemed like a way to escape a life of poverty and domestic violence. When Olga notified her husband that she had fled her traffickers, he urged her to return to them, and Olga realized that he was part of the labor trafficking scheme.

### Undocumented Status

Lack of legal immigration status leaves immigrants vulnerable to exploitation in both sex and labor trafficking and thus constitutes a major risk factor for trafficking.<sup>45</sup> Both Maria and Sandra, two earlier examples, were undocumented when they entered the United States. Maria was brought into the country by her boyfriend and his uncle, both of whom belonged to a family-based sex trafficking ring. Sandra was pressed into prostitution by the organized crime group that smuggled her into the United States and then demanded that she pay off the inflated debt that it claimed she owed it. Olga entered the United States on forged documents prepared for her by her traffickers; the visa that she had obtained expired while she was under their control. Both sex and labor traffickers confiscate their victims' passports and other identification and travel documents, often holding them as security for mounting debt, threaten to expose victims to the authorities, and warn victims about the harsh penalties that they will be subjected to if their lack of immigration status is revealed.<sup>46</sup>

Undocumented immigrants' lack of work authorization intensifies their poverty and makes it more likely that they will fall prey to sex and labor traffickers and other criminal enterprises in the underground economy. Law enforcement officials and legal and social service providers working with immigrants, especially those without legal status, should be vigilant about the possibility of human trafficking.

### Trafficking Disguised

Because prostitution is illegal in New York State, sex industry entrepreneurs rarely advertise their enterprises as such. Instead these businesses are disguised, at least in part, by names such as "massage parlor," "escort services," "modeling agency," "adult vacations," "adult services," and "erotic services." This nomenclature suggests prostitution to the initiated but does not overtly advertise it. To meet the demand by customers for youth, novelty, and exoticism, these businesses recruit a steady stream of girls and women, preferably teenagers, who are quickly replaced by others once the customers' desires have been satiated. The quickest and cheapest way to meet this demand is through girls and women recruited and supplied by sex traffickers.<sup>47</sup>

Pimps and sex tour operators have learned that one of the most effective ways to market, recruit, and control their human merchandise is through the use of internet technology that maintains the partial disguise. They sell their victims

on online classified sites, like Craigslist's "Adult Services" section, and advertise internet brides through websites with names like "Hot Russian Brides" and "Thai Girls for Marriage."<sup>48</sup> They trawl for new victims on social networking sites, like Myspace. One sixteen-year-old client of Sanctuary for Families happily added "Runway Modelz" to her social networking website as a new "friend," unaware that it was a ring of pimps hoping to recruit unsuspecting inner city teenage girls into prostitution. Traffickers often communicate with prostitution buyers and monitor the whereabouts and activities of their victims through e-mail and text message. A young person who anxiously answers a constantly ringing or buzzing cell phone may be a sex trafficking victim under the control of a pimp.

While sex trafficking businesses' disguises are only partial since their true identity must be readily discernible to the customers they need to attract, more often than not those engaged in labor trafficking hold themselves out as owners of, or senior employees in, wholly legitimate enterprises — such as employment agencies, food production and distribution enterprises, construction companies, and factories. Within these organizations trafficked individuals may work side by side with regular workers and the conditions of their trafficking may or may not be known by their co-workers.

### **Recruitment Agencies and Debt**

Many international trafficking victims enter the migration process willingly and rely on apparently legitimate recruitment agencies to organize their travel and place them with foreign employment. Unscrupulous agencies lie about the nature of the work, working conditions, and salary. Sometimes the promised jobs turn out not to be work at all but instead are commercial sexual exploitation in strip clubs and brothels. Katerina, a sex trafficking victim from Russia, responded to a help wanted ad in a legitimate Moscow newspaper for babysitters and housekeepers in New York City. Once she arrived there, she realized that the advertised work did not exist and she was offered a "choice" between "work" in a strip club or brothel.<sup>49</sup>

These agencies know that, once overseas their victims will be unable to insist on the original contract terms or assert even minimal human rights due to an overwhelming combination of forces including economic need, major resources invested in obtaining the overseas jobs, and immigration visas that are limited to the one host employer. Migrant workers find themselves stranded far from home, trapped into contracts for jobs with exploitative conditions for very little pay.<sup>50</sup>

By intentionally misrepresenting the nature of the overseas jobs and placing workers into exploitative conditions that they know the workers cannot escape,

these recruitment agencies abuse the workers' position of vulnerability and thus are guilty of trafficking. When encountering a migrant who relied on a recruitment agency, legal practitioners and social service providers should inquire into the activities of the recruitment agency and the terms of the contract to determine if the agency's practices are legitimate or exploitative.

Additionally, international migrant workers often take out exorbitant loans to pay for the migration. Workers frequently mortgage their homes or leverage everything their families own in order to finance the recruitment fees and airplane ticket.<sup>51</sup> Once they discover the true conditions of the overseas employment, they cannot afford to assert their rights or leave the exploitative employer. Often the trafficker compounds the debt by charging the victim inflated prices for lodging, food, transportation, and "employment fees." Employers who take advantage of this growing mountain of debt to extract labor, enforce compliance with intolerable working conditions, or drive victims into prostitution are effectively holding the victim in debt bondage. The presence of large amounts of debt can be an important indicator of trafficking.

### **A Family Business**

While the common image of a trafficker is as a member of an organized crime ring, increasingly both sex and labor trafficking are carried out by family-run crime groups. Maria and Olga, whose cases were described in the introductory examples, were both trafficked by networks of family members who preyed on vulnerable women and men in their own communities. Family sex traffickers often woo and sometimes marry their victims. This was the modus operandi of the traffickers in the infamous "Carreto brothers" case in which a mother and her sons ran a brutal sex trafficking ring from their home base in Tenancingo, Mexico.<sup>52</sup> When apprehended, the Carreto brothers insisted that they could not be sex traffickers because they were married to the women they were accused of prostituting. Similarly, Olga was recruited into labor trafficking by a well-regarded middle-aged woman, who was a distant relative who lived in her own village; the recruiter's status as family and community member made it especially easy to win the trust of Olga and her victims. There have been a number of cases of sex trafficking carried out by husband and wife teams; not infrequently the wife is herself a former sex trafficking victim. In these "Mom and Pop" trafficking operations, the wife is often responsible for keeping the victims in line while the husband focuses on securing and expanding the business.

One of the most frequent and traditional forms of family-based trafficking is the labor trafficking of domestic servants.<sup>53</sup> In these cases the victims are not

always youthful, although they are often immigrants whose undocumented status is used by their traffickers to keep them in fear and isolated from potential sources of help. A widely-publicized case of domestic labor trafficking took place in Muttontown, New York, where a wealthy couple enslaved two female Indonesian domestic servants, ages 51 and 47, for more than five years. The couple forced the victims to work long hours, deprived them of food, and beat them, burned them with cigarettes, and forced them to ingest hot chili peppers. The trafficking was exposed when one of the victims sought help by entering a local Dunkin' Donuts, making gestures of being slapped while uttering the word "master." The jury rejected the couple's defense that the victims had inflicted the wounds on themselves as part of a traditional Indonesian folk cure and fabricated their allegations to obtain immigration relief as trafficking victims.<sup>54</sup> A number of diplomats and their family members have been exposed for their labor trafficking of domestic servants but in most instances diplomatic immunity has shielded them from prosecution.<sup>55</sup>

## **Conclusion**

The United Nations Trafficking Protocol contains a definition of human trafficking that provides advocates as well as governments with much needed guidance for determining who is and is not a victim of sex or labor trafficking. More inclusive and flexible than New York State and federal criminal standards, the Trafficking Protocol's definition takes into consideration the tactics employed by traffickers that are insidious and prevalent but do not fall neatly into the criminal law categories of force, fraud, or coercion.

While not an exhaustive list, the presence of prostitution, pimps, sexual abuse, domestic violence, undocumented status, unscrupulous recruitment agencies, and large amounts of debt are telltale signs of trafficking for which legal and social service providers should remain vigilant. Some victims of trafficking will not exhibit or admit to any of the traditional indicators of trafficking; the apparent lack of such indicators should not cause providers to rule out trafficking as a possibility. Similarly, a victim's denial should not cause a provider to conclude that trafficking was not involved. In many cases a victim will persistently deny the presence of trafficking before admitting or disclosing her situation as a victim of trafficking. However, the presence of any or a combination of any of these indicators should alert a provider to the possibility that the individual with whom they are interacting may be a victim

of sex or labor trafficking. Likewise, providers should remember that not all traffickers fit the stereotype of organized crime. Human traffickers are just as, if not more, likely to be an intimate partner, family member, or community member of the victim.

## Notes

1. International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83, *entered into force* July 18, 1905; International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 211 Consol. T.S. 45, 1912 Gr. Brit. T.S. No. 20, *as amended by* Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 U.S.T. 1999, 30 U.N.T.S. 23, *entered into force* June 21, 1951; International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921 (1921) P.I.T.S.E. 2, *entered into force* June 15, 1922; Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, Sept. 25, 1926, 60 L.N.T.S. 253, *entered into force* March 9, 1927; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S., *entered into force* Aug. 24, 1934; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271, *entered into force* July 25, 1951; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 226 U.N.T.S. 3, *entered into force* Apr. 30, 1957; Convention on the Elimination of All Forms of Discrimination against Women, Dec. 19, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981; Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.
2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Sept. 9, 2003.
3. U.N. Treaty Collection, 12.a Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, <http://treaties.un.org> (follow "Databases" hyperlink; then follow "Status of Treaties" hyperlink; then follow "CHAPTER XVIII" hyperlink; then follow "12.a. Protocol to Prevent, Suppress, and Punish Trafficking in Persons" hyperlink) (*last visited* Sept. 10, 2010).

4. Trafficking Protocol, *supra* note 2, art. 3(a).
5. *Id.*
6. See N.Y. Penal Law § 230.34 (McKinney 2008); Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8) (2000) (“Trafficking Victims Protection Act”); Trafficking Protocol, *supra* note 2, art. 3(a).
7. “The key question under the [Trafficking Protocol] is not whether someone has been moved.” Dept. of State, Trafficking In Persons Report 35 (2010) (*hereinafter* “2010 TIP Report”).
8. See, e.g., International Organization for Migration (IOM), *Data and Research on Human Trafficking: A Global Survey* (2005); U.N. ESCOR, Hum. Rts. Comm., *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Feb. 29, 2000, U.N. Doc. E/CN.4/2000/68 (discussing trafficking in women, women’s migration, and violence against women), available at [http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf). (*hereinafter* “Special Rapporteur Report”).
9. N.Y. Penal Law § 230.34 (McKinney 2008); Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8) (2000).
10. Trafficking Protocol, *supra* note 2, art. 3(a).
11. Dorchen Leidholdt, *From Sex Trafficking to FGM: Emerging Issues*, Lawyer’s Manual on Domestic Violence 369, 373-75 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 5th ed. 2006). See also Brides4U, an online matchmaking site that delivers mail order brides, that warns that some bride seekers “seek to exploit the system and see potential brides as nothing other than commodities to be bought and subjugated . . . this kind of abuse ranges from the pressure for a bride to serve as wife, maid and nurse rolled into one, to more extreme cases of mental and/or physical abuse.” Brides4U identifies power imbalances, men’s perception of foreign brides as weak and passive, and men’s exploitation of fear of deportation as the three main causes of the abuse. Brides4U, Info For Brides, [http://www.brides-4u.com/brides\\_info/fraudsters](http://www.brides-4u.com/brides_info/fraudsters).
12. Trafficking Protocol, *supra* note 2, art. 3(b).
13. *Id.*, at art. 3(c).



14. The protection offered to minors under § 7102(8)(a) only applies to victims of sex trafficking. No analogous provision is extended to victims of labor trafficking under § 7012(8)(b). Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8), (9) (2000).
15. See, e.g., Mary Ann Dutton, *Empowering and Healing the Battered Woman* 16-3 (1992) (hereinafter “Dutton”).
16. Ellen Pence & Michael Paymar, Duluth Domestic Violence Intervention Project, Power and Control Wheel, <http://www.theduluthmodel.org/wheelgallery.php> (last visited Sept. 10, 2010).
17. Amnesty International’s definition of psychological torture is divided into eight categories: (1) isolation of the victim; (2) induced debility, producing exhaustion, weakness, or fatigue, (e.g., sleep or food deprivation); (3) monopolization of perception, including obsessiveness and possessiveness; (4) threats of harm to the victim or her family and friends and other forms of threat; (5) degradation, including humiliation, name calling and insults, and denial of privacy or personal hygiene; (6) forced drug or alcohol use; (7) altered states of consciousness produced through hypnotic states; and (8) occasional random and variable reinforcers or indulgences, partial reinforcers that keep alive the hope that the torture will cease. Dutton, *supra* note 15, at 26.
18. Research indicates that traffickers are using more subtle forms of exploitation and greater psychological abuse. 2010 TIP Report, *supra* note 7, at 36.
19. Oscar Montiel Torres, *Trata de Personas: Padrotes, Iniciación y Modus Operandi* 150-55 (2009).
20. The federal Trafficking Victims Protection Act reflects the fact that penal definitions for trafficking, aimed at identifying the criminal trafficker, ought to be more narrow than definitions of trafficking aimed identifying the victim or the phenomenon. The statute contains two definitions for trafficking. The first definition is more inclusive and is useful for policy and funding decisions for victims’ social service programs. It defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” and does not require the use of force, fraud, or coercion. The second definition for “severe sex trafficking” identifies the crime and creates a trafficking-specific immigration status. It is more narrow and requires the use of force, fraud, or coercion (unless the victim is under eighteen and is induced to perform a

commercial sex act, in which case no force, fraud, or coercion is required). Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8), (9) (2000).

21. See, e.g., April Rieger, *Missing The Mark: Why The Trafficking Victims Protection Act Fails To Protect Sex Trafficking Victims In The United States*, 30 Harv. J.L. & Gender 231 (2007).
22. Heather Clawson, et al., *Needs Assessment for Service Providers and Trafficking Victims: Final report to the National Institute of Justice* (2003), available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=202469>.
23. The names of trafficking victims described in this chapter have been changed to protect their privacy.
24. Information provided by Lori Cohen, Senior Staff Attorney, Immigration Intervention Project, Sanctuary for Families Center for Battered Women's Legal Services. See also Joseph Berger, "Despite Law, Few Trafficking Arrests," *The New York Times*, Dec. 3, 2009.
25. Information provided by Sister Mary Nerney, Executive Director, STEPS To End Family Violence.
26. Information provided by Lori Cohen, Senior Staff Attorney, Immigration Intervention Project, Sanctuary for Families Center for Battered Women's Legal Services and Tatyana Kopit, Director of Finance, Sanctuary for Families.
27. Many fail to recognize trafficking due to lack of training and reliance on assumptions that trafficking is not present. Researchers have found that only approximately 18% of local, county, and state law enforcement agencies in a random sample have had some type of human trafficking training, 9% have a protocol or policy on human trafficking and only 4% have designated specialized units or personnel to investigate these cases. Roughly 75% of local, county, and state law enforcement believe human trafficking is rare or non-existent in their local communities. Institute of Race and Justice, Northeastern University, *Understanding and Improving Law Enforcement Responses to Human Trafficking: Executive Summary*, 3-4 (2008). Another research report found that less than half of law enforcement officers in responding units had been trained to recognize potential victims of human trafficking, and only about 10% would be likely to recognize potential victims of human trafficking if they encountered

them while working on the street or investigating another case. National Opinion Research Center (NORC), University of Chicago, *Finding Victims of Human Trafficking* 44 (2008).

28. The 2009 United Nations Office on Drugs and Crime report states that women and girls made up approximately 79% of reported victims of human trafficking and, additionally, that 79% of identified cases of human trafficking involved sexual exploitation. U.N. Office on Drugs and Crime, *Global Report on Human Trafficking in Persons* 11 (Feb. 2009).
29. Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution <http://www.justice.gov/criminal/ceos/prostitution.html> (last visited Sept. 20, 2010).
30. Trafficking Protocol, *supra* note 2, art. 3(c). Under the federal law, the recruitment, harboring, transportation, provision, or obtainment of anyone under eighteen years old for commercial sex acts constitutes severe sex trafficking without any need to show force, fraud or coercion. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8), (9) (2000).
31. In addition to, or in conjunction with, sex trafficking, people in prostitution are subjected to a wide range of gender-based violence. As a group, they are raped, assaulted, and murdered at much higher rates than any other category of people. Melissa Farley, *et al.*, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 (3/4), *Journal of Trauma Practice* 33, 35 (2003) (surveying rates of rape of prostitutes in different cities and finding that 94% of women in street prostitution experienced sexual assault and 75% were raped by one or more johns); Urban Justice Center, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, 44 (2003) (finding that 80% of prostitutes in a study had experienced violence or been threatened with violence); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Post-Traumatic Stress Disorder*, 27 (3) *Women & Health* 37, 40-41 (1998) (finding that 82% of adults in prostitution had been physically assaulted and 83% had been threatened with a weapon); D. Brewer *et al.*, *Extent, Trends, and Perpetrators of Prostitution-related Homicide in the United States*, 51 *Journal of Forensic Sciences*, 51, 1101 (2006) available at <http://www.interscientific.net/JFS2006.html> (prostituted women have the highest homicide victimization rate of any set of women ever studied); John J. Potterat, *et al.*, *Mortality in a Long-term Cohort of Prostitute Women*, 159(8) *American Journal of Epidemiology* 778, 781 (Apr. 15, 2004) (the average age of death of prostitutes is 34).

32. Studies estimate anywhere from 75% to 95% of prostitution is pimp controlled. Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution <http://www.justice.gov/criminal/ceos/prostitution.html> (*last visited* Sept. 20, 2010) (finding 75% of girls engaged in formal prostitution work for a pimp); Council for Prostitution Alternatives Annual Report, July 1990-June 1991, Portland, Oregon, *quoted in* Kathleen Barry, *The Prostitution of Sexuality* 198 (1995) (estimating that up to 80% to 95% of all prostitution is pimp-controlled); Florida Supreme Court, Executive Summary, *Report of the Florida Supreme Court Gender Bias Study Commission* 26 (1990) (finding that 90% of street prostitution is controlled by pimps) (*hereinafter* "Florida Supreme Court Gender Bias Study").
33. In the case of boys and young men especially this may be an older and more powerful customer.
34. The Florida Supreme Court's commissioned report found that pimps use a variety of coercive methods in addition to rape to control their prostitutes. Florida Supreme Court Gender Bias Study, *supra* note 34, at 26. *See also* *Very Young Girls* (Showtime 2007) (*hereinafter* "Very Young Girls") (documentary film following adolescent girls trying to escape from prostitution and including part of a home video shot by Anthony and Chris Griffith, two pimps, explaining how they ensnare young girls and keep them trapped in prostitution); Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution: Still an Integral Part of Street Life*, Vol. 8 No. 9 *Violence Against Women* 1074, 1082 (2002) (*hereinafter* "Williamson") ("Most [prostitutes] reported they were infatuated with their pimp . . . consider[ed] themselves in love and defined the involvement with their pimp as a relationship . . . [or felt] infatuation, admiration, and loyalty.").
35. "The third and final ingredient for successful pimping is that a pimp must have a woman or women that want to see him on top. He is looking for dedication. He is looking for someone who wants to see her man in fine clothes and driving fine cars. His success or lack of success is a reflection on her. If her man is not looking his best, then she is not a very successful ho, and this will make for an embarrassing impression. As a prostituted woman, she must work very hard to earn his respect and his love and to keep him achieving the best in material possessions. He in return invites her into his underground social network with the sense of belonging it brings and the promise of material possessions it provides." Williamson, *supra* note 36, at 1079, 1080.

36. *See, e.g.,* Very Young Girls, *supra* note 36 (documentary film in which Anthony and Chris Griffith, two pimps, and several former prostitutes explain the process of isolation and in which Carolina, a former prostitute, does not know what to call herself — whether by her street name, Vanessa, or her given name, Carolina).
37. Williamson, *supra* note 34, at 1086. *See also* Donna Hughes, Citizens Against Trafficking, *Tattoos of Girls Under Pimp Control & Pimp Rules for the Control of Victims* (Aug. 10, 2009) (*hereinafter* “Hughes, Citizens Against Trafficking”)(showing a handwritten set of rules Carlton “Privilege” Simon, a convicted pimp, required the girls under his control to obey).
38. Hughes, Citizens Against Trafficking, *supra* note 39, at 1-4 (Aug. 10, 2009). *See also* Nicholas D. Kristof, “The Pimps’ Slaves,” *The New York Times*, Mar. 16, 2008; Claudia Rowe, “No Way Out: Teen Girls Sell Bodies in Seattle,” *Seattle Post-Intelligencer*, June 27, 2008.
39. Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*, at 10-14 (2001); Taya Moxley-Goldsmith, *Boys in the Basement: Male Victims of Commercial Sexual Exploitation*, Child Sexual Exploitation Update, American Prosecutors Research Institute (2005) (*hereinafter* “Moxley-Goldsmith”).
40. Dorchon Leidholdt, Esq., Director, Sanctuary for Families Center for Battered Women’s Legal Services, Testimony before the Committee on the Judiciary House of Representatives: Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs (Nov. 1, 2007).
41. Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution <http://www.justice.gov/criminal/ceos/prostitution.html> (*last visited* Sept. 20, 2010) (“The majority of American victims of commercial sexual exploitation tend to come from homes where they have been abused, or from families that have abandoned them.”); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Post-Traumatic Stress Disorder*, 27 (3) *Women & Health* 37, 38 (1998) (“Most people working as prostitutes have a history of childhood physical and sexual abuse”); Special Rapporteur Report, *supra* note 8, at 19 (identifying physical and psychological violence against women as one of the primary root causes of trafficking), *available at* [http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf).
42. “Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually exploited as well.” 2010 TIP Report, *supra* note 7, at 8.

43. Steve Ritea, "Twins Returned," *Newsday*, Apr. 8, 2008. Additional information provided by Linda Lopez, Deputy Director, Sanctuary for Families Center for Battered Women's Legal Services.
44. The desire to escape an abusive relationship or subordinate gender roles and patriarchal structures at home may push women to seek out international employment and are risk factors for trafficking. Special Rapporteur Report, *supra* note 8, at 19-21
45. *Id.* at 22-23.
46. Donna M. Hughes, *Hiding in Plain Sight: A Practical Guide to Identifying Victims of Trafficking in the U.S.* 6 (2003). See also Julia Preston, "Indictment Accuses Firm of Exploiting Thai Workers," *The New York Times*, Sept. 3, 2010 ("hereinafter "Thai Workers").
47. In Germany, for example, trafficking increased as brothel owners turned to trafficking to meet the supply for prostitutes where prostitution was legal. Conversely, in Sweden, trafficking decreased as demand for prostitution fell following a change in the law criminalizing the purchasing of sex. PressTV, *Human Trafficking Climbs in Germany*, May 24, 2010, available at <http://edition.presstv.ir/detail/127565.html>; Tom Sullivan, *Sweden Revisits Prostitution Law*, *Christian Science Monitor*, June 30, 2009.
48. In 2009, Cook County Sheriff Tom Dart filed a lawsuit in U.S. District Court against the website Craigslist, alleging it was one of the largest sources for prostitution in the country and included ads trafficking abused women and children for sex. Brief of Complainant, Thomas Dart, *Sheriff of Cook County v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. Oct. 20, 2009) (No. 09 Civ. 1385). See also Jacqui Chen, *Ex-Child Prostitute Sues Village Voice Over Sex Ads*, *Wired*, <http://www.wired.com/epicenter/2010/09/village-voice-sex-ads/> (Sept. 18, 2010). On September 3, 2010, Craigslist discontinued its adult services section. The company has not explained the removal but has indicated that the move will be permanent. Claire Cain Miller, "Craigslist Blocks Access to 'Adult Services' Pages," *The New York Times*, Sept. 4, 2010. Claire Cain Miller, "Craigslist Says It Has Shut Its Section for Sex Ads," *The New York Times*, Sept. 15, 2010.
49. Information provided by Carolien Hardenbol, Co-Director, Immigration Intervention Project, Sanctuary for Families Center for Battered Women's Legal Services.

50. Nisha Varia, Human Rights Watch, *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery*, Oct. 17, 2007, <http://www.hrw.org/en/news/2007/10/17/international-trafficking-persons-taking-action-eliminate-modern-day-slavery> (last visited Sept. 11, 2010); Thai Workers, *supra* note 48.
51. Nisha Varia, Human Rights Watch, *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery*, Oct. 17, 2007, <http://www.hrw.org/en/news/2007/10/17/international-trafficking-persons-taking-action-eliminate-modern-day-slavery> (last visited Sept. 11, 2010); Human Rights Watch, *Swept Under the Rug: Abuses against Domestic Workers Around the World*, 78-80 (2006); Thai Workers, *supra* note 48.
52. Kirk Semple, "Woman in Family-Run Prostitution Ring Pleads Guilty," *The New York Times*, July 23, 2008.
53. Katherine Scully, *Blocking Exit, Stopping Voice: How Exclusion from Labor Law Protection Puts Domestic Workers at Risk in Saudi Arabia and Around the World*, 41 Colum. Hum. Rts. L. Rev. 825, 832-33 (2010).
54. Corey Kilgannon, "N.Y. Couple Convicted in Slave Case," *The New York Times*, Dec. 17, 2007.
55. American Civil Liberties Union, *Trafficking and Exploitation of Migrant Domestic Workers by Diplomats and Staff of International Organizations in the United States*, Jan. 17, 2007, available at <http://www.aclu.org/womens-rights/trafficking-and-exploitation-migrant-domestic-workers-diplomats-and-staff-international>.