



Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation

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ABSTRACT

Millions of children are victims of trafficking and commercial sexual exploitation each year. Governments have responded with a range of measures, focusing primarily on seeking to prosecute perpetrators of these abuses and offering assistance to select victims. These efforts, while important, have done little to reduce the incidence of these forms of child exploitation. This Article asserts that a central reason why efforts to date may not be as effective as hoped is that governments have not oriented their approaches properly toward prioritizing prevention—the ultimate goal—and addressing these problems in a comprehensive and systematic manner. Instead, efforts to date have been piecemeal and

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oriented toward dealing with exploitation of children after the harm occurs. This Article argues for refocusing efforts toward the development of a comprehensive, prevention-oriented strategy that addresses the root causes of these problems. The Article discusses how certain critical issues—(1) research/data; (2) program design; (3) the dominant principle guiding state responses; (4) stakeholder coordination; and (5) the interrelationship among rights—have been largely ignored in developing responses to child trafficking and commercial sexual exploitation. The Article suggests that, by focusing greater attention on these issues, governments and child advocates can develop more effective responses to the trafficking and commercial sexual exploitation of children, and increase the likelihood that responses to these problems will help prevent such abuse of children.

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I. INTRODUCTION

In the past decade, considerable attention and resources have been directed toward addressing the issues of trafficking and commercial sexual exploitation of children.¹ Although the

1. Today, human trafficking is commonly mentioned in speeches by heads of state and the U.N. Secretary General. *See, e.g.*, President George W. Bush, Address Before a Joint Session of the Congress on the State of the Union, 42 WEEKLY COMP. PRES. DOC. 145, 148 (Jan. 31, 2006) (discussing the need for Americans to “show compassion abroad because regions overwhelmed by poverty, corruption, and despair are sources of . . . human trafficking”); President William J. Clinton, Memorandum on

international community and various national governments have taken a number of constructive steps, including the adoption of international and regional conventions and major national legislation,² it remains unclear how much these measures have benefited children at risk of exploitation. One reason these measures may not be as effective as hoped is that governments have not oriented their approaches properly toward prioritizing prevention—the ultimate goal—and addressing these problems in a comprehensive and systematic manner. Efforts to date have focused on dealing with the aftermath of such exploitation of children by seeking to prosecute traffickers or develop victim assistance programs.³ These measures, while important, have neglected certain steps essential to *preventing* child trafficking and commercial sexual exploitation, such as developing reliable research before enacting legislation or involving all stakeholders in the legislative planning and drafting process, and thus children around the globe remain at risk.

Millions of children are victims of trafficking and commercial sexual exploitation each year.⁴ In response to these grave violations of children's rights, the international community has agreed upon a three-pronged mandate that requires governments to (1) criminalize and prosecute all acts of trafficking and commercial sexual exploitation of children; (2) provide assistance to victims of these

Steps to Combat Violence Against Women and Trafficking in Women and Girls, 1 PUB. PAPERS 358, 359 (Mar. 11, 1998) (directing the Attorney General and the Secretary of State to “increase national and international awareness about trafficking in women and girls”); U.N. News Centre, Secretary-General Calls for ‘Bold Action’ to End Human Trafficking, <http://un.org/apps/news/story.asp?NewsID=30783&Cr=human+trafficking&Cr1=> (last visited Jan 5, 2010) (summarizing U.N. Secretary-General Ban Ki-Moon’s address to the General Assembly, which focused on the need to “criminalize human trafficking, prevent victimization by teaching people about their rights, reduce demand, end impunity and protect the victims”).

2. See, e.g., Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, 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) [hereinafter Trafficking Protocol]; 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, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000) [hereinafter CRC Protocol]; Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197 (2005); Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201 (2007).

3. See, e.g., David A. Feingold, *Think Again: Human Trafficking*, FOREIGN POL’Y, Sept.–Oct. 2005, at 26, 30 (discussing national and international efforts to prosecute sex traffickers).

4. See INT’L HUMAN RIGHTS LAW INST., DEPAUL UNIV. COLL. OF LAW, DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING 92 (Morrison Torrey & Sara Dubin eds., 2004) (reporting that an estimated ten million children around the world are involved in the sex trade and on an annual basis approximately one million children enter the sex industry).

crimes; and (3) develop successful prevention programs.⁵ Instead of choosing prevention as the starting point for developing an effective response to child trafficking and commercial sexual exploitation, to date most governments have paid the least attention to what is actually the end goal.⁶ In fact, in many locales, prevention measures have been nonexistent.⁷

While prevention has taken a backseat, governments have attempted to combat trafficking and commercial sexual exploitation of children by passing laws prohibiting these abuses and increasing sentences for perpetrators. Numerous countries have made progress in this regard.⁸ Some governments also have allocated limited resources for child victims.⁹ However, steps to advance criminal law in this area or assist victims, while necessary, have not been situated within a more comprehensive prevention strategy. As a result, the measures taken in those two areas fall short of producing optimal results (e.g., current prosecutions offer minimal deterrence when compared to the incentives for traffickers,¹⁰ and assistance to victims often ends early and fails to address systemic issues, leaving those “assisted” children vulnerable to repeated exploitation). Overall, efforts to date have been oriented toward dealing with the exploitation of children after the harm occurs—that is, by prosecuting perpetrators and by assisting victims. Absent is a comprehensive

5. See Trafficking Protocol, *supra* note 2, arts. 5–6, 9 (providing for criminalization, assistance to victims, and preventive measures); CRC Protocol, *supra* note 2, arts. 3, 8–9 (calling for criminal liability for certain acts of trafficking, prostitution, and pornography involving children and directing States Parties to adopt appropriate victim assistance and prevention measures); 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, 230 (2003) (quoting Secretary Powell as stating that the State Department’s trafficking report would be used “to ‘safeguard the vulnerable, to punish the traffickers, to take care of the victims, and to prevent future trafficking’”).

6. See Feingold, *supra* note 3, at 30 (discussing how political efforts have largely focused on the prosecution and the sanctioning of sex trafficking).

7. See SOC. TRANSITION TEAM, U.S. AGENCY FOR INT’L DEV., BEST PRACTICES IN TRAFFICKING PREVENTION IN EUROPE & EURASIA 19 (2009), available at http://www.usaid.gov/locations/europe_eurasia/dem_gov/docs/prevention_final_012909.pdf (discussing how the “lack of awareness” about human trafficking is one of the root causes of the problem).

8. See U.S. STATE DEP’T, TRAFFICKING IN PERSONS REPORT 47 (2009), available at <http://www.state.gov/documents/organization/123357.pdf> [hereinafter TIP REPORT 2009] (demonstrating through statistics the substantial number of prosecutions foreign governments have undertaken against human traffickers).

9. See, e.g., *id.* at 90, 104, 219 (reporting that countries like Bulgaria, Chile, and the Netherlands provide specialized services to child victims of trafficking).

10. See *infra* note 145 and accompanying text (discussing financial incentives for trafficking).

strategy that addresses the root causes of the problem with a view to preventing harm to children.¹¹

This Article's central claim is that there is a fundamental flaw in the orientation of current efforts to address trafficking and commercial sexual exploitation of children. Rather than approach these harms to children *ex ante* and comprehensively, current governmental and non-governmental measures are focused on *ex post* scenarios that fail to tackle prevention and address these abuses of children in a piecemeal fashion.

For example, in some locales, adult entertainment clubs have been identified as avenues through which minors are drawn into the sex trade and exploited.¹² Some governments have tried to reduce the number of minors involved in the sex industry by raising the minimum age for working in such establishments from eighteen to twenty-one years old.¹³ On its face, such a step makes sense and offers potential benefits—a fifteen year old girl for whom a false ID card is obtained to show she is eighteen years old is less likely to be able to assert she is twenty-one years old. Thus, such a measure might help remove many young girls from an exploitative environment or even prevent them from entering that environment in the first place. However, such measures are typically taken piecemeal rather than as part of a comprehensive prevention plan. Thus, when such a regulation is not accompanied by a mandate and funding for social services, educational opportunities, job training, and other programs for girls who leave, or might be lured into, the

11. See Hillary Rodham Clinton, *Secretary's Introductory Letter to TIP Report* 2009, *supra* note 8, at 1, 1 ("A majority of the world's countries now have criminal legislation prohibiting all forms of trafficking in persons Yet much remains to be done, particularly in identifying and addressing the root causes of trafficking").

12. See, e.g., MONICA O'CONNOR & GRAINNE HEALY, *THE LINKS BETWEEN PROSTITUTION AND SEX TRAFFICKING: A BRIEFING HANDBOOK* 19 (2006), available at <http://action.web.ca/home/catw/attach/handbook.pdf>; Citizens Against Trafficking, *Prostitution at the Strip-Clubs in Providence*, CAT BULL., Aug. 7, 2009, <http://www.citizensagainsttrafficking.org/page2.html>. But see Bryant Paul et al., *Government Regulation of "Adult" Businesses Through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects*, 6 COMM. L. & POL'Y 355 (2001) (questioning the methodology of several frequently-relied upon studies that point to adult businesses as the cause of adverse secondary effects).

13. See, e.g., ANDOVER, KAN., CODE ch. V, art. 6, § 5-609(A) (2003) (prohibiting employment "in or around an adult entertainment establishment" for persons under the age of twenty-one). In 2005, the legislature of the Indian province of Maharashtra passed a bill prohibiting all types of dance performances in eating houses, permit rooms, and beer bars, in part to combat the "immoral trafficking" of girls. Ratna Kapur, *The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion*, 8 THEORETICAL INQUIRIES L. 537, 549 (2007) (citing the Bombay Police (Amendment) Act, Maharashtra Act No. XXXV of 2005, § 33A(1)(a)). Unfortunately, despite the legislature's good intentions, "[f]orcing the women out of the bars would make them more vulnerable to being forced into sex work and subject to highly exploitative working conditions and violence." *Id.* at 551.

sex industry, the end result is that many of these girls who can no longer work in strip clubs instead end up in underground prostitution rings in greater danger than they would have been exposed to before the ordinance was adopted.¹⁴ This result does not mean that the initial idea of raising the minimum age was misguided, but rather that governments need to better consider and account for the consequences of such a step. That is, such action must be situated within a broader plan to ensure that when the state facilitates the removal of children from bad environments or adopts measures to bar youth from engaging in risky activities, it also addresses underlying systemic issues to ensure that these children actually do end up in a better environment and to prevent exploitation of these children in the future.¹⁵

This Article asserts that a comprehensive, prevention-oriented approach is critical to achieving real progress in reducing, and ultimately ending, the incidence of child trafficking and commercial sexual exploitation. That is, continuing to deal only with victimized children after-the-fact is an unwinnable situation, as there are too many exploited children. Instead, intervention efforts must “move upstream”¹⁶ so that we prevent the harm from occurring in the first place.

14. See Kapur, *supra* note 13, at 551. But see O’CONNOR & HEALY, *supra* note 12, at 20–21 (pointing to studies suggesting that “women in strip clubs and brothels had less control of the conditions of their lives, and probably faced greater risks of exploitation, enslavement, and physical harm than women on the street”).

15. See MIKE DOTTRIDGE, KIDS AS COMMODITIES: CHILD TRAFFICKING AND WHAT TO DO ABOUT IT 55 (2004), available at <http://terredeshommes.org/pdf/commodities.pdf> (noting that countries such as Nepal have prohibited children and women of certain ages from traveling abroad for work as an attempt to combat trafficking, but arguing that such actions put migrant children at greater risk and unnecessarily constrain the movement of them and their families).

16. The analogy of “moving upstream” has been used in a number of contexts and derives from the following story, which is told with slight variations:

While walking along the banks of a river, a passerby notices that someone in the water is drowning. After pulling the person ashore, the rescuer notices another person in the river in need of help. Before long, the river is filled with drowning people, and more rescuers are required to assist the initial rescuer. Unfortunately, some people are not saved, and some victims fall back into the river after they have been pulled ashore. At this time, one of the rescuers starts walking upstream. “Where are you going?” the others ask, disconcerted. The upstream rescuer replies, “I’m going upstream to see why so many people keep falling into the river.” As it turns out, the bridge leading across the river upstream has a hole through which people are falling. The upstream rescuer realizes that fixing the hole in the bridge will prevent many people from ever falling into the river in the first place.

Larry Cohen & Sana Chehimi, *Beyond Brochures: The Imperative for Primary Prevention*, in PREVENTION IS PRIMARY: STRATEGIES FOR COMMUNITY WELL-BEING 4–5 (Larry Cohen et al. eds., 2007).

Focusing on two interrelated but discreet abuses of children, trafficking and commercial sexual exploitation,¹⁷ this Article provides an overview of how certain critical issues—(1) research/data; (2) program design; (3) the dominant principle guiding state responses; (4) stakeholder coordination; and (5) the interrelationship among rights—have been largely ignored in developing responses to the trafficking and commercial sexual exploitation of children. The Article discusses how attention to these issues can have significant positive effects on laws, policies, or programs designed to *prevent* the trafficking and commercial sexual exploitation of children. Part II takes each of these issues in turn. First, highlighting the dearth of reliable data, Part II details the value of evidence-based research to prevention efforts. It then examines program design, explicating in particular the importance of involving historically marginalized populations and youth in the development of strategies to combat child trafficking and commercial sexual exploitation. Next, the Article explores the question of the dominant principle guiding state responses. Currently, that issue is focused on the debate between whether a law enforcement approach or victim-centered approach is more effective. While acknowledging value in each of those approaches, I submit that ultimately both fall short in that they address these issues only after the harm to children has occurred and thus do not prevent such harm. Instead, I propose that a child-centered approach should be the guiding principle in state responses. Next, the importance of effective coordination among stakeholders is discussed. Finally, Part II examines the impact of the interdependent nature of rights on efforts to combat child trafficking and commercial sexual exploitation, detailing the particular relevance this issue has to marginalized children. With respect to each of these issues, I also briefly address the challenges involved in incorporating these issues into the fight to eliminate these gross violations of human rights. In Part III, this Article addresses the overarching concern about the feasibility of comprehensive programs and offers suggestions for managing such issues.

This Article does not seek to examine all nuances involved in each issue, nor does it seek to craft a comprehensive prevention plan to eliminate child trafficking and commercial sexual exploitation. Those steps are needed but beyond the scope of the Article.¹⁸ Rather,

17. Although many children are trafficked for purposes of commercial sexual exploitation, a significant percentage of trafficked children are trafficked for other purposes, including work in sweat shops, agricultural work, domestic servitude, forced begging, child marriages, and illicit adoption. See DOTTRIDGE, *supra* note 15, at 9 (discussing a broader definition of the word trafficking). Likewise, many children have been exploited in the sex industry without having been trafficked. *Id.* at 17.

18. Moreover, as discussed in this Article, a number of steps are needed—including more research and more inclusive program design—to develop effective

this Article seeks to raise awareness of the need to develop a comprehensive prevention-oriented approach to child trafficking and commercial sexual exploitation and demonstrate the importance of the above issues to the development of solutions. It suggests that by focusing greater attention on these issues, governments, international and non-governmental organizations, and child advocates can develop more effective responses to the trafficking and commercial sexual exploitation of children and increase the likelihood that responses to these problems will help prevent abuse of children.

One might assert that a call for “moving upstream” and focusing on prevention might be relevant to other issues where the dominant response has been criminal law. Similar to state responses to child trafficking and commercial sexual exploitation, the focus in other areas has often centered on addressing the harm once it has occurred rather than tackling root causes of those problems.¹⁹ Governments would do well to shift toward supporting and advancing prevention strategies on a number of issues. In that respect, the problems discussed herein parallel other issues. However, without comparing or ranking abuses or suffering, I submit that, with respect to child trafficking and commercial sexual exploitation, we are witnessing a phenomenon that cannot be captured by considering it simply a criminal law issue. Rather, it is a fundamental human rights issue.²⁰ A common narrative of the early twenty-first century is the notion of the progress of nations coupled with disapproving regard for prior generations that tolerated slavery and other gross human rights violations.²¹ Yet a modern form of slavery, one that often targets children, thrives today, and the world has not mobilized sufficiently to prevent this grave violation of children’s rights and dignity. It is imperative that we do so now. In developing effective,

prevention programs; thus, it would be folly to suggest that one individual can proffer a definitive comprehensive plan.

19. The problem of domestic violence provides one example. See Jean R. Sternlight, *Is Alternative Dispute Resolution Consistent with the Rule of Law? Lessons from Abroad*, 56 DEPAUL L. REV. 569, 579 (2007) (noting “the criminal justice system’s inability to fundamentally address the root causes of domestic violence”); Andreea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U. J. GENDER SOC. POL’Y & L. 309, 317 (2004) (arguing that the failure to address root causes hinders efforts to eliminate domestic violence).

20. See *Interview with Ms. Sigma Huda, United Nations Special Rapporteur on Trafficking in Persons*, 2007 PROTECTION PROJECT J. HUMAN RTS. & CIV. SOC’Y 59, 68 (explaining that “the enormity of [the human trafficking] problem led the United Nations to decide that it should be addressed as a separate human rights violation issue”).

21. See Ranee Khooshie Lal Panjabi, *Sacrificial Lambs of Globalization: Child Labor in the Twenty-First Century*, 37 DENV. J. INT’L L. & POL’Y 421, 421–22 (2009) (explaining that “the idea of progress has dominated global thinking for the past few centuries,” while inhumane practices like child labor “have few defenders”).

comprehensive, prevention-oriented strategies for combating child trafficking and commercial sexual exploitation, we might not only prevent these grave violations of children's rights but also learn how to reorient responses in other areas effectively toward prevention and reduce other abuses of vulnerable populations.

II. KEYS TO A COMPREHENSIVE RESPONSE

A. *Developing Research/Data*

With respect to trafficking and commercial sexual exploitation of children, prevention must be the goal. One key component of prevention is early identification of vulnerability. Research can demonstrate not only the scope of the problem, which is essential for allocating resources effectively, but also who is more vulnerable.²² Reaching vulnerable children before they are exploited is critical, and research can facilitate that effort. The demand for services that exploit children must also be addressed, and evidence-based research²³ can help foster a better understanding of demand-related issues so that demand may be mitigated effectively. Equally

22. See E. ASIA & PAC. REG'L OFFICE, UNITED NATIONS CHILDREN'S FUND, REVERSING THE TREND: CHILD TRAFFICKING IN EAST AND SOUTH-EAST ASIA pt. II(B)–(C) (2009), available at http://www.unicef.gr/pdfs/Unicef_Trafficking_Report_Aug09.pdf; (reporting data on both scope and vulnerability). Determining and assessing vulnerability necessitates understanding that “[t]here is no single reason why children are trafficked, but rather a wide range of factors and layers of vulnerabilities related to children as individuals, their families, and the socio-economic context in which they live.” *Id.* at 24; see also United Nations Inter-Agency Project on Human Trafficking, *Targeting Endemic Vulnerability Factors to Human Trafficking*, 2007 SIREN REP. 1, available at http://www.no-trafficking.org/reports_docs/siren/gms02_siren_methodology_vulnerability.pdf (noting that in different locales, different factors play a key role in heightening vulnerability).

23. A Georgetown University study found that only 39 of 218 journal articles (18%) on human trafficking were based on empirical research. ELZBIETA M. GOZDZIAK & MICAH N. BUMP, INST. FOR THE STUDY OF INT'L MIGRATION, DATA AND RESEARCH ON HUMAN TRAFFICKING: BIBLIOGRAPHY OF RESEARCH-BASED LITERATURE 6 (2008), available at http://isim.georgetown.edu/Publications/ElzPubs/NIJ_BIB_FINAL_REPORT-1.pdf. “At 96 articles or 46 percent, the largest classification consisted of articles that were non-empirical, but published in peer-reviewed journals. This challenged traditional notions of the type of research published in peer-reviewed journals, which hold that the peer review process tends to eliminate non-empirical research.” *Id.* at 7. It is important to recognize that there is significant and valuable research to be done that is not empirical in nature. For example, a review and analysis of international or national law on the issue or of relevant court decisions is typically not empirical but often adds to our understanding of the legal issues relevant to child trafficking and commercial sexual exploitation. However, the above evidence supports the notion that there is insufficient empirical research being done to understand the complexities of trafficking and commercial sexual exploitation of children, root causes, and the methods for addressing these problems.

important, characterizations of the problem built on flawed estimates or inadequate research run the risk of producing policies that do not adequately or accurately address the problem as it actually exists.²⁴

This subpart discusses the lack of research and why valid and reliable research is a critical step in developing a comprehensive approach to preventing exploitation of children. It subsequently reviews some of the existing research and discusses how it can be used and expanded upon in creating legal solutions. Finally, it briefly addresses some challenges to developing accurate, reliable research, and it offers potential means of meeting those challenges.

One overlooked critical step in creating successful prevention strategies is developing an accurate and comprehensive understanding of the incidence of child trafficking and commercial sexual exploitation before enacting solutions. As one U.S. scholar explains, “[p]assing legislation should follow a process by which legislators research the issue, have some supportive evidence that the law will work, and are willing to allocate funds at state and federal levels to ensure states will carry out and uphold the law.”²⁵

There are significant shortcomings with regard to the underlying research needed to create and implement effective laws. Data on the incidence of child trafficking and commercial sexual exploitation are lacking.²⁶ The UNICEF Innocenti Research Centre reports that “there is a dramatic absence of harmonized and systematic data collection, analysis and dissemination at all levels – international, regional and national. Few reliable estimates exist of the magnitude of the phenomenon.”²⁷ Similarly, in a report on human trafficking research, Georgetown University’s Institute of Migration Studies concluded:

24. See Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, in DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY 17, 17 (Frank Laczko & Elzbieta Gozdzia ed., 2005), available at http://www.childtrafficking.com/Docs/iom_2005_data_and_research_on_human_trafficking_11.pdf#page=100 (“[I]nadequate data collection methods might result in descriptions that have little to do with reality. Consequently, there is a danger that policies and interventions developed based on these findings will be ineffective.”).

25. Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws or Public Education and Prevention*, 23 NEW ENG. J. CRIM. & CIV. CONFINEMENT 303, 316 (1997).

26. See GOZDZIAK & BUMP, *supra* note 23, at 4 (“While the majority of experts on human trafficking assert that the greatest number of victims of trafficking are women and children, there is little systematic and reliable data on the scale of the phenomenon . . .”).

27. UNICEF INNOCENTI RESEARCH CENTRE, CHILD TRAFFICKING IN EUROPE: A BROAD VISION TO PUT CHILDREN FIRST, at iv (2008), available at http://www.unicef-irc.org/publications/pdf/ct_in_europe_full.pdf.

[T]here is little systematic and reliable data on the scale of [human trafficking]; limited understanding of the characteristics of victims (including the ability to differentiate between the special needs of adult and child victims, girls and boys, women and men), their life experiences, and their trafficking trajectories; poor understanding of the *modus operandi* of traffickers and their networks; and lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue and restore programs, among other gaps in the current state of knowledge about human trafficking.²⁸

Data on child prostitution and child pornography are also similarly lacking or incomplete.²⁹

In the United States, Congress and the majority of states have adopted anti-trafficking legislation.³⁰ Other countries have adopted anti-trafficking legislation as well.³¹ The information available to policymakers advancing such legislation has been sufficient to establish there is a problem. Arguably, for policymakers with a law enforcement focus, there is not much of a need for significantly more research, as the mere occurrence of such abuses of children is a sufficient basis to mandate passage of criminal laws prohibiting such practices and imposing heavy penalties on violators.³² However,

28. GOZDZIAK & BUMP, *supra* note 23, at 4.

29. See, e.g., SARA ANN FRIEDMAN, ECPAT-USA, ALTERNATIVE REPORT TO THE INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE U.N. COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY § II (2007), available at <http://www.ecpatusa.org/pdfs/AlternativeReportUSAFinal2007.pdf> (reporting a lack of data on commercial sexual exploitation of children in the U.S.). To some extent, obtaining data on certain aspects of child pornography is facilitated by computer database records, but advances in technology also allow offenders to better mask their identities in some cases. ETHEL QUAYLE ET AL., CHILD PORNOGRAPHY AND SEXUAL EXPLOITATION OF CHILDREN ONLINE 9 (2008), available at http://www.ecpat.net/EI/Publications/ICT/Child%20Friendly__Child%20Pornography_FINAL.pdf.

30. For examples of federal anti-trafficking legislation, see William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 19 Stat. 3558; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650; and Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464. “As of April 2009, forty-two states had adopted anti-trafficking criminal legislation.” TIP REPORT 2009, *supra* note 8, at 57.

31. TIP REPORT 2009, *supra* note 8, at 9 (reporting that “more than half of the world’s countries have enacted criminal legislation prohibiting all forms of trafficking in persons”).

32. In fact, evidence-based research is not only important for prevention programs and assistance to victims, but it can also reveal information that law enforcement can utilize to develop more effective counter-trafficking and counter-child-exploitation strategies. UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, THE VIENNA FORUM REPORT: A WAY FORWARD TO COMBAT HUMAN TRAFFICKING ¶ 176 (2008), available at <http://www.ungift.org/docs/ungift/pdf/vf/>

vague understandings and rough estimates are insufficient for developing responses that will likely prevent these abuses from continuing. This is illustrated by the fact that the best available evidence indicates that the scale of trafficking and commercial sexual exploitation of children remains significant and may be increasing, in spite of the recent measures adopted to prevent these abuses of children.³³ Given the flat prohibition on trafficking and commercial sexual exploitation of children under international law, and similar prohibitions in almost all—if not all—countries, the evidence of continued child exploitation is enough to mandate a greater response. The development of effective interventions, however, requires a much more comprehensive and nuanced understanding of these problems.

Therefore, the first essential step in reorienting anti-trafficking and anti-child-exploitation strategies toward prevention is to engage in the research necessary to gain a comprehensive understanding of both the problems and the resources available (and those needed) to respond. In the last few years, a small number of empirical research studies have been undertaken, and their findings demonstrate the value of evidence-based research in this area.³⁴ These projects, and others like them, can and should be used to inform legislative action plans.

For example, the prevailing narrative on trafficking suggests that it typically flows from poorer countries to wealthier countries.³⁵ In addition to these routes, however, research also reveals that there is significant intra-country and intra-regional trafficking in poorer areas.³⁶ For example, the International Organization for Migration

ebook2.pdf [hereinafter VIENNA FORUM REPORT]; see also *infra* notes 40–46 and accompanying text.

33. Approximately one million children enter the sex industry annually. ECPAT-USA, WHAT YOU SHOULD KNOW ABOUT SEX TOURISM BEFORE YOU GO ABROAD: IMPORTANT NEW LAWS FOR TRAVELERS (1997); INT'L HUMAN RIGHTS LAW INST., *supra* note 4, at 92; see also Nancie Caraway, *Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse*, 14 TUL. J. INT'L & COMP. L. 295, 295 (2006) (reporting an “almost fifty percent increase” in the incidence of trafficking from 1995 to 2000).

34. See, e.g., Vanessa E. Munro, *Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution*, 46 BRIT. J. CRIMINOLOGY 318 (2006) (discussing the results of a comparative study that investigated the merits and shortcomings of domestic responses to human trafficking in various European countries).

35. Alexis A. Aronowitz, *Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organizations that Promote It*, 9 EUR. J. CRIM. POL'Y & RES. 163, 170 (2001).

36. In fact, evidence suggests there is more intra-country trafficking of persons than cross-border trafficking of individuals. See U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT 23 (2004), available at <http://www.state.gov/documents/organization/34158.pdf> [hereinafter TIP REPORT 2004] (estimating an annual 600,000 to 800,000 trafficking victims, mostly women and children, with that number increasing to

(IOM) has found that in Southeast Europe “[t]here is considerable trafficking not only between Eastern and Western Europe, but within Central and Eastern Europe.”³⁷ The implications are significant, as policies and programs to prevent trafficking and commercial sexual exploitation of children need to pay greater attention to intra-country and intra-regional trafficking within resource-constrained regions.

The prevailing narrative on human trafficking also suggests that its victims are women and children and that the traffickers are men.³⁸ Though there is truth in the common perception that women and children make up the great majority of victims of trafficking,³⁹ research uncovers a more complex picture of the traffickers. For example, IOM research in Southeast Europe found that over 40% of recruiters were women.⁴⁰ Thus, informed by evidence-based research, police and immigration officers in the region can design better counter-trafficking strategies to account for the fact that many women are involved in perpetrating these abuses. Similarly, those organizations developing prevention programs can educate at-risk children (and their families) that women, including women they know, might seek to exploit them.⁴¹

Finally, the prevailing conception of human trafficking that women and girls are the victims⁴² obscures a more complex reality. While women and girls are disproportionately represented among

between two to four million individuals when intra-country trafficking is accounted for).

37. Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 BROWN J. WORLD AFF. 179, 188 (2003).

38. See Feingold, *supra* note 3, at 26 (stating that trafficking of men is rarer than the trafficking of women and children).

39. See U.S. STATE DEP’T, TRAFFICKING IN PERSONS REPORT 6 (2005), available at <http://www.state.gov/documents/organization/47255.pdf> (estimating that approximately 80 percent of trafficking victims are women and girls and up to fifty percent are minors).

40. Laczko & Gramegna, *supra* note 37, at 188; see also Dianne Scullion, *Gender Perspectives on Child Trafficking: A Case Study of Child Domestic Workers*, in GENDER AND MIGRATION IN 21ST CENTURY EUROPE, 55–56 (Helen Stalford et al. eds., 2009) (discussing how progressively more women are playing an active role in child trafficking).

41. See Scullion, *supra* note 40, at 57–58 (arguing that the role that women play in trafficking arrangements should be acknowledged in developing a multi-faceted approach that includes “education for families and communities as well as more effective legal provisions”). IOM research found that the majority of trafficked women and children were contacted in person by a “friend” or acquaintance. Laczko & Gramegna, *supra* note 37, at 189; see also DOTTRIDGE, *supra* note 15, at 32 (“In a horrifying number of cases, the individuals who trafficked children and make money out of them during their exploitation are either close relatives or close friends of the family of the child involved.”).

42. See UNITED NATIONS CHILDREN’S FUND, PROFITING FROM ABUSE: AN INVESTIGATION INTO THE SEXUAL EXPLOITATION OF OUR CHILDREN 11 (2001), available at <http://www.unicef.org/emerg/files/profitng.pdf> (noting that the trafficking of boys is “seldom talked about”).

victims, research findings reveal that in certain locales or with certain activities, boys are also at risk.⁴³ For example, the U.S. Federal Bureau of Investigation estimates that over 50% of all child pornography seized in the United States depicts boys.⁴⁴ Also, the majority of Sri Lanka's roughly 20,000–30,000 child prostitutes are boys.⁴⁵ In addition, certain types of labor trafficking typically exploit boys more often than girls.⁴⁶ Therefore, although the best evidence confirms that the majority of victims are women and girls, there are variations among and within countries. We thus need to ensure that victim-assistance programs and prevention strategies adequately account for at-risk boys, as well as girls.

The above examples are not intended to suggest that all commonly-held perceptions about child trafficking and exploitation are wrong. Research also confirms some commonly held beliefs, including, as noted above, that most victims are women and girls.⁴⁷ That said, accurate data would provide a much clearer picture of the circumstances children confront and enable us to develop more effective responses, especially in terms of designing early intervention strategies to reduce vulnerability and prevent children from being exploited in the first place.⁴⁸

One reason that research studies have not yet been part of the process of developing legislation is that frequently there is impatience with research studies—or rather a lack of understanding about the

43. See *id.* (discussing a number of locations where boys are serially sexually abused).

44. *Id.*

45. *Id.*

46. See, e.g., VEGARD IVERSEN, CHILDREN'S WORK IN FISHERIES: A CAUSE FOR ALARM? 2 (2006), available at ftp://ftp.fao.org/FI/DOCUMENT/sflp/SFLP_publications/English/child_labour.pdf (reporting that approximately 85% of child laborers in the fisheries industry are boys); see also MOHAMMED ANWAR, CTR. FOR RESEARCH & SOC. DEV., CHILD TRAFFICKING FOR CAMEL RACES: A PERSPECTIVE FROM PAKISTAN (2004), available at http://www.childtrafficking.com/Docs/crsd_2004_child_trafficking_camel_races_pakistan_3.pdf (reporting on the trafficking of boys to serve as camel jockeys). Boys are also frequently trafficked for work as forced beggars, street vendors, shoe shiners, miners, construction workers, agricultural laborers, and sometimes commercial sex workers. See TIP REPORT 2009, *supra* note 8, at 147 (describing the various functions of boys trafficked in to and out of Guinea).

47. See TIP REPORT 2004, *supra* note 36, at 23 (stating that the majority of trafficking victims are women and children).

48. See DOTTRIDGE, *supra* note 15, at 32 (noting that while the premise underlying the adoption of the U.N.'s Trafficking Protocol in 2000 was that trafficking was largely controlled by organized crime, "[t]he evidence reveals something different . . . on the whole the recruitment and trafficking of children and adults is dominated by people who do not belong to a large organised crime syndicate (such as the Mafia), but to a smaller network with a few representatives in different countries").

importance of good data.⁴⁹ Those focused only on law enforcement may see little need for research once strong criminal laws are introduced. More broadly, anti-intellectualism sentiment runs high in some places.⁵⁰ Because we know that many children are being trafficked and sexually exploited, most people do not want to wait until a multi-year research study is completed in order to “prove” the problem exists.⁵¹ At times, the general public and some policymakers fail to appreciate how much value can come from evidence-based research.⁵²

The need for research does not suggest that nothing can be done to assist victims until research is complete. Continuing efforts should be made to provide services to child victims and aid other children at risk, even as research is developing. However, to develop effective responses that ultimately might prevent such exploitation in the first place requires knowing who is most affected, what risk factors make an individual vulnerable, why there is such demand for commercial sex services and labor performed by children, how traffickers operate and recruit, and many other issues that can be unveiled through empirical research.⁵³ Moreover, with respect to any interim steps taken, there must be a monitoring and evaluation component built in so that governments and child advocates can learn what works and identify best practices.⁵⁴

Another significant research challenge is the clandestine nature of child trafficking and commercial sexual exploitation, which makes it difficult to develop valid representative data.⁵⁵ The underground

49. Cf. Laczko & Gramegna, *supra* note 37, at 183 (attributing “the lack of data on the scale of trafficking” to “the low priority given to the combating of human trafficking by authorities in many countries”).

50. See Jeffrey D. Sachs, Op-Ed., *The American Anti-Intellectual Threat*, TODAY’S ZAMAN, Sept. 23, 2008, <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=154008> (arguing that the popularity of 2008 Republican Vice Presidential candidate Sarah Palin demonstrated a growing anti-intellectual sentiment in the U.S.).

51. Cf. Nicola Piper, *A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania*, in DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY, *supra* note 24, at 203, 216 (describing the “snapshot” nature of existing research on trafficking and arguing that the proper identification of victims “requires a lot of time”).

52. See VIENNA FORUM REPORT, *supra* note 32, ¶ 89 (describing how research can “inform[] policymakers and an interested public about how to allocate scarce resources and improve national responses to human trafficking”).

53. Tyldum & Brunovskis, *supra* note 24, at 18.

54. See generally JOHN M. OWEN & PATRICIA J. ROGERS, PROGRAM EVALUATION: FORMS AND APPROACHES (International ed., Sage Publ’ns 1999) (1999) (discussing the value of monitoring and evaluation).

55. Gergana Danailova-Trainor, *Evaluation of Trafficking Programmes and Research*, in HUMAN TRAFFICKING: NEW DIRECTIONS IN RESEARCH 44, 46 (Int’l Org. for Migration ed., 2008), available at http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/human_trafficking_new_directions_for_research.pdf.

nature of these activities presents challenges in terms of data development on two fronts. First, it is difficult to obtain information about those who exploit children (e.g., traffickers, pimps, and johns).⁵⁶ Second, the vulnerable and affected populations are often hidden and literally or functionally disenfranchised.⁵⁷ In the context of trafficking, this is commonplace.⁵⁸ Those exploited often come from historically marginalized populations and thus are already disadvantaged.⁵⁹ Children are at even greater risk. They are inherently more vulnerable to exploitation than adults, as developmental issues, such as the more limited verbal skills of younger children, make children more susceptible to maltreatment and also leave them less capable of drawing attention to violations of their rights when they occur.⁶⁰ Moreover, due to prior experience with law enforcement or other government officials, exploited children may be reluctant to come forward and identify as victims for fear of further negative repercussions for them or their families.⁶¹

Currently, much of the available research is drawn from data from law enforcement and rehabilitation centers, which represent only a small percentage of cases.⁶² There are valid questions as to the representativeness of that population.⁶³ For example, existing shelters and rehabilitation centers for victims of human trafficking are largely designed to serve women and girls who are victims of sex trafficking.⁶⁴ Therefore, research drawn from rehabilitation centers'

56. See Tyldum & Brunovskis, *supra* note 24, at 18 (stating that traffickers constitute "hidden populations").

57. *Id.*

58. See *id.* (stating that "hidden populations" are "one of the most challenging factors" in studying human trafficking).

59. See DOTTRIDGE, *supra* note 15, at 28 (discussing how trafficking victims were marginalized before the advent of globalization).

60. Jonathan Todres, *Women's Rights and Children's Rights: A Partnership with Benefits for Both*, 10 CARDOZO WOMEN'S L.J. 603, 605 (2004); see also GERALDINE VAN BEUREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD*, at xx (1995) (explaining that children are "easy targets" due to their vulnerability and arguing that "[m]any violations of children's rights are only possible because of the invisibility of children," in that they are "less able to draw attention to violations of their rights because they are disenfranchised and may lack the verbal skills or necessary contacts to make their protests heard").

61. See TIP REPORT 2009, *supra* note 8, at 39 (explaining that "human trafficking victims may fear possible criminal charges or deportation, retaliation by traffickers if they give information to police, or attacks against family members").

62. Tyldum & Brunovskis, *supra* note 24, at 30. Part of this is due to the challenges presented by the clandestine nature of the activities. *Id.* at 18. However, failure to have a prevention-oriented strategy has also led to a narrow view of which individuals we should be concerned about—if the goal is prevention, the target group should be all at-risk children.

63. *Id.* at 30.

64. Mike Dottridge, *Young People's Voices on Child Trafficking: Experiences from South Eastern Europe* 7 (UNICEF Innocenti Working Papers, Paper No. IWP-

data inevitably under-represents the number of boys being exploited and the number of girls and boys trafficked for purposes of exploitative labor, domestic servitude, or other reasons.⁶⁵ Although data from law enforcement and rehabilitation centers are the most readily available information,⁶⁶ and the clandestine nature of these acts presents research challenges,⁶⁷ researchers must develop and employ methodologies that draw upon data from the broader range of sources to ensure representativeness.

Another hurdle to developing valid research is ideology, which often distorts methodology, resulting in unreliable or unusable research.⁶⁸ As one social scientist reports, “[i]n no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry.”⁶⁹ That too many individuals have suffered commercial sexual exploitation is clear. However, ideological considerations and objectives have led some researchers to conflate trafficking with prostitution and pornography, equating any commercial sex act with trafficking.⁷⁰ Including every commercial sex act in trafficking figures misstates the incidence of trafficking.⁷¹ Similarly, viewing trafficking and prostitution as functional equivalents can result in labor-related trafficking cases being ignored or undercounted.⁷² Other research confuses trafficking, smuggling, and migration, further muddling research results.⁷³ In addition to

2008-05, 2008), available at http://www.unicef-irc.org/publications/pdf/iwp_2008_05.pdf.

65. *Id.*

66. See Tyldum & Brunovskis, *supra* note 24, at 23 (stating that “[d]ata on trafficking cases registered by law enforcement or organizations administering rehabilitation programmes in the countries of origin are commonly presented in analyses on human trafficking”).

67. Dottridge, *supra* note 64, at 6–7.

68. GOZDZIAK & BUMP, *supra* note 23, at 9.

69. *Id.* at 9 (internal quotation marks omitted) (quoting Ronald Weitzer, Sociologist, George Washington University). See generally Ronald Weitzer, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*, 35 POL. SOC’Y 447 (2007) (arguing that the “moral crusade” against sex trafficking has had a major impact on efforts to address the problem).

70. See Weitzer, *supra* note 69, at 455 (“The conflation of trafficking and prostitution is motivated by the crusade’s ultimate goal of eliminating the entire sex trade . . .”).

71. See *id.* at 453 (“Some prostitutes make conscious decisions to enter the trade and do not feel that their work is degrading or oppressive. . . . These workers are invisible in the discourse of the anti-prostitution crusade precisely because their accounts clash with abolitionist goals.”).

72. See GOZDZIAK & BUMP, *supra* note 23, at 31 (“A great deal of research has focused on trafficking for sexual exploitation, to the detriment of investigating trafficking for bonded labor and domestic servitude.”).

73. See GOZDZIAK & BUMP, *supra* note 23, at 46 (explaining that “[t]he distinction between trafficking and smuggling is not always easy to make”); Weitzer, *supra* note 69, at 452 (“[A]nti-prostitution activists have consistently tried to erase the distinction between coercive trafficking and voluntary migration . . .”).

conflation issues, much of the existing research is often based on very small sample sizes that are not randomly drawn⁷⁴ and inherently inclined to “confirm” conclusions the particular advocate is seeking to advance. Conflating of terminology and other issues make it difficult to compare data across regions or time. It also can lead to adverse results, ranging from labor trafficking victims being treated as economic migrants and denied assistance (when only individuals trafficked into the sex industry are seen as victims) to legitimate migrants being denied any agency (when no distinction is made between trafficking and other non-coerced movement of certain individuals).⁷⁵ All individuals and organizations must be free to advance their views, but empirical research must be conducted free from ideological constraints.

A related challenge is the lack of clear definitions and uniform terminology, which makes it difficult to compare study results and assess trends.⁷⁶ The lack of uniform definitions and terminology leads to data sets that may be over- or under-inclusive and, even if accurate, difficult to compare with other data sets that rely on different definitions of trafficking or other key terms.⁷⁷ Additionally, researchers often fail to disaggregate data, thus making it hard to use the research to develop intervention strategies that effectively target the most vulnerable children and successfully prevent child exploitation.⁷⁸ For example, UNICEF reports that “[s]tatistics are often collected only on cases of cross-border trafficking of women and girls for sexual exploitation. . . . National data are rarely disaggregated by age, gender, national origin or forms of exploitation.”⁷⁹ Identifying the number of children involved is particularly challenging, as age is often difficult to prove—lack of birth registration persists in areas, and many child victims are identified only after they turn eighteen and thus are not included in

74. See GOZDZIAK & BUMP, *supra* note 23, at 44 (noting that “[r]eliance on unrepresentative samples is widespread”).

75. See UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 10 (explaining that “[f]ar too often trafficking victims, both children and adults, are treated as illegal migrants or as individuals who are criminally complicit in their own exploitation” as a result of the lack of a consistent legal definition of child trafficking).

76. See Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms and Contexts*, 11 HARV. HUM. RTS. J. 65, 66–67 (1998) (“While these institutions have agreed on the necessity of a reconceptualization of the trafficking problem, they have yet to reach a consensus on a minimum working definition of trafficking.”).

77. UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 5–10.

78. *Id.* at 3.

79. UNICEF INNOCENTI RESEARCH CENTRE, SOUTH ASIA IN ACTION: PREVENTING AND RESPONDING TO CHILD TRAFFICKING SUMMARY REPORT 5 (2008) [hereinafter SOUTH ASIA IN ACTION]; see also UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 7.

data on children.⁸⁰ Also, few studies have focused on boys.⁸¹ Moreover, there is little reliable baseline data, so even as data collection improves, it will be difficult to draw conclusions from prior year comparisons (e.g., determining whether increased numbers reflect better data collection or a worsening situation).⁸² Thus, future researchers should ensure that their research is designed to capture all child victims (including, for example, those trafficked while under eighteen who are identified only later, or children in the sex industry who, following arrest, ultimately have charges reduced to status offences so that they have no record that they were victims of commercial sexual exploitation).⁸³ They must work also to ensure that common definitions are used across research and that ideological considerations are addressed, so that the comparative value of various studies improves over time. These steps will help improve both the accuracy and comprehensiveness of research results and provide policymakers a clearer and more sophisticated picture of these problems.

In sum, developing valid and reliable research will help policymakers and non-governmental organizations (NGOs) target resources and develop more effective intervention strategies. It will enable interventions to be made further upstream before a child is victimized. Before that can be done, however, scholars and researchers must begin addressing these issues more comprehensively and devising solutions to some of the problems outlined above. For example, we need to develop new methodologies for working with and understanding hidden populations. It is also necessary to address definitional issues and ideological challenges. Undertaking quality evidence-based research is a critical step in understanding and eradicating child trafficking and commercial sexual exploitation. Although there are many challenges in the research context, these issues should not deter us from undertaking

80. See SOUTH ASIA IN ACTION, *supra* note 79, at 5 (noting that “[e]ven when statistics are disaggregated, challenges remain in determining the age of the child”). See generally Jonathan Todres, *Birth Registration: An Essential First Step Toward Ensuring the Rights of All Children*, 10 HUM. RTS. BRIEF 32 (2003) (arguing that the development of successful birth registration programs is a necessary “first step” in combating violations of children’s rights).

81. GOZDZIAK & BUMP, *supra* note 23, at 7 (reporting that out of 218 journal articles on human trafficking, only 14 included discussion of male trafficking victims, and of those, only one discussed the plight of boy victims).

82. See Elzbieta M. Gozdziaak & Elizabeth A. Collett, *Research on Human Trafficking in North America: A Review of Literature*, in DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY, *supra* note 24, at 99, 108 (discussing the need for reliable baseline data in formulating accurate estimates of trafficking).

83. To the extent possible, it would also be beneficial to research those children who avoided trafficking or commercial sexual exploitation to help identify successful strategies for preventing exploitation.

empirical research so that we can understand these issues at a level that will enable the development of effective prevention strategies.

B. Program Design

Solid research is the first often-overlooked step that may make a difference in addressing and eradicating child trafficking and commercial sexual exploitation. Another step that demands increased attention is the design of programs aimed at assisting children and preventing victimization. This subpart discusses a fundamental starting point for effective program design—who is involved in program design. Because program design is very case-specific (changing based on specific issue and target population, and shaped by available resources, cultural issues, and other factors), this Article does not aim to address every aspect of program design. Instead, it seeks to highlight a foundational aspect of program design that is frequently overlooked when developing anti-trafficking programs—that of who participates in developing such programs.

As discussed in the Introduction, international law has established a clear road map for addressing the trafficking and commercial sexual exploitation of children, built around a three-pronged mandate to punish perpetrators, assist victims, and prevent exploitation.⁸⁴ The program design step relates most directly to the effectiveness of both providing assistance and implementing prevention programs, areas where the most work remains to be done, but it could have benefits for law enforcement as well.⁸⁵ Reorienting states' overarching approach to child trafficking and commercial sexual exploitation toward prevention brings out the importance of meaningful participation from all affected communities.⁸⁶

As noted above, program design is multi-faceted. However, failing to account for the foundational issue of who designs prevention or victim assistance programs jeopardizes outcomes regardless of how the remaining steps in program design (and implementation) unfold. This subpart explains how the dominant narrative on trafficking and commercial sexual exploitation has excluded the voice of marginalized populations and youth. It explains why inclusion of

84. See *supra* note 5 and accompanying text (describing the three-pronged mandate to address the problem).

85. See UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 14–15 (highlighting the need for consideration of children's best interests in developing successful protection measures).

86. A criminal law-based approach typically involves a narrow segment of society—the state and perpetrators. In contrast, a prevention orientation exposes the need for all members of the community to participate in protecting the well-being of children.

these two groups in the program design process is a critical component of developing the most effective assistance and prevention plans possible. Finally, it reviews some of the challenges this change will present and briefly discusses how those challenges might be met.

Today, the dominant narrative on trafficking and commercial sexual exploitation of children is shaped largely, although not exclusively, by a Western perspective and is rooted in historical biased conceptions about who is virtuous and who is ill-intentioned.⁸⁷ The narrative includes such commonly-articulated views as “people in *those* countries don’t value their children as we do”; “they sell their children *over there*”; “demand is caused by pedophiles”; and “these children are helpless but we can rescue them.” Each of these statements mischaracterizes the reality of the situation: there is no evidence to support the statement that certain people as a group value children more or less than other groups do;⁸⁸ in instances in which a parent in a developing country “sells” a child, frequently that parent has been misled into thinking the child will be provided a job and/or schooling in exchange for domestic work or other work that is not exploitative (conversely, such exploitation also occurs in the West and not just “over there”);⁸⁹ pedophiles represent only a part of the

87. Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 607–08 (2009); *see also* Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L.J. 201, 222 (2001) (“While there are no cultures that are innocent of discriminatory practices against women, human rights discourse treats non-Western cultures as particularly problematic in this regard.”); *see also* Christina Holder, *A Feminist Human Rights Law Approach for Engendering the Millennium Development Goals*, 14 CARDOZO J.L. & GENDER 125, 134 (2007).

Feminist legal theorists fault the state-centric approach to human rights law for its male bias, claiming that international human rights institutions are populated by males who exclude from mainstream debate issues that are outside their experience, particularly rights violations that occur in the private sphere—such as domestic violence, food security, and access to drinking water—which are of critical importance to women heads of households.

Id.

88. I am unaware of any credible evidence supporting the contention that, as a people, a particular group values their children more than another. Research to “prove” this and indicators selected to “measure” this are inherently problematic (and in many cases biased). For example, because the United States ranks twenty-ninth in the world based on infant mortality rates, should it necessarily follow that people in the U.S. value their children less than those in the twenty-eight countries with lower infant mortality rates? Just as such conclusions about Americans based on limited data would be evidence flawed reasoning, so too would similar assertions about other peoples.

89. *See, e.g.*, MINISTRY OF LABOR & SOC. WELFARE, LAO PEOPLE’S DEMOCRATIC REPUBLIC, *BROKEN PROMISES, SHATTERED DREAMS: A PROFILE OF CHILD TRAFFICKING IN THE LAO* PDR 40 (2004), *available at* www.unicef.org/media/files/BrokenPromisesFULLREPORT.pdf (“[C]lose relatives are involved and even parents who may be misled by the trafficker. Cases of parents ‘selling’ their children were not found during the study . . .”).

demand that drives child trafficking and commercial sexual exploitation;⁹⁰ and characterizations of children as totally helpless undervalues their views, overlooks the agency of many children who play active parts in facilitating their own escape, and fails to appreciate that rescue is just the first step in providing meaningful assistance and preventing future exploitation.⁹¹ This narrative has led to the exclusion of historically marginalized populations and youth in the development of assistance and prevention programs.⁹² This program design flaw should be recognized and corrected.

Marginalized populations need a greater voice in the process. Devalued conceptions of marginalized populations have facilitated their exploitation.⁹³ Historically marginalized groups—the poor, racial and ethnic minorities, women and girls, immigrants, refugees, and others—are at heightened risk, and yet they are dramatically under-represented in most governments developing programs and policies aimed at addressing trafficking and commercial sexual exploitation of children.⁹⁴ They must be given a greater voice in the process of combating these human rights violations.⁹⁵

90. U.S. Department of Justice, Child Exploitation and Obscenity Section (CEOS), Child Sex Tourism, <http://www.usdoj.gov/criminal/ceos/sextour.html> (last visited Jan. 4, 2010) (“While some tourists are pedophiles that preferentially seek out children for sexual relationships, many child sex tourists are ‘situational abusers.’ These are individuals who do not consistently seek out children as sexual partners, but who do occasionally engage in sexual acts with children when the opportunity presents itself.”); see also Sara Dillon, *What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children*, 17 UCLA WOMEN’S L.J. 121, 149 (2008) (“[I]t is so easy to push this kind of trafficking into the realm of ‘perversion’ and the unusual or unrepresentative. In fact though, even by the most conservative estimates, child sex trafficking is demonstrably not unusual.”); Melissa Farley, *The Demand for Prostitution*, <http://www.captivedaughters.org/demanddynamics/demandforprostitution.htm> (last visited Jan. 4, 2010) (“Johns are average citizens rather than sadistic psychopaths. They are from all walks of life—doctors, judges, famous actors and CEOs, as well as construction workers, social workers, and traveling salesmen.”); Julia O’Connell Davidson, *The Sex Tourist, The Expatriate, His Ex-Wife and Her “Other”: The Politics of Loss, Difference, and Desire*, 4 SEXUALITIES 5, 7 (2001) (“[S]ex tourists are a heterogeneous group. They vary in terms of nationality, gender, age, ethnicity and racialized identity, sexual orientation and socioeconomic background, as well as in terms of their sexual practices whilst abroad and the subjective meanings they attach to their sexual encounters.”).

91. Dottridge, *supra* note 64, at vi.

92. See UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 3 (“Children’s experiences, recommendations and own actions to prevent trafficking are often overlooked when developing programmes and initiatives to address trafficking and to assist those children who have been trafficked.”).

93. Todres, *supra* note 87, at 607–08.

94. See, e.g., Women in National Parliaments, <http://www.ipu.org/wmn-e/world.htm> (last visited Jan. 4, 2010) (noting that as of September 30, 2009, women hold 18.5% of seats in national parliaments globally). Children typically have no representation rights, and refugees and immigrants are frequently limited in representation, as are ethnic groups that are minorities in their countries. See, e.g.,

International development professionals know that the only way to achieve sustainability of development programs is to ensure buy-in among those affected.⁹⁶ Communities at risk of trafficking and commercial sexual exploitation must be included in the design, development, and implementation of prevention and victim assistance programs to ensure the success of such programs. For example, identifying and involving representatives from immigrant communities is essential to developing policies and programs that are culturally sensitive and will be effective in the targeted communities.⁹⁷

That said, ensuring that target communities support programs designed to combat child trafficking and commercial sexual exploitation is not the only reason to engage historically marginalized groups. More important, greater participation will help ensure that policymakers have better ideas and information about needs, problems, and resources available to address these issues.⁹⁸ There is still even greater value in including historically marginalized populations in program design: diversity “both promotes good

Racial and Ethnic Minority Representation, <http://www.fairvote.org/?page=416> (last visited Jan. 4, 2010) (describing the underrepresentation of minorities in the U.S.).

95. See David Kahane & Carolyn Lukensmeyer, *Representation in Democratic Deliberation*, 12 DISP. RESOL. MAG. 7, 7 (2006) (“Those affected by political decisions should have a real say in making them.”).

96. Local community participation and buy-in is an essential component of any sustainable development project. See GUY BESSETTE, INVOLVING THE COMMUNITY: A GUIDE TO PARTICIPATORY DEVELOPMENT COMMUNICATION 141 (2004) (“Development research and the implementation of development initiatives will not have much impact without the effective participation of the communities.”); RAY JENNINGS, OFFICE OF TRANSITION INITIATIVES, USAID, PARTICIPATORY DEVELOPMENT AS NEW PARADIGM: THE TRANSITION OF DEVELOPMENT PROFESSIONALISM 1–2 (2000), available at www.usaid.gov/our_work/cross-cutting_programs/transition_initiatives/pubs/ptdv1000.pdf (“Participation requires recognition and use of local capacities and avoids the imposition of priorities from the outside. It increases the odds that a program will be on target and its results will more likely be sustainable.”).

97. See BESSETTE, *supra* note 96, at 16 (arguing that development must be defined by each community’s cultural context and that various groups in the community “must play an active part in the process”). The Committee on the Rights of the Child has called upon States Parties to encourage participation from the community, including children and particularly child victims. See, e.g., U.N. Comm. on the Rights of the Child, *Consideration of the Reports Submitted by the States Parties under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography—Concluding Observations: Austria*, ¶ 13, U.N. Doc. CRC/C/OPSC/AUT/CO/1 (Oct. 22, 2008) (directing Austria to encourage such participation).

98. See Udaya Wagle, *The Policy Science of Democracy: The Issues of Methodology and Citizen Participation*, 33 POL’Y SCI. 207, 207 (2000) (“[C]itizen participation is important . . . to improve the quality of information provided to make appropriate policy decisions . . .”).

outcomes and discourages bad outcomes.”⁹⁹ As explained in a 2000 G8 Communiqué:

Cultural diversity is a source of social and economic dynamism which has the potential to enrich human life in the 21st century, as it inspires creativity and stimulates innovation Promoting cultural diversity enhances mutual respect, inclusion and non-discrimination, and combats racism and xenophobia Experience shows that diversity can arouse interest, engender initiative and be a positive factor in communities seeking to improve their economies¹⁰⁰

In other words, ensuring diversity at the program and policy design stage helps foster a broader range of ideas while simultaneously reducing the impact of mistrust among communities and the harmful effects of bias, stigma, and discrimination.¹⁰¹ As a result, enabling

99. David Orentlicher, *Diversity: A Fundamental American Value*, 70 MO. L. REV. 777, 780 (2005).

100. Group of Eight [G8], *G8 Communiqué Okinawa 2000*, ¶¶ 39–41 (Jul. 23, 2000), available at <http://www.g7.utoronto.ca/summit/2000okinawa/finalcom.htm>; see also Peter Mair & Jan Zielonka, *Introduction to THE ENLARGED EUROPEAN UNION: DIVERSITY AND ADAPTATION* 1, 8 (Peter Mair & Jan Zielonka eds., 2002) (“Diversity teaches adaptation, bargaining and accommodation. It is a source of competition, self-improvement and innovation.”).

An important element of the value of cultural diversity is the growing empirical data validating the benefits of cultural diversity in a specific context. In the business arena there are studies showing that firms managing cultural diversity achieve greater innovation and creativity, provide a more attractive workforce to potential workers, and, ultimately, achieve enhanced market performance. In the education context, empirical data supports the benefits of cultural diversity in terms of creating a more dynamic learning environment and graduates that are better prepared to deal with a more multicultural society. All of this empirical data shows the value of cultural diversity and not specific morphological features.

Steven A. Ramirez, *A General Theory of Cultural Diversity*, 7 MICH. J. RACE & L. 33, 59 (2001).

101. Bias and discrimination are key factors driving the exploitation of certain populations and their children. See The Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, ¶ 55, delivered to the Commission on Human Rights, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000), 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) (“Gender-based discrimination intersects with discriminations based on other forms of ‘otherness,’ such as race, ethnicity, religion and economic status, thus forcing the majority of the world’s women into situations of double or triple marginalization.”); Johanna Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations*, 52 EMORY L.J. 71, 124–25 (2003) (noting that traffickers target women from particular racial or ethnic groups); Chuang, *supra* note 76, at 68 (“Trafficking in women is fueled by poverty, sexism, and racism”); Olufunmilayo I. Fawole, *Economic Violence to Women and Girls: Is It Receiving the Necessary Attention?*, 9 TRAUMA VIOLENCE & ABUSE 167, 172 (2008) (describing how gender-based “economic violence results in

diversity in the program design and development stage of the process will increase the likelihood of developing successful measures to prevent such abusive practices.

In addition to including historically marginalized populations in developing and implementing prevention and assistance programs, policymakers must also involve youth in the process. “Too often, prevention strategies do not take into account and incorporate the views of children, or fail to empower children to meaningfully engage in prevention activities and decision-making processes.”¹⁰² Child participation is a foundational component of children’s rights law. Article 12 of the U.N. Convention on the Rights of the Child (CRC),¹⁰³ which enjoys near universal acceptance,¹⁰⁴ establishes that states parties “shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”¹⁰⁵

There are many potential benefits of involving children in dialogues on issues that affect their lives. In the context of program design to prevent child trafficking and commercial sexual exploitation, young people have insights that adults may not perceive. As a UNICEF Innocenti Report explains,

[children] are ‘experts’ on the factors that make children vulnerable, their reasons for leaving home, and their special needs regarding prevention, assistance[,] and protection. Children and young people have an important role to play in helping to identify areas for intervention, design relevant solutions[,] and act as strategic informants of research.¹⁰⁶

For example, in one study, trafficked children reported that most had received little information about trafficking and ways to avoid being trafficked before they were trafficked.¹⁰⁷ “All children indicated that schools did little to provide relevant information to protect them from trafficking.”¹⁰⁸ By listening to children and giving them a voice, we can identify additional avenues for effective intervention, prior to the

social inequality and promotes sexual exploitation of girls and young women by older men”).

102. E. ASIA & PAC. REG’L OFFICE, *supra* note 22, at 58.

103. Convention on the Rights of the Child, G.A. Res. 44/25, Annex, pt. I, art. 12, U.N. GAOR, 44th Sess., 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter CRC].

104. There are 193 States Parties to the CRC; only two states (the U.S. and Somalia) have yet to ratify, although both have signed the CRC. Multilateral Treaties Deposited with the Secretary-General, Status of Treaties, Convention on the Rights of the Child, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Jan. 4, 2010).

105. CRC, *supra* note 103, art. 12.

106. Dottridge, *supra* note 64, at vi.

107. *Id.* at 13.

108. *Id.*

point at which they are harmed. The same study reported that most children left school because they thought their families could not afford it,¹⁰⁹ again providing policymakers and child advocates with information that could lead to more effective targeted interventions prior to exploitation.¹¹⁰ Finally, the study found that many children could identify a “changing point”—an event or crisis which left them more vulnerable to exploitation.¹¹¹ “The types of changes that appear to have had the greatest impact include a change of residence or of family composition, or in the child’s own interaction and relationship with friends and peers.”¹¹²

This last point highlights another reason to ensure children have a voice. Peer relationships have a significant impact on children, and peer pressure and peer-on-peer violence tend to be readily identifiable by children and often missed by adults, frequently because it occurs when children are away from adults.¹¹³

There are a number of challenges to ensuring effective participation of historically marginalized populations. First, care must be taken in identifying representatives from various groups and ensuring that they truly are representative and not simply individuals with whom policymakers prefer to work. As part of this step, it is vital that policymakers and those in the majority appreciate the heterogeneity of marginalized groups.¹¹⁴ Second, there may be trust-related challenges, as certain populations might view efforts to involve them with some initial skepticism.¹¹⁵ Relationships might take time to build, and policymakers must look at this as a long-term process and investment that ultimately can pay dividends not just on

109. *Id.*

110. *Id.* at 48.

111. *Id.* at 16–17.

112. *Id.* at 16.

113. See PAULO SÉRGIO PINHEIRO, WORLD REPORT ON VIOLENCE AGAINST CHILDREN 123 (2006) (“School bullying usually occurs when no teachers are present . . .”). “Forms of violence perpetrated by children include bullying, sexual and gender-based violence, schoolyard fighting, gang violence, and assault with weapons. Technology provides a new medium for bullying using the Internet and mobile phones, and has given rise to new terms such as ‘cyber-bully’ and ‘cyber-bullying.’” *Id.* at 116. The frequency of peer-on-peer violence often surprises adults. Among eleven-, thirteen-, and fifteen-year-old children in thirty European countries, thirty-five percent reported having been bullied in the past two months. *Id.* at 122, 124.

114. See, e.g., Lennart Båge, *Policies and Lessons for Reaching Indigenous Peoples in Development Programs*, in 2020 FOCUS BRIEF ON THE WORLD’S POOR AND HUNGRY PEOPLE, at 1 (Int’l Food Policy Research Inst. ed., 2007), available at http://www.ifpri.org/sites/default/files/publications/beijingbrief_bage.pdf (acknowledging the importance of “[t]aking into account the heterogeneity of poverty” when designing development programs for indigenous peoples).

115. See BESSETTE, *supra* note 96, at 51 (emphasizing “the importance of building trust and understanding between the researcher or development practitioner and community members”).

these issues but also with respect to other social and economic issues confronting their constituents.¹¹⁶ Third, language barriers and cross-cultural differences need to be navigated carefully and with an openness to learning about historically marginalized populations. Finally, fully involving historically marginalized populations means not merely giving them a seat at the table but also being willing to defer to them in decision-making and the design of policies and programs.

Just as there will be challenges involved in incorporating marginalized populations in the program design process, there are a number of commonly identified challenges associated with engaging youth in any project or program.¹¹⁷ For example, the selected children may not be representative of the entire at-risk population. As with adults, children are a heterogeneous group. Therefore, simply involving some youth in the program development does not mean youth voices and views are fully represented. Also, there is a tendency to rely frequently on the same youth, given their familiarity with the process, leading to a professionalization of select youth.¹¹⁸ Another problem involves sustaining initiatives as children grow up—when children turn eighteen, they are no longer children.¹¹⁹ This consistent turnover in the youth group makes the sustainability of initiatives more challenging. Finally, adults must guard against manipulating youth to serve the agenda that adults want. Manipulation can occur even with the best intentions and is a greater risk when younger children are engaged in projects.¹²⁰

In addition to these general challenges associated with youth participation, there are additional issues in the context of trafficking and commercial sexual exploitation of children. Foremost, there is the risk of re-traumatizing children.¹²¹ Equally important, many children may be reluctant to participate, given concerns over being stigmatized and possibly ostracized.¹²² It is crucial that these issues

116. See *id.* at 36 (“Establishing a relationship with a local community is a process that will develop along the way, through the interaction of research teams or development practitioners with people of that community.”).

117. GERISON LANSDOWN, PROMOTING CHILDREN’S PARTICIPATION IN DEMOCRATIC DECISION-MAKING 17 (United Nations Children’s Fund, Innocenti Insight Series No. 6, 2001).

118. *Id.*

119. *Id.*

120. *Id.* This is not to suggest that adults must defer to youth in all decisions, but rather that care must be taken to minimize manipulation of child participation to ensure that it ends up being more than token participation. *Id.* at 9.

121. See Dottridge, *supra* note 64, at 52 (“Attaining the right balance between protecting these children from undergoing too many interviews, from the risks of re-traumatization or violation of their privacy on one side, and obtaining valuable information about their experiences to inform better prevention strategies in future on the other side, is bound to remain difficult.”).

122. *Id.* at 30, 44.

are handled with sensitivity and due recognition for the age and maturity of the children.

None of these challenges present insurmountable hurdles. Policymakers and advocates for children must simply be aware of the potential problems and seek to overcome them as best as possible.

In sum, as detailed above, program design is an essential step in responding to, and ultimately preventing, the trafficking and commercial sexual exploitation of children. Ending such exploitation of children is a monumental task, so it is critical that all ideas are considered and communities buy into the programs eventually adopted to combat child exploitation. Involving historically marginalized populations and youth in the process of developing policies and programs is critical to ensuring that governments and NGOs develop strategies that have the greatest chances of success.

C. The Dominant Principle Guiding State Responses

As detailed in the Introduction, government strategies have not been prevention-oriented but rather have focused primarily on dealing with the after effects of such exploitation through criminal sanction and victim assistance. Another consideration, therefore, in developing and implementing responses to the trafficking and commercial sexual exploitation of children is the dominant principle in guiding state responses to these issues. In seeking to prevent trafficking and commercial sexual exploitation of children, it matters not only what governments do but also *how* they do it.

Currently, the fundamental query on this point is whether to tilt the scales in favor of a law enforcement approach or a victim-centered approach when allocating resources and designing programs.¹²³ This debate is important, but the current framing is shortsighted as both options are after-the-fact approaches to child exploitation. Therefore, I would broaden, and thus reframe, the latter category as “child-centered.”¹²⁴ A victim-centered approach, as discussed below, offers important benefits but still sees these children only as victims and produces an ex post rather than ex ante focus to combating trafficking and commercial sexual exploitation of children.

123. See, e.g., U.S. STATE DEPT., TRAFFICKING IN PERSONS REPORT 12 (2006), available at <http://www.state.gov/g/tip/rls/tiprpt/2006/index.htm>.

124. See also UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 40–41. (also advocating a “child-centred approach”). For discussions on approaching trafficking of adults, this would need to be reframed as a person-centered approach. The important issue is to go beyond simply considering victims after they are harmed. See *id.* at 14–15 (emphasizing the importance of identifying vulnerable groups and preventing exploitation).

I submit that to prevent trafficking and commercial sexual exploitation of children, we need to adopt a child-centered approach. A child-centered approach would mean considering all children, not just victims, and accounting for the needs and rights of all children. It recognizes that all children are vulnerable, though some might be at heightened risk of exploitation.¹²⁵ Therefore, a child-centered approach would consider all children and the impact of laws, policies, and programs on children, whether or not they are victims. As its focus is child well-being, the child-centered approach has harm prevention as its core principle with respect to these issues.

This subpart discusses the problems associated with emphasizing a law-enforcement approach and explains how a move toward a victim-centered approach, while an improvement, is not sufficient to effectively prevent these abuses of children. It then describes the value of a child-centered approach. As a child-centered approach (i) recognizes vulnerability and seeks to protect children before they are exploited; (ii) requires care be taken to avoid the risk of re-traumatization of children during criminal trials; and (iii) focuses on the delivery of services needed by child victims to recover fully and re-integrate into the community, it may ultimately be a better process for reducing the harm inflicted on vulnerable children.

In recent international and regional dialogues on the question of what should serve as the guiding principle underlying state responses to child trafficking and commercial sexual exploitation, there is increased support for a victim-centered approach rather than a law-enforcement centered philosophy. The Committee on the Rights of the Child, for example, regularly highlights the importance of a victim-centered approach.¹²⁶ Similarly, a number of national governments have voiced support for such an approach.¹²⁷ While this

125. See RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U. S., CANADA AND MEXICO* 66–68 exhibit 3.6 (2001) (listing seventeen categories of children with heightened vulnerability to sexual exploitation); see also Martha A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 8 (2008) (arguing that vulnerability is “a universal, inevitable, enduring aspect of the human condition”).

126. See, e.g., U.N. Comm. on the Rights of the Child, *Consideration of the Reports Submitted by the States Parties under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography—Concluding Observations: United States of America*, ¶ 24, U.N. Doc. CRC/C/OPSC/USA/CO/1 (June 25, 2008) [hereinafter *Concluding Observations: U.S.*] (noting the State party’s efforts in developing programs to combat child prostitution with a “victim-centred approach”).

127. See, e.g., Jayne Huckerby, *United States of America*, in *COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD* 230, 247 (Global Alliance Against Traffic in Women ed., 2007).

The US government equates its prosecutorial focus with a “victim-centered” approach to trafficking: “. . . we believe the US Government approach – one that prioritizes catching perpetrators to put them out of business and cease to

represents a step in the right direction, the prevailing approach at the international, regional, and national levels to trafficking and commercial sexual exploitation of children has remained primarily a law enforcement framework.¹²⁸

In developing law on child trafficking and commercial sexual exploitation, the international community has agreed to more stringent obligations on law enforcement issues than on prevention and victim assistance.¹²⁹ The two primary international conventions—the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,¹³⁰ and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography¹³¹—both impose flat obligations with respect to criminalization of trafficking and commercial sexual exploitation of children but include only more suggestive language with respect to assistance to victims and implementation of prevention programs.¹³² Not only are greater emphasis and resources given to law enforcement but even victim assistance programs are developed sometimes from a law enforcement perspective—for example, by tying assistance to victims

exploit other victims – is a ‘victim-centered approach.’” However, its prosecutorial focus often runs counter to the rights of trafficked persons.

Id. (quoting a 2005 U.S. government report to the OSCE) (alteration in original) (citation omitted). In May 2008, the U.S. reported to the Committee on the Rights of the Child on its implementation of the CRC Protocol. *Concluding Observations: U.S.*, *supra* note 126, ¶¶ 1–2. During its session, the Committee questioned the Department of Justice representative about U.S. prevention efforts, to which the representative responded, “The U.S. takes prevention seriously. That’s why we seek heavy penalties for traffickers.” (The Author was present at the UN Committee hearing in Geneva in May 2008.) See also Todres, *supra* note 87, at 651 n.158; cf. *Concluding Observations: U.S.*, *supra* note 126, ¶¶ 21, 23 (directing the U.S. to adopt a more “holistic approach” that utilizes both prosecution and prevention measures and that aims to address the “root causes” contributing to child vulnerability). However, it appears that under the Obama Administration, the U.S. effort to implement a victim-centered approach has changed for the better. See Luis C deBaca, *Ambassador’s Introductory Letter to TIP Report 2009*, *supra* note 8, at 2, 2 (noting that greater effort is needed to address vulnerability of certain individuals, because “[n]ot all progress will come through programs or prosecutions.”).

128. See Mike Dottridge, *Introduction* to COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD, *supra* note 127, at 1, 1 (“[T]he priority for governments around the world in their efforts to stop human trafficking has been to arrest, prosecute and punish traffickers, rather than to protect the human rights of people who have been trafficked.”).

129. Jonathan Todres, *The Importance of Realizing “Other Rights” to Prevent Sex Trafficking*, 12 CARDOZO J.L. & GENDER 885, 886–87.

130. Trafficking Protocol, *supra* note 2.

131. CRC Protocol, *supra* note 2.

132. Trafficking Protocol, *supra* note 2, art. 5(1), art. 6(3); CRC Protocol, *supra* note 2, arts. 3, 8. For a more detailed examination of the language in these conventions, see Todres, *supra* note 87, at 642–48.

to cooperation with law enforcement or participation in trials against traffickers.¹³³

One reason for the prevalence of a law enforcement approach is that trafficking and commercial sexual exploitation of children are among the most appalling criminal acts.¹³⁴ Thus, the need and public demand for law enforcement measures will persist.¹³⁵ Moreover, given that the sex trade involves many transnational cases, this issue frequently implicates border issues, and today's emphasis on national security often results in countries employing a law enforcement approach at the border.¹³⁶ Additionally, adopting a new law or strengthening an existing criminal law is, in some respects, easier to achieve, providing policymakers and governments with something tangible to show citizens they care about these issues.¹³⁷

133. See, e.g., 8 U.S.C. § 1101(a)(15)(T) (2009) (mandating that to qualify for the visa for victims of a "severe form of trafficking," such individuals must have "complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime"); Carol Nader, *Restrictions Eased for Sex Trafficking Victims*, AGE (Austl.), June 17, 2009, <http://www.theage.com.au/national/restrictions-eased-for-sex-trafficking-victims-20090616-cg1b.html> (noting that Australian law requires trafficking victims to cooperate with law enforcement investigations or prosecutions to qualify for a permanent visa). *But see*, e.g., Council of Europe Convention on Action Against Trafficking in Human Beings, *supra* note 2, art. 13(1) (calling for a thirty-day recovery period during which victims would not be required to participate in law enforcement activities to obtain services).

134. See Marcelo Ferrante, *Community Views and Criminal Law Reform*, 77 REV. JUR. U.P.R. 459, 460 (2008) (noting that "judgments of criminal responsibility tend to reflect the corresponding blameworthiness judgments, or judgments of moral culpability"). The prohibition on slavery and the slave trade, which includes trafficking in persons, is considered a peremptory norm (or *jus cogens*), the highest form of customary international law, and from which no derogation is permitted. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 702 cmt. n & reporters' notes 4, 11 (1987).

135. Retributive principles underlie much of criminal justice. See, e.g., Ferrante, *supra* note 134, at 460 ("Criminal law is centrally a retributive practice.").

136. See Huckerby, *supra* note 127, at 246 (explaining that law enforcement authority is increasingly exercised by immigration officials due to concerns about terrorism and border security).

137. See Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses*, 11 AM. U.J. GENDER SOC. POL'Y & L. 567, 588 (2003) ("Concentrating primarily on criminal law issues is [] easier than pursuing the more complex, expensive and less politically palatable goal of expanding social programs in other areas."); Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 819 n. 337 (2007) ("Criminal law is an easy and politically expedient solution to social problems . . ."). In addition to being politically expedient, it is also arguably cheaper and easier to take a law enforcement approach that builds on preexisting structures, such as existing police forces and prosecutorial offices, than it is to tackle the systemic issues that result in some individuals becoming marginalized and vulnerable to exploitation. On the economic efficiency of criminal law, see generally Robert Cooter, *Prices and Sanctions*, 84 COLUM. L. REV. 1523 (1984); Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193 (1985).

One should not discount the fact that law enforcement plays an important role in addressing trafficking and commercial sexual exploitation of children. However, a law enforcement centered approach neglects two critical facts: (i) law enforcement has a limited deterrent effect and thus, by itself, is insufficient for achieving the ultimate goal of prevention; and (ii) if not undertaken with the victim in mind, law enforcement can re-traumatize already severely injured children.

First, a law enforcement-focused model is built on the assumption that criminal law sanctions provide a deterrent and will prevent further exploitation of children.¹³⁸ In fact, it is unclear how effective criminal law is as a tool for changing behavior.¹³⁹ In the context of trafficking and commercial sexual exploitation of children, the number of arrests, prosecutions, and convictions remains very low.¹⁴⁰ The low number of arrests and convictions does not mean that law enforcement is useless, but rather, I submit, reflects in large part how difficult these cases are for law enforcement.¹⁴¹ The clandestine

138. See Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 950 (2003) (calling deterrence “a centerpiece of criminal law reform” and explaining that lawmakers seek to control crime “by devising a penalty-setting system that assigns criminal punishments of a magnitude sufficient to deter a thinking individual from committing a crime”).

139. See *id.* at 951.

[T]here is growing evidence to suggest skepticism about the *criminal law's* deterrent effect—that is, skepticism about the ability to deter crime through the manipulation of criminal law rules and penalties. The general existence of the system may well deter prohibited conduct, but the formulation of criminal law rules within the system, according to a deterrence-optimizing analysis, may have a limited effect or even no effect beyond what the system's broad deterrent warning has already achieved.

Id.

140. See Mark Motivans & Tracey Kyckelhahn, *Federal Prosecution of Human Trafficking, 2001–2005*, BUREAU JUST. STAT. DATA BRIEF, Oct. 2006, at 1, 1 (reporting that for the five-year period from 2001 to 2005, U.S. attorneys prosecuted 146 suspects in which human trafficking was the lead charge); “No Success” in Trafficking Cases, BBC NEWS, Apr. 1, 2009, http://news.bbc.co.uk/2/hi/uk_news/scotland/7976336.stm (reporting that almost eighty victims of human trafficking had been identified in Scotland, but that there had not been a single successful criminal prosecution).

141. Admittedly, in some instances, the low numbers of arrests and convictions for child trafficking and commercial sexual exploitation reflects the low priority given to such cases by some governments. *E.g.*, UNODC—United Nations Office on Drugs and Crime, Regional Office for South Asia: Project Summary IND/S16, http://www.unodc.org/india/ind_s16.html (reporting “difficulties in implementing the provisions of the law on the ground” in India and explaining that to some degree, this is attributed to “low prioritization accorded by law enforcement to the problem of trafficking”); see U.S. Gov’t Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-Trafficking Efforts Abroad*, 10

nature of the activity makes law enforcement challenging, and the multi-jurisdictional nature of many of these cases consumes significant resources and creates additional complexities.¹⁴² Despite the low number of convictions, there is still value in law enforcement measures—e.g., law has an expressive function,¹⁴³ and holding those who exploit children accountable for their actions has value, even though not all perpetrators of these crimes are brought to justice. It is important, however, not to overstate what law enforcement can achieve on its own, in terms of reducing the number of children trafficked or sexually exploited. Even if convictions increase significantly, it is not clear that this will result in a significant increase in deterrence¹⁴⁴ because the deterrent effect from harsh criminal sanctions is offset by the huge financial incentives for traffickers and exploiters of children.¹⁴⁵

TRENDS ORGANIZED CRIME 16, 22 (2006) (“[S]ome governments give low priority to human trafficking violations.”).

142. See COAL. AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS 32–34, 95–96 (2001), available at http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf (describing various law enforcement difficulties, including lack of resources, jurisdictional difficulties, and the characteristic mobility of clandestine businesses, in investigating and prosecuting sex traffickers). For example, a case involving trafficking of a girl from Mexico to California might potentially involve Mexican police, Mexican social services, state and local police in California, Customs and Border Patrol, ICE agents, FBI agents, the U.S. Department of Justice, social services agencies in the United States, and other agencies. See Marisa B. Ugarte et al., *Prostitution and Trafficking of Women and Children from Mexico to the United States*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 147 (Melissa Farley ed., 2003) (providing historical background information and case examples of sex trafficking between Mexico and the U.S.).

143. On the law’s expressive function, see Meredith Johnson Harbach, *Is the Family a Federal Question?*, 66 WASH. & LEE L. REV. 131, 197–200 (2009); Cass R. Sunstein, *Incommensurability and Valuation in Law*, 92 MICH. L. REV. 779, 822 (1994) (stating that law “affect[s] social valuations in general”).

144. See Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD. 173, 173 (2004) (arguing that “that manipulating criminal law rules within that system to achieve heightened deterrence effects generally will be ineffective”).

145. See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 163 (2007) (“Trafficking is an extremely profitable international criminal enterprise, ranking third in profits after the arms and drug markets.”). The potential for profit from human trafficking is immense in part because, unlike with arms and drugs, which an individual can sell only once, a human being can be sold repeatedly. Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 342 (2007). While determining the profitability of an illegal enterprise inevitably involves some approximation, traffickers earn an estimated five to ten billion dollars each year. *Id.* Other estimates are considerably higher; the International Labour Organization (ILO) reports that human trafficking trade generates over \$31 billion annually for organized criminal enterprises. Srikantiah, *supra*, at 163 (citing The Director-General, Int’l Labour Office, *Report of the Director-General: A Global Alliance Against Forced Labour*, ¶ 265 & tbl.2.1, delivered to the

Equally important, although law enforcement plays a vital role in combating trafficking and commercial sexual exploitation of children, it does not address the roots of these human rights violations. Tackling the root causes of these problems means addressing the reasons behind both the demand that drives the exploitation of children and the supply of vulnerable children ripe for exploitation in the sex industry and various labor settings and industries. Thus, basic, systemic supply and demand issues must be addressed.

Second, in addition to having only a minimal deterrent effect and limited ability to prevent child exploitation, a law-enforcement centered approach risks further traumatizing child victims.¹⁴⁶ By the time a child has been identified as a victim of trafficking and/or commercial sexual exploitation, he or she has experienced great trauma, including physical, psychological, and emotional abuse.¹⁴⁷ Even under optimal circumstances, the road to full recovery and reintegration into his or her community is a major undertaking.¹⁴⁸ A law enforcement approach to trafficking and commercial sexual exploitation of children can exacerbate the trauma experienced by trafficked and sexually exploited children. Frequently, children in the sex trade are arrested and initially treated as criminals rather than as victims.¹⁴⁹ Furthermore, some laws tie access to services to

International Labour Conference (June 6, 2005)). Moreover, other “legitimate” businesses profit from human trafficking as well. For example, the sex trade, an industry that benefits from trafficking in persons, generates billions of dollars annually not only for prostitution rings and other criminal enterprises but also for legitimate businesses, such as hotels, restaurants and shops in tourist locales, travel agencies, and other tourism related enterprises. U.S. Department of Justice, *supra* note 90 (“[C]ountries which are struggling economically have become increasingly tourist-oriented in their search for profitable sources of income. These governments sometimes turn a blind eye to the sex tourism industry, thus allowing the industry to perpetuate sexual exploitation upon children in order to encourage tourism to their country in general.”).

146. See, e.g., Geneva O. Brown, *Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds Against Teenaged Prostitutes*, 57 CATH. U. L. REV. 471, 501–02 (2008) (arguing that policies requiring vulnerable child victims to testify against pimps and sex traffickers cause secondary victimization).

147. See MIKE DOTTRIDGE, REFERENCE GUIDE ON PROTECTING THE RIGHTS OF CHILD VICTIMS OF TRAFFICKING IN EUROPE 17–19 (2006), available at http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf (discussing the different forms of harm inflicted on child victims at the different stages of trafficking). See generally CATHY ZIMMERMAN ET AL., *STOLEN SMILES: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE* (2006), available at <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf> (presenting specific statistical data on adolescent female victims).

148. See DOTTRIDGE, *supra* note 147, at 31 & fig.5 (outlining the phases of recovery).

149. *Id.* at 32; FRIEDMAN, *supra* note 29, at 20–22.

cooperation with law enforcement, meaning that traumatized children who fear law enforcement might be denied or delayed access to services.¹⁵⁰ In criminal trials of perpetrators, children are often re-traumatized by having to testify against their abusers and then face cross-examination by defense counsel.¹⁵¹

In contrast to the law enforcement approach, a victim-centered approach shifts the government focus so that it better accounts for the needs and experiences of those most affected by trafficking and commercial sexual exploitation—the victims.¹⁵² A victim-centered approach can spur law and policy initiatives that ensure better care for victims once they are identified as well as greater awareness of the risks of further traumatizing child victims during the trial of a perpetrator of such abuses.¹⁵³

A victim-centered approach is an improvement, but it still falls short in two respects. First, it seeks to help children only after they have been harmed. Second, it does not focus sufficiently on root causes of the problem (except perhaps to a limited extent when victims are returned to their communities).

Therefore, I submit that a child-centered approach should be the guiding principle in all actions taken to combat child trafficking and commercial sexual exploitation.¹⁵⁴ A child-centered approach would have as its paramount consideration ensuring the well-being of all children and preventing the exploitation of any child. A child-centered approach recognizes that achieving the well-being of all children and preventing child exploitation means addressing the root causes of these problems (both supply and demand issues) and fostering sustainable change, so that children are less vulnerable to

150. See *supra* note 133 and accompanying text (providing examples of such conditional policies).

151. See LAUDAN Y. ARON ET AL., COMPREHENSIVE SERVICES FOR SURVIVORS OF HUMAN TRAFFICKING: FINDINGS FROM CLIENTS IN THREE COMMUNITIES 11 (2006) (noting that victims “often have to relive their experiences during case preparation (for example, during stress interviews, in which they are interrogated as if they were hostile witnesses) and testifying”). This is not to suggest that the presence of a child in a trial should result in doing away with these constitutional protections for defendants, but rather that special care must be taken to minimize trauma to child victims. See UNITED NATIONS OFFICE ON DRUGS & CRIME, JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME: MODEL LAW AND RELATED COMMENTARY pt. 1, ch. III, § C, art. 28 (providing model law measures aiming to protect the well-being of child victim witnesses while satisfying the accused’s right of confrontation).

152. See U.N. Comm. on the Rights of the Child, *Report of the Committee on the Rights of the Child*, ¶ 25, U.N. Doc. A/63/41 (Feb. 1, 2008) (directing states parties to take “all possible measures” to avoid the “stigmatization and social marginalization” of child victims).

153. See *id.* at 8–9 (calling for states parties to avoid the “double victimization” of child victims and to provide services that facilitate the physical and psychological recovery of child victims and their reintegration into society).

154. For trafficking and commercial sexual exploitation of adults, a parallel person-centered approach can be developed.

such exploitation. Finally, for those children who are harmed, a child-centered approach requires prioritization of child well-being and draws attention to the need to ensure that the child (i) is not further traumatized and (ii) has both immediate and ongoing access to social services and other forms of assistance until recovery is complete.

The following hypothetical provides an example of how using a child-centered approach as the guiding principle in action to combat child trafficking and commercial sexual exploitation would produce different responses—and arguably better results—than that which would emerge from a law enforcement centered or victim-centered approach. Although this example is illustrative, it is by no means unique, as similar scenarios play out around the globe, including within the United States. A fourteen-year-old girl lives with her family in the poorer section of a city in Mexico. A combination of poverty and discrimination hinders her access to health care. As a result, she begins to have more frequent health issues that result in increased absenteeism from school. She begins to fall behind in school and her performance declines. She starts to feel ostracized by her peers, and her teachers begin to see her as a “non-compliant student” or “bad kid” because she fails to show up regularly. With her family experiencing financial strain, she leaves school to try to find a job to help her family. She is offered a job by a man, who in fact is a “recruiter” for a trafficking ring, and ultimately is raped by the recruiter, sold to a trafficker, and transported across the United States–Mexico border, where she is sold by the trafficker to a brothel. After five months of being confined to a brothel, where on average she is forced to have sex with ten to twelve men every day, she escapes to a shelter and requests assistance.

A law enforcement approach typically is focused most on punishing the perpetrators of the abuse (in this case, most likely the brothel owner, as the trafficker probably has long since disappeared). She might receive social services, but they typically would be a lower priority than the prosecution efforts.¹⁵⁵ In some instances, because law enforcement did not rescue her, she may not be recognized as a victim and thus would receive no help or even be treated as a criminal.¹⁵⁶ A victim-centered approach would seek to support law enforcement efforts to apprehend perpetrators but will focus on ensuring that any action taken is done in such a manner as to minimize trauma to the child. It would structure law and policy to ensure that the child has access to care and social services regardless

155. Haynes, *supra* note 145, at 350.

156. See Haynes, *supra* note 145, at 347 & n.30 (explaining that victims who are not rescued by law enforcement may not be recognized as “victims” and are therefore unlikely to receive services, and noting that some are even arrested for criminal or immigration violations).

of the status of law enforcement efforts or whether the child had cooperated with the prosecution.¹⁵⁷ Under both approaches, however, intervention will occur only after grave harm to the child.

In contrast, a child-centered approach to preventing trafficking and sexual exploitation of children recognizes that all children are vulnerable and seeks to identify early those children at heightened vulnerability. It focuses first on opportunities for earlier intervention and assistance—such as when adults notice the girl is falling behind in school or when the girl leaves school. A child-centered approach also seeks to address root causes, such as the discrimination and poverty that led to the girl's health declining such that she began to fall behind in school. The aim in a child-centered approach is to maximize child well-being and minimize risk of harm before it occurs. Should a child be harmed, a child-centered approach would mandate longer-term care and, as the child reintegrates into her community, focus on addressing root causes and systemic issues that could put the child at risk again.

Although the above example is just a rough sketch, it illustrates how a child-centered approach might prove more effective than a law enforcement approach or a victim-centered approach in achieving the ultimate goal of prevention. The child-centered approach requires that policymakers view the child and his or her needs as the starting point, whether the child is at risk, has been victimized, or is being relied upon by the state as a witness in the prosecution of a perpetrator of these abuses.

Moving to a child-centered approach that focuses on preventing harm to all children will require several steps, including (1) decriminalizing children; (2) ensuring that adequate safeguards are in place so that children are not further traumatized through judicial proceedings, etc.; (3) extending training programs to all who come into regular contact with children (including judges, immigration officials, police, etc.) and not just to those who are assigned to special task forces set up to address these issues;¹⁵⁸ (4) allocating adequate resources to prevention programs and victim services;¹⁵⁹ and (5)

157. See U.N. High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Trafficking*, add., guideline 6, delivered to the Economic and Social Council, U.N. Doc. E/2002/68/Add.1 (May 20, 2002) (asserting that assistance should be available to all victims of trafficking "without discrimination" and that the provision of adequate shelter "should not be made contingent on the willingness of the victims to give evidence in criminal proceedings).

158. See FRIEDMAN, *supra* note 29, at 2 (recommending training to everyone in the immigration and law enforcement systems who may come into contact with child victims).

159. Currently, there are few shelters in the United States specifically set up to treat child victims of commercial sexual exploitation. See Rowena Fong & Jodi Berger Cardoso, *Child Human Trafficking Victims: Challenges for the Child Welfare System*, EVALUATION & PROGRAM PLAN (forthcoming 2010) (noting the scarcity of shelters and

starting a serious dialogue on the demand- and supply-side issues that underlie the root causes of the problem, one that results in action to address those issues.

The temptation is to rush to defend current actions by arguing that many governments already do some of the above. First, too few governments actually are taking these steps. Those that have done so often have done so in a piecemeal manner. For example, there are training programs for law enforcement and others, but frequently those training programs target special task forces rather than the “beat cop” who might actually be more likely to encounter trafficking victims or children at risk.¹⁶⁰ In addition, although victim services are provided to some children, most children go without any services, and those who do receive services do not always receive what they need for a full recovery.¹⁶¹ Victims often require a broad range of services for an extended period, and their needs change over time.¹⁶² Furthermore, child victims’ needs differ from those of adult victims. Therefore, victim services must be appropriately tailored to meet the special needs of children and must be continually reviewed so they evolve as children’s needs evolve during the recovery and reintegration phase. Recall that providing for the full rehabilitation and reintegration of all child victims is not merely a moral imperative but is mandated by the treaties and laws adopted to protect children from harm.¹⁶³

Ultimately, because it has children and not the acts of child trafficking and commercial sexual exploitation as its starting point and its focal point, a child-centered approach helps us move “upstream” in our efforts to intervene effectively on behalf of children. Such an approach offers a better chance of addressing the root causes

treatment programs offering services tailored to sexually exploited children). Even fewer resources are available to boys. SHARED HOPE INT’L, REPORT OF THE CANADA-UNITED STATES CONSULTATION IN PREPARATION FOR WORLD CONGRESS III AGAINST SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS 1(2008), *available at* http://www.ecpat.net/WorldCongressIII/PDF/RegionalMTGs/canada_us_consult_report_final.pdf.

160. See FRIEDMAN, *supra* note 29, at 11 (noting that training to law enforcement officers is “piecemeal”).

161. See SHARED HOPE INT’L, *supra* note 159, at 9–10 (describing various difficulties in finding restorative services for child victims, and explaining that “[a]s a result these children are pulled in different directions and/or they fall right through the cracks”).

162. ARON ET AL., *supra* note 151, at 12–14.

163. See, e.g., CRC, *supra* note 103, art. 39 (“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim . . .”); Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *supra* note 2, art. 14(1) (“Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery.”).

of these issues to avoid harm to children in the first place and minimize further trauma to the children who have already suffered such violations.

In summary, while criminal law has a role to play, it is necessary to ask how it will help children in need. Policies and programs must prioritize children. Admittedly, child protection measures and rehabilitative programs take more time to show results, and such endeavors often do not fit neatly into political election cycles. Policymakers and governments must resist the urge to take the easier route and declare victory; instead, they must realize that a child-centered approach may be a long-term process but ultimately is the best way to ensure the well-being of vulnerable children and prevent exploitation. A child-centered approach, rather than a law-enforcement centered or victim-centered approach, can (i) better inform the process of addressing root causes and preventing these abuses of children; (ii) help ensure that each victim receives the necessary care and assistance; and (iii) make certain that other steps taken to combat child trafficking and commercial sexual exploitation—including law enforcement measures—are carried out in a way that avoids unintended harm to children.

D. *Stakeholder Coordination*

Current efforts to combat child trafficking and commercial sexual exploitation involve a broad range of stakeholders, including international organizations, national governments, state and local governments, human rights organizations, social service agencies, faith-based groups, health care professionals, educators, and others. A key issue is coordination of all of these efforts. Failure to coordinate effectively results in inefficiencies, and “inefficiencies” in this realm mean that children who might have been helped instead are violated.

This subpart discusses the problems associated with the lack of coordination of response efforts. It discusses the importance of effective coordination among stakeholders and briefly highlights some initial steps that can help foster better coordination among stakeholders and more effective provision of services aimed at reducing or eliminating child exploitation. Finally, this subpart discusses some of the barriers to improved coordination among stakeholders and steps that can be taken to minimize those obstacles.

As noted above, human trafficking has attracted significant attention in recent years, and governments, international organizations, and NGOs have invested millions of dollars.¹⁶⁴ In

164. See *supra* note 1 and accompanying text (describing attention and resources directed at combating trafficking in recent years).

addition, many more governmental agencies and non-governmental organizations have joined the fight, initiating their own programs aimed at addressing trafficking and commercial sexual exploitation of children. In all of this work, little attention is paid to coordinating the work of entities engaged in this struggle. Most organizations want to be involved in a project with a tangible end product (e.g., such as a new criminal law or a new shelter for victims), yet there are serious inefficiencies in our efforts to combat trafficking and commercial sexual exploitation of children and assist victims that need to be addressed.¹⁶⁵ A 2009 U.N. Secretary-General report on coordination in the context of anti-trafficking efforts found:

[C]oordination is often lacking among various law enforcement agencies, such as immigration, workplace inspectors and police authorities. This results in agencies working at cross-purposes. . . .

Poor coordination between law enforcement and criminal justice service providers, on the one hand, and victim service providers, including NGOs, on the other, [is] a recurrent theme¹⁶⁶

In many cities, if one asks even basic questions such as “is there a list or database of organizations/agencies working on these issues here in this city?” the answer typically is “no” or, at best, “yes, but it’s incomplete or out of date.”¹⁶⁷ When one considers the fact that government agencies and social service providers often do not have a clear idea of how each agency and organization fits within the multi-sector network of services for victims, it is no wonder that victims struggle to figure out how to access services, at-risk children often do not have access to information that might help them avoid exploitation, and traffickers can continue to operate with little risk of punishment.¹⁶⁸ In short, we must do a better job of coordination, as it

165. See *supra* notes 11, 137 and accompanying text (noting that tangible results are desirable for political purposes, but asserting that the root causes of trafficking need to be addressed).

166. Background Paper of the Secretary-General, Improving the Coordination of Efforts Against Trafficking in Persons 12 (Apr. 29, 2009), *available at* <http://www.un.org/ga/president/63/letters/SGbackgroundpaper.pdf> (citation omitted) (emphasis omitted). There is significant difficulty with coordination among entities working within the United States on these issues. See, e.g., CAL. ALLIANCE TO COMBAT TRAFFICKING AND SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA: FINAL REPORT OF THE CALIFORNIA ALLIANCE TO COMBAT TRAFFICKING AND SLAVERY TASK FORCE 8 (2007) (finding that within the state of California, “[t]he delivery of and access to victim services are not always well coordinated”).

167. When I travel to various cities to speak on these issues, I regularly ask this question and most often am told that no central database exists in that particular city that accurately lists entities engaged in this work, what each entity does, and the populations each serves.

168. See CAL. ALLIANCE TO COMBAT TRAFFICKING AND SLAVERY TASK FORCE, *supra* note 166, at 84.

can produce benefits across all three areas—protection, prevention, and punishment. More effective coordination can help ensure that victims access services. It can help vulnerable children acquire knowledge and tool sets to mitigate their risk of exploitation. In addition, it can help facilitate effective collaboration among law enforcement agencies across jurisdictions so that bureaucratic obstacles are minimized and perpetrators of these crimes cannot escape justice.¹⁶⁹ More broadly, improved prevention-oriented coordination can facilitate the involvement of all sectors of society so that we can move toward our ultimate goal—preventing such exploitation of children.

At the international level, policymakers have started to recognize the value of coordination.¹⁷⁰ The U.N. has begun to highlight the need for improved coordination among stakeholders involved in combating trafficking. These efforts need to be developed much further for all forms of child trafficking and must be replicated to combat commercial sexual exploitation of children as well.

Several steps are necessary to begin to address coordination issues, including (1) development of national plans of action, as well as regional and sub-regional plans; (2) integration of all sectors into programs to combat trafficking and commercial sexual exploitation of children, and correspondingly the incorporation of anti-child-exploitation initiatives into the work of organizations operating in each sector; and (3) strengthening of inter-jurisdictional cooperation.¹⁷¹

Trafficking victims themselves often do not recognize that they have recourse under U.S. laws, so they do not report the abuse. . . . Victims – or potential victims – need to be aware of the tactics that are used to coerce and trick the vulnerable, how they can protect themselves against these actions, victims' rights in the United States and how to get help.

Id.

169. See, e.g., *id.* at 67 (“Where protocols were available, law enforcement was better able to recognize and refer human trafficking victims, largely due to coordinating with other agencies and creating written memoranda of understanding. Without such protocols and agreed upon coordination with other agencies, their work was hampered.”).

170. See, e.g., ECOSOC Res. 2006/27, pmb., U.N. Doc. E/2006/27 (July 27, 2006), available at <http://www.unhcr.org/refworld/docid/46c455ab27.html> (“[r]ecognizing that broad international cooperation between Member States, especially among related countries of origin, transit and destination, and relevant intergovernmental and non-governmental organizations and other members of civil society, is essential to counter effectively the threat of trafficking in persons”).

171. There are other issues relevant to effective coordination. For example, common definitions and language is essential to comparing work across jurisdictions and consistency in law enforcement efforts. E. ASIA & PAC. REG’L OFFICE, *supra* note 23, at 19 (“Despite years of work on the issue, with many debates and workshops on language and definitions, there remains a resounding lack of clarity on what exactly

First, a national plan of action is needed in every country. National plans of action can facilitate more effective coordination of services by identifying stakeholders, delineating tasks, and structuring channels of communication among stakeholders.¹⁷² National plans of action have been a point of emphasis recently for Council of Europe member states.¹⁷³ As a result, roughly two-thirds of European countries have established a National Plan of Action on Human Trafficking.¹⁷⁴ However, as of 2008, only nine European countries had established a national plan of action “that addresses child trafficking specifically and comprehensively.”¹⁷⁵

The content of these plans of action implicate some of the other core issues discussed in this Article. For example, UNICEF reports that thirty-seven European countries “[have]assigned an institution to take the leading role on national anti-trafficking policy development and implementation.”¹⁷⁶ However, the institution selected by each country varies significantly throughout Europe.¹⁷⁷ Choice of which institution takes the lead—e.g., the ministry of justice, ministry for children and family affairs, etc.—is significant, often meaning the difference between a law enforcement centered approach to these issues and a child-centered approach. In addition, national plans of action should include a research component which includes ongoing monitoring and evaluation of plans and programs. National plans of action should also be examined to determine

constitutes child trafficking.”). The aim here is not to raise every issue but to highlight high level considerations that can initiate the process for improved coordination.

172. See USAID, *The Albanian Initiative: Coordinated Action Against Human Trafficking*, <http://www.caaht.com> (last visited Jan. 4, 2010) (noting that coordinating action and sharing information made stakeholder’s anti-trafficking programs run more efficiently).

173. See Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *supra* note 2, Explanatory Report, pt. I(b), ¶ 16.

[M]ember states were encouraged to draw up national action plans against trafficking. To that end, the Council prepared the above mentioned model action plan against trafficking in women in 1996 and since then has encouraged the preparation of both national and regional action plans, in particular in South-East Europe and the South Caucasus.

Id.

174. UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 11. Comprehensive plans of action address “data collection and research; prevention; awareness-raising; victim identification, referral, assistance and protection; durable solutions for victims, including return, where applicable, and integration or reintegration; legal reform; law enforcement; training; and other activities.” *Id.* at 28. See also Org. for Sec. & Co-Operation in Eur., *OSCE Action Plan to Combat Trafficking in Human Beings*, Annex, OSCE Doc. PC.DEC/557/Rev.1 (July 7, 2005).

175. UNICEF INNOCENTI RESEARCH CENTRE, *supra* note 27, at 30.

176. *Id.* at 32.

177. *Id.*

whether they provide for adequate measures to ensure the meaningful participation of historically marginalized populations and youth in the program design process.

Similar shortcomings in terms of planning and coordination are evidenced in U.S. efforts. When the United States was reviewed in 2008 by the U.N. Committee on the Rights of the Child pursuant to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography,¹⁷⁸ the Committee on the Rights of the Child and leading NGOs highlighted gaps in national efforts and emphasized the importance of national-level coordination both for data collection and the development of victims services.¹⁷⁹ Subsequently, the United States adopted a new law aimed at addressing some aspects of coordination.¹⁸⁰ However, responsibility for this national plan is situated in the Attorney General's Office¹⁸¹ and is heavily weighted toward law-enforcement considerations.¹⁸²

Within the United States, the national government, each state, and key cities should have their own plan of action and should identify a coordinating agency to facilitate effective collaboration among all entities working to combat trafficking and commercial sexual exploitation of children. There should be a dynamic database in each locale, so that an interested individual or organization can readily learn which agencies in that area are working on these issues, what each agency and organization does, and which communities each agency and organization serves. Without clear tracking, there is a significant risk of duplication of efforts in some areas and total gaps in coverage in other areas.¹⁸³

Second, successfully addressing child trafficking and commercial sexual exploitation will require the involvement of all sectors of society. Not only are law enforcement, immigration, and social services agencies needed, but programs aimed at combating these abuses must also integrate the health care sector, education sector, tourism industry, transportation sector, textiles industry, and many other stakeholders that either come into regular contact with children or whose business benefits from or facilitates (often unknowingly)

178. *Concluding Observations: U.S.*, *supra* note 126, ¶¶ 1–2. As the United States is not yet a party to the CRC, but is a party to both Optional Protocols to the CRC, this marked the first time that the United States submitted a report to, and was reviewed by, the Committee on the Rights of the Child. *Id.* ¶ 2.

179. *Id.* ¶¶ 12–13; FRIEDMAN, *supra* note 29, at 2.

180. Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Protect Our Children Act of 2008, Pub. L. No. 110-401, 122 Stat. 4229.

181. *Id.* § 101(a).

182. *See id.* pmb. (asserting that the purpose of the Act is “to increase the ability of law enforcement agencies to investigate and prosecute child predators”).

183. *See* COAL. AGAINST TRAFFICKING IN WOMEN, *supra* note 142, at 14–15 (recommending the development of a central database and a tracking mechanism to increase coordination between agencies).

child exploitation.¹⁸⁴ Similarly, every entity in each of these sectors must incorporate anti-child-exploitation initiatives into their work.¹⁸⁵ For example, hospitals and other health care facilities often present one of the only windows of opportunity to identify child victims of commercial sexual exploitation when pimps, seeking to “protect their investment,” take children to emergency rooms for necessary health care.¹⁸⁶ Likewise, school officials often are well positioned to identify vulnerable children before they are subjected to exploitation.¹⁸⁷ On the other side of the problem, companies working in the tourism and transportation industries—e.g., hotels, airlines, travel agencies, transportation and shipping companies—might be inadvertently facilitating trafficking and commercial sexual exploitation of children when traffickers and pimps utilize their infrastructures and services.¹⁸⁸ Such companies can play a role in preventing these abuses of children. They must take up this task, and governments and child advocates must incorporate them into anti-trafficking and anti-child-exploitation work.

Third, inter-jurisdictional cooperation must be strengthened, as many patterns, networks, and cases of child trafficking and commercial sexual exploitation intersect with multiple jurisdictions and their agencies, including city, state, national, and international

184. See FRIEDMAN, *supra* note 29, at 2, 16 (recommending training for everyone “who may come in contact with trafficked or sexually exploited children” and commending efforts to raise awareness targeting “men who patronize prostitutes”).

185. Although this might seem like a call for an enormous amount of work, in many instances entities can take small steps to contribute to prevention efforts. For example, businesses might participate in “safe spaces” programs, providing a safe haven for children seeking to escape from commercial sexual exploitation. See Elizabeth Miller et al., *Migration, Sexual Exploitation, and Women’s Health: A Case Report from a Community Health Center*, 13 VIOLENCE AGAINST WOMEN 486, 495 (2007) (arguing that hospitals should “embrace their role in extending safe spaces” to trafficking victims). Hospitals can help identify child victims, building on their work in identifying domestic violence cases. See *id.* (providing as an example the useful function hospitals serve in providing resources to domestic violence victims and arguing that hospitals are in a position to ensure “safe case identification” for trafficking victims as well). In many instances, some additional training and incremental additional work can enable entities to play an important role, without requiring massive investment. See *id.* at 492 (noting that health care providers receive general training on screening for cases of domestic violence).

186. See *id.* at 486 (“Health care providers are in a unique position to identify and support U.S. sex trafficking victims; thus, education and training for health care professionals on trafficking is needed.”).

187. See FRIEDMAN, *supra* note 29, at 31 (including the utilization of school officials as a means of increasing victim identification as part of the Department of Education’s initiative).

188. See, e.g., Lin Lean Lim, *Introduction to THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 1, 7 (Lin Lean Lim ed., 1998) (calculating that two to fourteen percent of the Gross Domestic Product of Indonesia, Malaysia, the Philippines, and Thailand derives from sex tourism).

entities.¹⁸⁹ The U.N. Secretary General has emphasized the need for international judicial collaboration with respect to such issues as extradition, mutual legal assistance, and confiscation of proceeds of trafficking pursuant to a foreign request.¹⁹⁰ This call for better coordination across jurisdictions should not be limited only to law enforcement measures. Such coordination is equally important when assisting victims and designing and implementing prevention strategies. Similarly, enhancing cooperation across jurisdictions within countries (e.g., among federal, state, and local stakeholders) is also vital.¹⁹¹

Improved coordination among stakeholders is essential, but efforts to achieve such improvement face stumbling blocks unless adequately accounted for when addressing coordination. Three issues in particular must be addressed: (1) the need to overcome mistrust among agencies and concerns about competition for funding; (2) the need for training on these issues; and (3) the lack of priority given to coordination.

At the outset, it is important to recognize that different entities bring different perspectives and expertise to the table. No one sector can address this issue singlehandedly.¹⁹² Yet, historically in some locales, there has been mistrust among social services NGOs and law enforcement, as well as competition among NGOs.¹⁹³ While some

189. For a report on one successful multi-jurisdictional effort that highlights the complexities, see Mohamed Mattar, *Human Security or State Security? The Overriding Threat in Trafficking in Persons*, 1 INTERCULTURAL HUM. RTS. L. REV. 249, 269 (2006).

A collective effort by twelve countries in Southeastern Europe and neighboring regions deserves mentioning in this respect. In September 2003, these countries participated in a joint operation The ten-day-long operation targeted over 20,000 border crossings, bars, and nightclubs in the region and identified a total of 463 victims of sex trafficking and 595 suspected traffickers. The operation resulted in launching 319 new criminal investigations, with 207 traffickers charged under the specific anti-trafficking provisions of national legislation.

Id.

190. Background Paper of the Secretary-General, *supra* note 166, at 15–16.

191. See CHRISTINE BEDDOE, ECPAT-UK, MISSING OUT: A STUDY OF CHILD TRAFFICKING IN THE NORTH-WEST, NORTH-EAST AND WEST MIDLANDS 41 (2007) available at http://www.ecpat.org.uk/downloads/ECPAT_UK_Missing_Out_2007.pdf (reporting that one such effort to combat child trafficking involved the coordination of “all 55 Police Forces in England, Scotland, Wales, Ireland and Channel Islands and the United Kingdom Immigration Service, Serious and Organised Crime Agency (SOCA), Crown Prosecution Service and several non-governmental organisations”).

192. See, e.g., DOTTRIDGE, *supra* note 15, at 47 (“Even organisations which operate throughout a country, such as a national police force, usually lack the right expertise to take on all the types of work required at both ends of a trafficking chain, such as both prevention and providing care to children recovered from traffickers.”).

193. *Id.* at 51 (“Even in countries with a tradition of NGOs wielding influence, government agencies sometimes baulk [sic] at developing a relationship with an NGO, especially when it comes to policing matters.”).

agencies and organizations work well together, others have not. Historical reluctance to collaborate must be acknowledged and overcome. There are limits, of course, to coordination. For some NGOs, retaining independence from government is crucial to working effectively with at-risk populations, and thus the extent of their collaboration with police has limitations.¹⁹⁴ In these instances, there is still value in open channels of communication and selective collaboration where possible. Even simply being aware of each other's work can help mitigate the chances that one entity's work will undermine that of the other or that a victim or vulnerable child will slip through the cracks and fail to receive services or adequate protection from exploitation. Similarly, NGOs must be careful that concerns over competition for funding do not get in the way of supporting work that can advance efforts combat child trafficking and commercial sexual exploitation.¹⁹⁵ Financial pressures are very real for NGOs, but improved coordination does not have to mean sacrificing funding. Although limitations to coordination exist in some areas, all entities and agencies working on these issues must recognize that the core stakeholders on this issue are not going to change in the near future and that each can play an important role. They also must recognize that a failure to coordinate effectively with other agencies and organizations puts children in jeopardy of missing out on needed protection or services. Therefore, entities must find better ways to coordinate agendas and programs in order to maximize protection and benefits for victims and at-risk children.

Second, many individuals and organizations in various sectors that have connections with these forms of child exploitation are unfamiliar with these issues and may not have been educated about the existence of these problems, how to recognize potential child exploitation scenarios, and when and how to respond appropriately. In the past decade, I have spoken to numerous individuals and organizations that were learning for the first time that children around the globe, including in their own cities and towns, are victims of trafficking and commercial sexual exploitation. Their subsequent desire to get involved immediately and their passion for the issues are important and should not be discouraged. However, simply having them "enter the fray" without sufficient training runs the risk of doing more harm than good in some cases. Without understanding the complexities of the issues of trafficking and commercial sexual exploitation or without understanding the cross-cultural issues that

194. See *id.* at 51 (noting that in cooperating with law enforcement, NGOs might run the risk of "being perceived as police informers").

195. *Id.* at 72 (noting the potential risk that "preoccupation by donor and evaluators with being able to measure impact may reduce the funding available for preventive action").

arise in community outreach in various communities, their rush to help might end up fracturing relationships or interfering with law enforcement efforts. Similarly, in other sectors, such as the transportation industry, many individuals may be wholly unaware that they are coming into contact with exploited children. For example, commercial sexual exploitation thrives along trucking routes,¹⁹⁶ and thus individuals in the trucking business need to be educated and trained on these issues so that they can play a role in preventing further exploitation of children—or at the very least not facilitate further harm to children.

Third, projects aimed solely at improving coordination can be time-intensive and typically do not produce easily definable results.¹⁹⁷ Donors need to be convinced of its importance, and NGOs and government agencies need to prioritize it. Efforts aimed at improving coordination must also be monitored and evaluated so that the benefits of coordination can be measured accurately, its value demonstrated, and best practices for coordination identified.

As with the other issues previously discussed, effective stakeholder coordination faces obstacles, but they are not insurmountable. Political will is vital. Prevention of child trafficking and commercial sexual exploitation will be enhanced if attention and resources are dedicated to addressing coordination challenges. Successful coordination among all stakeholders at the international, regional, national, and local levels and across all relevant sectors—law enforcement, the judicial system, immigration, healthcare, education, social services, academia, etc.—is essential to the sustainability and success of efforts to prevent the trafficking and commercial sexual exploitation of children.¹⁹⁸ It is also instrumental to identifying and sharing best practices. Overall, improved coordination will help realize efficiencies and maximize the return on investment of resources in this area. Given the current global economic crisis, it is even more important to ensure that resources are used efficiently and effectively, and improved coordination among stakeholders is central to achieving that goal.

196. See, e.g., The Protection Project, Human Rights Report: Poland, http://www.protectionproject.org/human_rights_reports/report_documents/poland.doc (last visited Jan. 4, 2010) (“Trafficking between Poland and Germany occurs mostly along the major truck routes.”).

197. See DOTTRIDGE, *supra* note 15, at 38 (asserting that although “[i]t may take time,” NGOs “can potentially team up quite easily with others”).

198. SOUTH ASIA IN ACTION, *supra* note 79, at 28; see also DOTTRIDGE, *supra* note 15, at 32 (discussing debt bondage and noting that “when the debt is incurred in one country and a migrant is subjected to coercion and threats in another, no single government can enforce a ban on debt bondage”).

E. *The Interrelationship Among Rights*

An extensive body of international law recognizes every child's right to live free from trafficking and commercial sexual exploitation.¹⁹⁹ Although the trafficking and commercial sexual exploitation of children are addressed in specific articles of international conventions or even separate treaties—such as CRC Article 34 (“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.”)²⁰⁰ or the Trafficking Protocol²⁰¹—these crimes impose harms on children that affect a broad range of rights. Conversely, the root causes of vulnerability of children to these abuses also cuts across many rights.²⁰² An examination of why a child becomes vulnerable to exploitation and the impact of such exploitation reveals the interrelated nature of rights. As one study on child trafficking reports,

[t]here is no single reason why children are trafficked, but rather a wide range of factors and layers of vulnerabilities related to children as individuals, their families, and the socio-economic context in which they live. Child victims of trafficking are rarely affected by only one factor; rather it is the compounding of several factors that renders them susceptible to being exploited.²⁰³

These various factors implicate a broad array of the child's rights, including the right to a nationality and citizenship, the right to birth registration, the right to be free from discrimination, health rights, education rights, and more.²⁰⁴ How these rights intersect with each other and impact each other and the child's ability to realize his or her rights thus has significant implications for developing and implementing programs aimed at preventing child trafficking and commercial sexual exploitation or providing assistance to victims.

This subpart discusses the interrelationship among rights and its particular implications for vulnerable children. It subsequently explains how, to date, laws, policies, and programs have not

199. See, e.g., Trafficking Protocol, *supra* note 2; CRC Protocol, *supra* note 2; CRC, *supra* note 103; Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *supra* note 2; Council of Europe Convention on Action Against Trafficking in Human Beings, *supra* note 2; Int'l Labour Org. [ILO], Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, ILO Doc. C182 (June 17, 1999), available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>.

200. CRC, *supra* note 103, art. 34.

201. Trafficking Protocol, *supra* note 2.

202. Todres, *supra* note 129 (noting that the root causes of sex trafficking implicate a need to ensure a host of other rights).

203. E. ASIA & PAC. REG'L OFFICE, *supra* note 22, at 24.

204. Todres, *supra* note 129, at 888; see also E. ASIA & PAC. REG'L OFFICE, *supra* note 22, at 53–54 (discussing the importance of birth registration and education in prevention strategies).

sufficiently accounted for the interdependent nature of rights. Finally, it briefly discusses some challenges in developing programs to prevent trafficking and commercial sexual exploitation of children that effectively account for the interrelationship among rights.

Today, as discussed above, governments have failed to sufficiently prioritize prevention and develop prevention programs to address these abuses of children. Successful prevention measures must account for and address the root causes or systemic issues that make certain children more vulnerable to exploitation. Typically, the most marginalized children are at greatest risk of exploitation.²⁰⁵

Examining vulnerability leads to a recognition of the interdependent and indivisible nature of human rights. For example, children whose births are not registered or whose health and education rights are impeded are more vulnerable to exploitation.²⁰⁶ More specifically, unregistered children often encounter obstacles in accessing health care services.²⁰⁷ Children without a regular source of health care more frequently have unmet health needs,²⁰⁸ and children with unmet health needs are more likely to miss school, fall behind their classmates, and be at greater risk of dropping out of school.²⁰⁹ Youth who do not finish school enter the workforce at a younger age with fewer skills, leaving them at heightened risk of trafficking and exploitation.²¹⁰ Furthermore, children who suffer

205. See *supra* note 59 (discussing heightened vulnerability of historically-marginalized groups).

206. See DOTTRIDGE, *supra* note 15, at 69; *Birth Registration: Right From the Start*, INNOCENTI DIGEST, March 2002, at 1, 4–6 (discussing the importance of birth registration).

207. *Birth Registration: Right From the Start*, *supra* note 206, at 5.

208. See Paul W. Newacheck et al., *Health Insurance and Access to Primary Care for Children*, 338 N. ENG. J. MED. 513, 514–16 (1998) (demonstrating that children with no health insurance are consistently less likely to receive adequate medical care).

209. MATTHEW C. H. JUKES ET AL., *SCHOOL HEALTH, NUTRITION AND EDUCATION FOR ALL: LEVELING THE PLAYING FIELD* 41 (2008); FRESH, *Focusing Resources on Effective School Health: A Fresh Start to Improving the Quality and Equity of Education*, <http://www.freshschools.org/Pages/LinksDocuments.aspx> (“Poor health and malnutrition are important underlying factors for low school enrollment, absenteeism, poor classroom performance, and early school dropout . . .”); see also JOY MILLER DEL ROSSO & TONIA MAREK, *CLASS ACTION: IMPROVING SCHOOL PERFORMANCE IN THE DEVELOPING WORLD THROUGH BETTER HEALTH AND NUTRITION* 11 (1996) (reporting that “[h]ealthier and better nourished children stay in school longer, learn more and become healthier and more productive adults”); Deborah L. Crooks, *American Children at Risk: Poverty and Its Consequences for Children’s Health, Growth, and School Achievement*, 38 AM. J. PHYSICAL ANTHROPOLOGY 57, 57 (1995) (“Poor health and poor growth are likely to lead to poor school achievement via deficits in cognitive functioning, behavior and activity, and increased absenteeism and school failure.”).

210. See DOTTRIDGE, *supra* note 15, at 69 (explaining that formal and informal education decreases the risk of exploitation). Moreover, schools provide not only basic education but also information on the types of exploitation to which children may be subjected. *Id.* Missing school means losing out on these opportunities as well.

from stigma and discrimination, whether based on race, ethnicity, sex, sexual orientation, or other protected characteristics, are more likely to be marginalized and thus vulnerable to exploitation. In other words, a host of rights—including, but not limited to, the right to be free from discrimination, the right to birth registration, the right to a nationality, health rights, and education rights—are vital to keeping children out of exploitative settings, and each of these rights (and the extent to which they are realized or impeded) have an impact of the other rights of the child.

Therefore, sector-specific laws, policies, and programs (e.g., a new education law that increasing funding for education) might benefit many children but may not reach the most marginalized children. These children face multiple obstacles that reach beyond issue-specific responses as many of their rights are frequently impeded. Thus, narrowly-tailored anti-trafficking programs might not be sufficient to ensure that the most vulnerable children are safe from exploitation. For the most marginalized children, a comprehensive, multi-sector response that addresses all of their interrelated rights is the only way to ensure their protection and well-being.

Today, there is widespread acknowledgment that rights are interrelated and/or interdependent.²¹¹ In the context of trafficking and commercial sexual exploitation of children, however, there has been only passing reference to this concept. International conventions mention root causes briefly but impose only weak obligations on states to address those issues, for example, by only mandating that states “take steps” toward addressing such factors.²¹²

211. See, e.g., C.H.R. Res. 2001/30, ¶ 4(d), U.N. Doc. E/CN.4/RES/2001/30 (Apr. 20, 2001) (reaffirming “the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms”); Philip Alston, *Economic and Social Rights*, 26 *STUD. TRANSNAT’L LEGAL POL’Y* 137, 147 (1994) (“[S]upport for the notion that the two sets of rights [civil and political and economic, social and cultural rights] are interdependent is widespread and is clearly reflected in international human rights instruments.”).

212. See, e.g., Trafficking Protocol, *supra* note 2, art. 9(4) (requiring states to parties to take steps to “alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity”); CRC Protocol, *supra* note 2, art. 9(1) (“States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.”); Council of Europe Convention on Action Against Trafficking in Human Beings, *supra* note 2, art. 5 (requiring member states to “establish and/or strengthen social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings”). The COE Convention further requires states parties to “promote a Human Rights-based approach and . . . use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all [such] the policies

Even the most recent multilateral treaty in this area has fallen short on this point: the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which does well to identify that a broad range of sectors of society must be engaged in the prevention of sexual exploitation of children, does not contain any provisions that explicitly address the interrelationship among rights and the need to address root causes.²¹³ Similarly, treaty bodies (those committees responsible for monitoring implementation of human rights treaty provisions) have missed opportunities to highlight the interrelated nature of rights, typically mentioning only in passing the importance of a holistic approach to addressing rights and vulnerability. Accounting for the interrelationship among rights when combating trafficking and commercial sexual exploitation of children will help communities identify and reach at-risk individuals before they are subjected to abuses through trafficking and commercial sexual exploitation.²¹⁴

Accounting for the interrelated nature of human rights will not happen easily. It creates several challenges for child exploitation prevention efforts. It means that measures to assist children, particularly the most vulnerable children, must be more comprehensive and integrated than they traditionally have been. This means that successful prevention of child exploitation will require significantly greater resources than have been allocated to date, which will be especially difficult in resource-constrained environments (where many of the most vulnerable children live). Developing a comprehensive response also adds significant complexities at the design and implementation phases. In addition, it puts increased value on the importance of effective coordination—an issue that presents its own challenges, as discussed in Part II.D.²¹⁵

With respect to all of these challenges, it will be essential to educate policymakers on the importance of allocating greater

and programmes . . .” *Id.* art 5(3). And finally, speaking directly to the issue of child exploitation, the COE Convention requires states parties to “take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.” *Id.* art. 5(5).

213. Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *supra* note 2, art. 4 (“Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.”); *id.* art. 5(1) (“Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.”).

214. See C.H.R. Res. 2001/30, *supra* note 211, ¶ 4(b) (discussing the “inextricable link between full respect for the rights . . . and the process of development”).

215. See, e.g., U.S. Gov’t Accountability Office, *supra* note 141, at 27 (“[L]ack of a coordinated strategy creates the risk of overlap and fragmentation that may result in wasting scarce funds and limiting program effectiveness.”).

resources. In many instances, low-cost interventions can be developed to minimize the burden on government and NGO budgets. For example, school lunch programs in very poor areas simultaneously reduce malnutrition (enabling greater educational achievement) and incentivize attendance (thus also facilitating educational advancement, while keeping children from entering the work force too young).²¹⁶ This low-cost program has multiple benefits, including reducing vulnerability to trafficking and commercial sexual exploitation.

Equally important, the additional pressure on resources created when confronting the interrelationship among rights can be offset to a significant extent by efficiencies gained through addressing the other issues mentioned in this article. Knowledge gained through evidence-based research will facilitate more cost-effective targeting of areas with the greatest need. A more inclusive program design process will ensure that the best ideas emerge early and effective strategies are employed; in addition, improvements in coordination of stakeholders should lead to more effective resource utilization. In other words, the issues discussed in this Article not only lead to improvements with respect to substantive measures adopted but also cross-fertilize one another.

In sum, understanding and accounting for the interrelationship among rights is an essential step in developing effective prevention programs that address the root causes of vulnerability and ensure that the most marginalized children benefit from society's investment in measures to combat trafficking and commercial sexual exploitation. This step is also essential to ensuring that victims of such abuses similarly benefit by being able to access the services necessary for full recovery and reintegration into their communities in order to prevent further exploitation.

216. Free lunch programs in schools in poorer communities simultaneously reduce malnutrition and encourage attendance. *See, e.g.*, Association Francois-Xavier Bagnoud, Programs for AIDS Orphans and Vulnerable Children, at 14 (noting that programs in South Africa that provide meals for children orphaned by AIDS during school also have after-school component "where the children receive information on the prevention of HIV/AIDS, prevention of violent behavior, promotion of self-respect, respect for others and the Rights of the Child"); *see also* USDA, Food and Nutrition Service, National School Lunch Program, http://www.fns.usda.gov/cnd/Lunch/AboutLunch/ProgramHistory_8.htm (last visited Jan. 4, 2010) (describing how the National School Lunch Program addresses the problem of malnutrition in the U.S. and quoting a Wisconsin school official, who asserted that attendance at the school had improved as a result of the program).

III. COST AND THE SYNERGISTIC NATURE OF COMPREHENSIVE STRATEGIES

The most common critique of calls for comprehensive strategies is that they will cost too much and thus are not feasible. This Article offers two responses to that line of thinking. First, I submit that the above steps are essential to consider if we are going to be successful in reducing child exploitation. Rejecting a comprehensive strategy means continuing with piecemeal approaches that do not really prevent such exploitation of children but only address—and frequently inadequately—harm after it occurs. Further, ignoring the need for comprehensive strategies because of cost suggests that we cannot, or choose not to, find the money to prevent children from being violated. Stopping the trafficking and commercial sexual exploitation of children merits higher priority than that. Second, as discussed in this section, the connections among the five issues discussed in Part II suggest that making progress in each of these areas will improve the efficiency of prevention measures, thereby saving resources. Therefore, over the long-term, the total cost may not be as great as anticipated and might decline over time as savings are realized.

As evidenced by the past decade of major action by governments and civil society and the continued incidence of child trafficking and commercial sexual exploitation, a piecemeal approach that is oriented toward dealing with the aftermath of harm to children is not bringing us closer to our goal of eliminating such abuses. It has resulted in a small number of convictions of perpetrators of these abuses and limited assistance to a very select number of victims.²¹⁷ Although each such individual case—the conviction of a child exploiter or the provision of assistance to a child victim—is a “victory,” these victories have been few and far between. Far more often, we have failed to prevent such grievous harm to children.²¹⁸

Our efforts are not reaping the benefits we had hoped, and in some cases, they are exacerbating the harm. Recall the results from some jurisdictions’ efforts to help by increasing the minimum age for working in adult entertainment clubs—some girls ended up in

217. See *supra* notes 140, 155–56 and accompanying text (providing data on disappointing conviction numbers and discussing difficulties in making services available to victims).

218. With the annual number of “victories” typically calculated in the hundreds or low thousands, and victims in the millions, the gap is dramatic. Compare *supra* note 140 and accompanying text (reporting low numbers of identified victims and convictions), with *supra* note 4 and accompanying text (providing statistics on child victims of trafficking).

underground prostitution rings in greater danger.²¹⁹ In addition, when incremental measures are achieved (e.g., a new criminal law or the opening of a shelter for victims), often victory is declared, running the risk of leading policymakers and the general public to conclude that the problems of trafficking and commercial sexual exploitation of children have been addressed. They view the adopted measure as the solution rather than one of many necessary steps.²²⁰ Incremental steps can result in progress, but governments and the public must be educated as to the fact that ending such abuses of children will not be easy and will not come from a new law or policy but rather from a comprehensive, sustained effort over many years. There are huge incentives for perpetrators of these abuses to continue to seek to exploit children.²²¹ Policymakers and the general public also must be educated on the importance of situating all measures within a broader, prevention-oriented, comprehensive strategy. A prevention-oriented approach will highlight the importance of social programs, development initiatives, and other measures needed to address the root causes of these problems.²²²

Second, although the call for comprehensive prevention strategies might seem overwhelming, moving in the direction of a comprehensive prevention-oriented strategy will result in synergies that realize benefits and save resources. A complete list of potential efficiencies is well beyond the scope of this Article, and many opportunities for efficiency and savings will be unveiled only as the process evolves, research is completed, and new ideas are brought to the table. Below, however, are several illustrative examples.

At the most fundamental level, if governments make progress with prevention, that not only will help children avoid terrible harm but also will reduce the amount of money needed for both law enforcement and assistance to victims. If the number of victims declines over time, there will be a reduced need for shelters. In the short term, there is a need for many more shelters for child victims of

219. See *supra* notes 13, 14 and accompanying text (discussing the potentially dangerous results of regulations increasing the minimum age of exotic dancers).

220. See, e.g., *Venice Bans Begging, Aims to End Child Exploitation*, VANCOUVER SUN, Jul. 25, 2008, at A8 (describing a city's policy against begging as an intended damper on child exploitation).

221. The incentives in the multi-billion dollar enterprises of illicit trafficking and sexual exploitation of children are enormous. See *supra* note 145 and accompanying text (discussing the profitability of trafficking).

222. On the importance of sustainable development, see U.N. Dep't Econ. & Soc. Affairs, Background Paper of the Div. for Sustainable Dev., Guidance in Preparing a National Sustainable Development Strategy: Managing Sustainable Development in the New Millennium 16–28, U.N. Doc. DESA/DSD/PC2/BP13 (Feb. 8, 2002). For a database of best practices worldwide, see generally UN-Habitat, Best Practices Database in Improving the Living Environment, <http://www.bestpractices.org> (last visited Jan. 4, 2010).

trafficking and commercial sexual exploitation,²²³ but that can decline over time once efforts begin to focus on prevention.

In addition, each of the five issues discussed above offers potential benefits with respect to some or all of the other issues. Progress on evidence-based research will reap benefits in terms of better-tailored programming, can help facilitate the development of methodologies for implementing a child-centered approach, and might identify ways to account effectively for the interrelated nature of rights. Involving historically marginalized populations and youth in program design might reveal better ways to conduct research effectively in those communities. A more inclusive program design process will ensure that the best ideas emerge early and effective strategies are employed for preventing child exploitation. It might also unearth overlooked resources that could be brought to the table to assist communities in preventing child exploitation. Ensuring diversity at the program and policy design stage can help reduce the impact of bias, stigma, and discrimination, addressing one of the root causes of exploitation and a key to managing the interrelated nature of rights.²²⁴ Reducing bias and ensuring broad-based participation in program design can also facilitate efforts to foster better coordination.²²⁵ Enhanced coordination will reduce inefficiencies across a range of prevention-related measures as well as in law enforcement and victim assistance programs.

The issues discussed in this Article are all interconnected. As steps are taken to develop a comprehensive, prevention-oriented strategy, there are efficiencies to be gained. Policymakers and child advocates must engage in more deliberate analysis of proposed laws, policies, or programs. Identifying potential risks associated with new policies or programs at the program design stage will allow for modifications that can minimize the risk of harm to children. Involving marginalized populations and youth in program design and evaluation will help identify risks associated with specific proposals. Research, in particular monitoring and evaluation projects, can also provide additional data once projects have been in place for a period of time, so that programs can be modified as needed and best practices identified and employed.²²⁶

223. See *supra* note 159 (discussing the scarcity of shelters for trafficking victims).

224. See *supra* note 97 and accompanying text (discussing the need for participation from various groups in the community in program development).

225. Background Paper of the Div. for Sustainable Dev., *supra* note 222, at 18 (asserting that “horizontal integration,” or “the coordinated involvement of various sectors in strategy development” is a necessary component in sustainable development).

226. See *supra* note 54 and accompanying text (discussing the importance of including a monitoring and evaluation component).

In sum, refocusing our efforts toward a comprehensive, prevention-oriented approach to child trafficking and commercial sexual exploitation will not be an easy transition. However, it is clear that a piecemeal, after-the-fact strategy is failing to protect our children. Although it might appear to be a daunting task, this section highlights the potential benefits to be gained by moving in this direction, making the viability of a comprehensive prevention strategy more feasible both politically and economically.

IV. CONCLUSION

How is it that millions of children continue to be subjected to some of the harshest forms of abuse and exploitation every year? Complacency certainly plays a role. Too often, governments and the public fail to mobilize sufficiently to prevent such exploitation. Tolerance of human rights violations must end. However, action itself is not sufficient. As detailed in this Article, many countries have adopted measures to address the trafficking and commercial sexual exploitation of children only to find minimal success at best.²²⁷ In many cases, these efforts have produced lower-than-expected returns. A primary reason for the limited success of substantive measures aimed at combating these abuses of children is the failure to develop comprehensive, prevention-oriented strategies for addressing such exploitation of children. Developing and effectively using reliable research, ensuring the meaningful involvement of marginalized populations and youth in program design, employing a child-centered approach to these issues, improving stakeholder coordination, and accounting for the interrelationship among rights are vital steps to achieving a comprehensive response to child trafficking and commercial sexual exploitation. If governments, international organizations, and child advocates pay greater attention to these issues, they will increase the likelihood of developing measures that will succeed in preventing the trafficking and commercial sexual exploitation of children.

227. See *supra* note 11 (noting that while there has been a significant increase in criminal legislation aimed at addressing trafficking, the problem nonetheless continues).