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ENSURING DECENT WORK FOR DOMESTIC WORKERS: AN INTEGRAL APPROACH TO THE PREVENTION OF LABOR TRAFFICKING

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I. Introduction

Human rights advocates and academic researchers are beginning to focus more intensely on domestic servitude as a widespread form of labor trafficking. This is critically important: slaves, especially those enslaved in domestic servitude, tend to remain invisible unless someone actively searches for them.¹ In this regard, the interaction between advocates and academic researchers is important.² As advocates concentrate their efforts on the rescue, restoration, and rehabilitation of domestic slaves, researchers can provide the analytics that can inform measures of prevention. The International Labor Organization Convention Concerning Decent Work for Domestic Workers,³ concluded in the summer of 2011, is

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¹ An earlier version of this paper was presented at the symposium, “Justice at the Door: Ending Domestic Servitude,” organized by St. Thomas University School of Law through the INTERCULTURAL HUMAN RIGHTS LAW REVIEW and its Graduate Program in Intercultural Human Rights’ Human Trafficking Academy, January 27, 2012.

² Elzbieta Gozdzia et al., *Research on Human Trafficking in North America: A Review of Literature*, 43 INT’L MIGRATION 99 (Jan. 2005). “A great deal of research has been focused on trafficking for sexual exploitation, to the detriment of investigating trafficking for bonded labor or domestic servitude.” *Id.* at 117.

³ Int’l Labor Org. [ILO], Convention Concerning Decent Work for Domestic Workers, ILO C189 (June 16, 2011), *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:2551460 [hereinafter C189].

an important achievement in this regard. This convention provides for a series of labor rights protections for domestic workers which, if strictly enforced, could lead to the prevention of domestic servitude. Indeed, this article argues that the strict enforcement of international labor standards, together with efforts to eliminate discrimination against migrants, racial and ethnic minorities, and women, are critical to the prevention of all forms of labor trafficking.

More specifically, this article analyzes domestic servitude as a form of human trafficking for the purpose of forced labor in relation to the broader phenomenon of less severe forms of labor abuse and exploitation, and discrimination based on the race, ethnicity, gender, and migration status of trafficking victims. On the basis of this analysis, the article argues for an integral approach to the prevention of labor trafficking. Its basic premise is that the law enforcement approach to prevention, outlined in the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention on Transnational Organized Crime (Palermo Protocol),⁴ alone is inadequate to prevent labor trafficking as the most severe form of labor abuse and exploitation. Thus, the strict enforcement of the labor protections set forth in the Convention Concerning Decent Work for Domestic Workers, and other International Labor Organization (ILO) conventions, is critical to the global abolitionist movement. Similarly, the fulfillment of state obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁵ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁶ is necessary to address the social and cultural attitudes and practices that permit labor abuse and exploitation and, ultimately, labor

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol].

⁵ International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD].

⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

trafficking.

The first section of this article situates labor trafficking, including domestic servitude, on a continuum of labor abuse and exploitation, by way of a discussion of the Convention Concerning Decent Work for Domestic Workers. Here the paper cautions against the equal and opposite dangers of categorizing all domestic labor abuse as domestic servitude on the one hand, and ignoring less severe forms of labor abuse, on the other. Moreover, it argues that the strict enforcement of ILO standards aimed at reducing labor abuse and exploitation is necessary to prevent involuntary labor, including involuntary labor in the home. The second section examines the evidence of domestic servitude in the United States. For the purposes of this article, the most striking aspect of the available evidence is what it reveals about the connection between domestic servitude, as a form of labor trafficking in general, and poverty, migration ethnicity, and gender. This analysis supports the inference that discrimination explains the cruel, inhuman and degrading treatment human traffickers inflict on those they enslave. The third section analyzes discrimination under three aspects: the impact of discrimination on human dignity and rights; state obligations under international human rights law to eliminate all forms of discrimination; and the mentality of those who abuse and exploit others. This discussion demonstrates the necessity to modify social and cultural patterns of conduct and customary practices that perpetuate racial, gender, and other forms of discrimination, thereby leading to serious violations of human dignity and fundamental rights. The final section frames the contours of an integral approach to the prevention of domestic servitude and other forms of labor trafficking.

II. Domestic Servitude, Labor Trafficking, and Labor Abuse and Exploitation

Domestic servitude is a form of labor trafficking which occurs in the context of domestic work. Partly because of the ill-defined and under-regulated nature of domestic work, domestic

workers are vulnerable to a wide range of abuses. It is critically important to take those abuses seriously in order to ultimately address the most serious form of domestic worker abuse: domestic servitude. The ILO and other international bodies have long been concerned about the rights of domestic workers because of the sheer magnitude of the phenomenon of domestic work. The ILO, analyzing data from 177 countries, estimates there are between 52 and 100 million domestic workers.⁷ Because domestic work is ill-defined and under-regulated, the ILO highlighted the need for comprehensive legal protections for domestic workers in a 2010 report.⁸ The ILO took up the report's recommendations at the 100th ILO annual conference, and adopted the Convention Concerning Decent Work for Domestic Workers (the Convention).⁹

The Convention is an important achievement. First, it set forth a remarkably simple definition of domestic work that captures the essence of a form of labor that encompasses a vast range of tasks. Domestic work, simply, is work in or for the household within an employment relationship.¹⁰ More importantly, the Convention explicitly applies labor rights protections to a category of largely informal work that is prone to abuse. As the Preamble notes "domestic work is undervalued, invisible and mainly carried out by women and girls, many of whom are migrants or members of

⁷ YAMILA SIMONOSVKY & MALTE LUEBKER, CONDITIONS OF WORK & EMPLOYMENT PROGRAMME (TRAVAIL), INT'L LABOUR OFF., DOMESTIC WORK POL'Y BRIEF 4, GLOBAL AND REGIONAL ESTIMATES ON DOMESTIC WORKERS 8 (May 27, 2011), available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155951.pdf.

According to the report, Asia and Latin America are the two largest regions (Asia with an estimated twenty-one million or 40% of all domestic workers worldwide; Latin America with nineteen million or 37%; selected advanced countries, not including the United States, constitute 3.5 million or .09%).

⁸ Int'l Labor Org., *Decent Work for Domestic Workers*, ILC.100/IV/1 (2010), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143337.pdf.

⁹ C189, *supra* note 3.

¹⁰ *Id.* Article 1 provides, in part: "The term 'domestic work' means work performed in or for a household or households. . . . The term 'domestic worker' means any person engaged in domestic work within an employment relationship." *Id.* art. 1(a)-(b).

disadvantaged communities and who are particularly vulnerable to discrimination in terms of employment and of work, and to other abuses of human rights.”¹¹ The principal concern of the Convention, laid out in article 3, is “the effective protection and promotion of the human rights of all domestic workers.”¹² Thus, it obligates parties to the Convention, or member states, to protect the right to freedom of association and collective bargaining and to eliminate discrimination with respect of employment and occupation. The Convention addresses a wide range of issues including terms of employment and decent working conditions, minimum wage, regular pay, weekly rest, paid annual leave, worker health and safety, and other related matters.

To be sure, the Convention’s article 3 specifically calls for the “elimination of all forms of forced or compulsory labour” in the setting of domestic work;¹³ although notably the term “domestic servitude” appears nowhere in the Convention. Similarly, article 5 calls for measures to protect domestic workers from “all forms of abuse, harassment and violence;”¹⁴ a provision that is also pertinent to domestic servitude. Article 8 addresses the situation of migrant domestic workers (MDWs) who are particularly susceptible to abuses, including trafficking.¹⁵ However, it is important to note that the Convention places domestic servitude in the broader context of labor abuse and exploitation. The ILO made this clear in the 2010 report which laid the foundation for the convention: “domestic workers are particularly vulnerable to discrimination, exploitation and abuse, without this necessarily constituting trafficking or forced labour.”¹⁶

In a 2001 report, Human Rights Watch made a similar distinction between labor abuse and exploitation and labor

¹¹ C189, *supra* note 3, at Preamble.

¹² *Id.* art. 3.

¹³ *Id.* art 3.

¹⁴ *Id.* art 5.

¹⁵ *Id.* art. 8.

¹⁶ Int’l Labor Org., *supra* note 8. Notably, the report establishes the connection between discrimination, abuse and exploitation. *Id.* This connection is analyzed more thoroughly in the following sections of this article.

trafficking.¹⁷ Addressing the situation of migrant domestic workers, and more specifically “live-in” MDWs with special visas in the United States, the report found:

[E]mployers exploit the power imbalance in the employment relationships to violate workers’ rights, including the rights to freedom of movement, to freedom of association, to privacy, to just and favorable conditions of work, including a healthy and safe workplace and fair remuneration, to health, to be protected against sex discrimination, including sexual harassment, and not to be held in servitude or required to perform forced labor.¹⁸

Those who defend the rights of migrant workers are keenly aware that migrant workers, whether they toil in homes, fields, restaurants or factories, experience abuse and exploitation. They earn minimum and often sub-minimum wages for labor-intensive work; they work long hours without overtime pay and without health, retirement or unemployment benefits; and they toil in unhealthy and dangerous working conditions. Yet, these forms of abuse and exploitation fall short of involuntary labor. For one thing, labor abuse and exploitation lack the elements of “force, fraud or coercion” set forth in article 3 of the Palermo Protocol. Migrant workers, especially undocumented migrant workers, accept work on these unfavorable and exploitative terms. They may accept them because they have no other options due to their migration statutes or other factors; but they accept them. These forms of abuse and exploitation are serious enough to warrant a response from advocates, even though, for the purposes of the law, they fall short of involuntary labor.

Mindful of the importance of distinguishing common forms of abuse and exploitation from labor trafficking, including domestic

¹⁷ *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* 13 HUM. RTS. WATCH 2(G) , 5 (June 2001) [hereinafter H.R. Watch Rep.], available at http://www.esclavagemoderne.org/media/hrw_abuse_domestic_workers_specialvisas.pdf.

¹⁸ H.R. Watch Rep., *supra* note 17.

servitude, the Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, of the Organization for Security and Cooperation in Europe (OSCE) offered three threshold criteria:

Poor living and working conditions: Victims of domestic servitude are subject to extremely long hours, usually going beyond 12 hours and even amounting to 18 hours a day. They often systematically lack sufficient sleeping hours. . . Victims of domestic servitude usually live with their employer and have no private living space. They are often given scarce or poor food, they suffer real starvation.

Low or no wages: . . . Even if the worker receives a certain amount of money, insufficient wages can still be considered an important component of domestic servitude when such an amount, in addition to not being commensurate with the working hours, does not go beyond mere subsistence.

Violation of human dignity and autonomy: Human dignity is violated when people are psychologically or sexually abused; when they are subjected to violent punishment; when they bear racist or discriminatory behavior because of their racial or ethnic origin . . . when they constantly abused even if only verbally, and subject to continuous humiliation.¹⁹

The statement is reproduced at length to draw attention to its main descriptors: poor living and working conditions, extremely long hours, systematic lack of sleep, real starvation, no wages beyond mere subsistence, psychological and sexual abuse, violent punishment, and continuous humiliation. These conditions are far in

¹⁹ Organization for Security & Cooperation in Europe [OSCE], *Unprotected Work, Invisible Exploitation: Trafficking for the Purposes of Domestic Servitude*, Rep. of the Tenth Alliance Against Human Trafficking in Persons Conference, 23 (June 17-18, 2010) [hereinafter OSCE Rep.], <http://www.osce.org/cthb/75804>.

excess of the conditions of abuse and exploitation too often associated with the work of migrants and others.

Coming now to the point of this discussion, analytically, domestic servitude should be located on a continuum of labor abuse and exploitation. That continuum runs from no abuse or exploitation (through wage, hour, and occupational health and safety violations) to labor trafficking (including domestic servitude as a specific form of labor trafficking that involves work in or for the household within an employment relationship). Labor trafficking in general, and domestic servitude more specifically, constitute the most severe form of labor abuse and exploitation. In this regard, domestic servitude is conceptually analogous to torture: exploitative labor practices are to domestic servitude and other forms of labor trafficking as what "other cruel, inhuman and degrading treatment and punishment" are to torture.²⁰ Severity is the critical differential.²¹

It is critically important that researchers and advocates focus more intentionally on domestic servitude. There is a dearth of research on the specific characteristics of this form of labor trafficking that can guide advocacy. This focused research and advocacy must place domestic servitude in the broader context of labor abuse. Failure to contextualize domestic servitude would be to invite two equal and opposite dangers. One error would be to categorize all labor abuse and exploitation as labor trafficking and all forms of abuse of domestic workers as domestic servitude. This would risk the credibility of an abolitionist movement which must still convince broad segments of the population that slavery exists in various forms in the United States. If everything is trafficking, then nothing is trafficking. The other error would be to effectively ignore other forms of labor abuse and exploitation that fail to meet the legal standard of labor trafficking. Less severe forms of labor abuse and exploitation are as worthy of the attention of advocates for the simple reason that workers who suffer less severe forms of abuse are as worthy of protection and concern as those who suffer the most severe

²⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, PmbL., Dec. 10, 1984, 1465 U.N.T.S. 85, 23 I.L.M. [hereinafter CAT].

²¹ *Id.* art 16.

forms. This may be particularly pertinent in situations where public authorities, mindful of the need for migrant labor, might be willing to ignore less severe forms of labor abuse and exploitation.

Moreover, this bears on the practical matter of the rescue of victims of domestic servitude. As the crime is clandestine, identifying trafficking victims is substantially challenging. The transnational criminal syndicates engaged in human trafficking are adept at avoiding detection and are able to buy protection from corrupt governments or police officials. There are large gaps in the training of first responders that would assist in the identification of victims. Ordinary citizens are generally unaware of the signs of human trafficking despite the proliferation of public awareness campaigns. Above all, victims of human trafficking are too isolated and too fearful to reveal themselves.

The challenges of identifying those held in domestic servitude are particularly formidable. Domestic slaves are held captive behind the doors of affluent homes whose owners escape suspicion because of their wealth and social status. The right to privacy the law attaches to the home further shields those who abuse and exploit their domestic workers from intrusion by government regulators. This problem is especially acute in the case of foreign diplomats who enjoy varying degrees of diplomatic immunity and who are able to bring domestic servants into the United States on special visas. Therefore, domestic servants are trapped beneath layers of concealment and even legal protections.

The critical point is this: the probability of encountering and rescuing victims of domestic servitude is likely to increase where there is concerted regulatory and law enforcement effort to prevent, eliminate and punish all forms of labor abuse and exploitation in private households. Active investigations of labor abuse can lead to the discovery and rescue of those held as domestic slaves, who might otherwise languish in servitude bearing a chance encounter outside the home where they are held captive.

*III. Domestic Servitude, Poverty, Migration, Race,
Ethnicity and Gender*

Domestic servitude as a form of labor trafficking should be analyzed and addressed in the context of labor abuse and exploitation generally, and in the abuse of domestic workers more specifically. It must also be analyzed and addressed in relation to the factors increasing vulnerability to labor trafficking: poverty, migration, gender, ethnicity, and ultimately, discrimination.

That domestic servitude exists in the United States is certain: only the scope of the crime is in doubt due to the paucity of data, difficulties of data collection, confidentiality requirements of the law, diplomatic immunity, and most importantly the isolation and fear of victims. There have been federal investigations and prosecutions resulting in convictions.²² Likewise, there have been investigations and prosecutions at the state and local levels.²³

The problems with both the quantitative and qualitative data on human trafficking in the United State are well known. The paucity of data is one problem; the quality of human trafficking indicators is another.²⁴ Moreover, the U.S. Bureau of Justice Statistics (BJS) does not disaggregate the data on labor trafficking with sufficient precision to assist in an analysis of the scope of domestic servitude in the United States.²⁵ However, a 2008 United

²² *United States v. Kozminski*, 487 U.S. 931, 952 (1988); *United States v. Calimlin*, 538 F.3d 706 (7th Cir. 2008); *United States v. Djoumessi*, 538 F.3d 547 (6th Cir. 2008); *United States v. Paulin*, 329 Fed. Appx. 232 (11th Cir. 2009). See also Organization of American States [OAS], *Exploratory Assessment of Human Trafficking Cases Under Non-Federal Jurisdictions in the United States* (Nov. 2006) [hereinafter OAS Rep.], <http://www.oas.org/atip/Reports/Non.Federal.ATIP.Cases.pdf>.

²³ OAS Rep., *supra* note 22.

²⁴ Frank Laczko et al., *Developing Better Indicators of Human Trafficking*, 10 BROWN J. WORLD AFFAIRS 179, 185 (2003).

²⁵ U.S. Dep't of Justice, *Federal Prosecution of Human Trafficking: 2001-2005* (Oct. 2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fpht05.pdf> [hereinafter Fed. Pros. H.T. 2001-05]; U.S. Dep't of Justice, *Characteristics of Suspected Human Trafficking Incidents: 2007-2008*, (Jan. 2009), available at <http://www.bjs.gov/content/pub/pdf/cshti08.pdf> [hereinafter H.T. Incidents 2007-

States Government Accountability Office (GAO) report on allegations of abuse by domestic workers with special visas employed in the homes of foreign diplomats gives some insight.²⁶ The GAO report, covering an eight-year period ending in 2008, documented forty-two allegations of abuse.²⁷ Ten of those cases involved allegations of human trafficking; prosecutors initiated human trafficking investigations in eight of those. The others involved less severe forms of abuse and exploitation, including physical and verbal assaults, and most prominently, wage and hour violations.²⁸ The GAO, citing information proffered by advocacy groups, reported that the actual number of abuse cases could be as many as sixty-six.²⁹ But more important than the number of cases of domestic worker abuse, or even confirmed cases of domestic servitude, is what these cases reveal about the connection between poverty, migration, ethnicity and gender. Victims of labor trafficking are overwhelming migrants. Virtually all those held in domestic servitude in the United States are migrant women.

Statistical analyses of data conducted by the BJS attest to this. According to the data on confirmed human trafficking cases for the period between 2008 and 2010, sex trafficking victims were generally white (26%) or black (40%).³⁰ Four-fifths (83%) of these

08]; U.S. Dep't of Justice, *Characteristics of Suspected Human Trafficking Incidents: 2008-2010* (Apr. 2011), available at <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf> [hereinafter H.T. Incidents 2008-10].

²⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-892, HUMAN RIGHTS: U.S. GOVERNMENT'S EFFORTS TO ADDRESS ALLEGED ABUSE OF HOUSEHOLD WORKERS BY FOREIGN DIPLOMATS WITH IMMUNITY COULD BE STRENGTHENED, (July 2008), available at <http://www.gao.gov/new.items/d08892.pdf>.

²⁷ *Id.* at 11.

²⁸ *Id.* at 12-13. The figures should be placed in perspective. The Department of State issues thousands of A-3 and G-5 visas annually; it issued more than 2,000 in 2007 alone. Also, data on investigations indicate that workers, including domestic workers, are subject to less severe forms of abuse. For example, the Labor Department conducts between 30,000 and 40,000 investigations of alleged wage and hour violations each year. *Id.* at 8, 16. These data underscore the argument here that abuse and exploitation have to be placed on a continuum of severity of violations of all workers' rights.

²⁹ *Id.* at 14.

³⁰ H.T. Incidents 2008-10, *supra* note 25.

were American citizens.³¹ By contrast, victims of labor trafficking were overwhelming Hispanic (63%) or Asian (17%).³² Virtually all labor trafficking victims (95%) were migrants, with the vast majority of them undocumented aliens (67%).³³ Similarly, labor traffickers tend to be Hispanic (48%).³⁴ Two-thirds of those charged with human trafficking were also charged with sex transportation or alien smuggling offenses.³⁵

The BJS statistical analyses are of no help to researchers attempting to analyze domestic servitude within the broader context of labor trafficking. These reports do not have a separate category for domestic servitude, although the BJS's 2009 report covering the 2007-2008 period associated 14% of labor trafficking incidents with "unregulated" industries, which could presumably include domestic work.³⁶ However, the BJS's data does establish the relationship between migration and labor trafficking in the United States, and strongly suggests a relationship with human smuggling.³⁷ Other reports confirm this and document cases of domestic servitude. To cite a prominent example, a study published in 2005 by the Human Rights Center at University of California at Berkeley identified fifty-seven forced labor operations in at least a dozen California cities between 1998 and 2003.³⁸ These operations involved some 500 migrants from 18 countries, including 136 Thai victims, 104, Mexicans and 53 Russians. Notably, the study found that a third of the victims were held in domestic servitude.

³¹ H.T. Incidents 2008-10, *supra* note 25.

³² *Id.* These percentages stand in stark contrast to the data for the 2007-2008 period, during which the BJS reported 51% of labor trafficking victims were Asian compared to 31% Hispanic. H.T. Incidents 2007-08, *supra* note 25.

³³ H.T. Incidents 2008-10, *supra* note 25.

³⁴ *Id.*

³⁵ Fed. Pros. H.T. 2001-05, *supra* note 25.

³⁶ H.T. Incidents 2007-08, *supra* note 25.

³⁷ On the connection in practice between human smuggling and human trafficking, see Cynthia Shepard Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT'L & COMP. L. 503 (Spring 2006).

³⁸ HUMAN RIGHTS CENTER UC BERKELEY, FREEDOM DENIED: FORCED LABOR IN CALIFORNIA (Feb. 2005), <http://www.oas.org/atip/country%20specific/Forced%20Labor%20in%20California.pdf>.

In addition to the fact that victims of labor trafficking are overwhelmingly minority migrants, a substantial percentage are women. The BJS report for the 2007-08 period found that the majority (61%) of labor trafficking victims were female.³⁹ Confirmed cases of domestic servitude in the United States illustrate the relationship between domestic servitude and migration, ethnicity and gender. For example, the victim in the *United States v. Calimlin*⁴⁰ prosecution was a Filipina woman who had been held in servitude for two decades. The victim in *United States v. Djoumessi*⁴¹ was a young woman from Cameroon. The victim in *United States v. Maude Paulin*⁴² was a Haitian girl. The victim in *United States v. Udezor* was a woman from Nigeria.⁴³ The ethnicity and gender dimension is also apparent internationally. In its review of non-federal jurisdiction cases, the Organization of American States (OAS) documented four cases of domestic servitude involving women from the Philippines, Vietnam, Mexico, and Guatemala.⁴⁴ Similarly, the case studies in Amnesty International's 2001 report described the ordeals of female domestic servants who had suffered abuse by foreign diplomats or members of their families.⁴⁵

These observations draw attention to broader issues of poverty, migration, and particularly the feminization of migration, and, ultimately, racial and gender discrimination. Although poverty is not the sole reason women choose to migrate, it is among the most important factors accounting for the phenomenon migration experts have taken to calling the 'feminization of migration.' High levels of unemployment, low wages, and absence of social and economic opportunities exert tremendous pressures on women to migrate. Often women migrate in search of jobs to support families in their

³⁹ H.T. Incidents 2007-08, *supra* note 25.

⁴⁰ *Calimlin*, 538 F.3d 706.

⁴¹ *Djoumessi*, 538 F.3d 547.

⁴² *Paulin*, 329 Fed. Appx. 232.

⁴³ *United States v. Udezor*, 515 F.3d 260 (4th Cir. 2008); cf. *Kozminski*, 487 U.S. at 931. The victims in the latter case were two men suffering from intellectual disability. *Id.*

⁴⁴ OAS Rep., *supra* note 22.

⁴⁵ H.R. Watch Rep., *supra* note 17.

home countries.⁴⁶ This is part of the equation. Globalization and the demand for migrant workers, and especially domestic workers in developed nations, are important contributing factors. The dynamics of the domestic labor market make migrant domestic workers vulnerable to abuses, exploitation and labor trafficking. As the executive director of the United Nations Development Fund for Women (UNIFEM) observed,

[T]he nature of work available to migrant and trafficked labour leads to widespread denial of human rights, particularly for women and children. Because the work is illegal, employers have an interest in concealing their illegal employees. Moreover, domestic work is physically confined to the employer's household, which is generally perceived as a private domain beyond the reach of industrial regulation and law. The resulting psychological isolation exacerbates the unequal power relations between the trafficked worker and the employer, which, combined with traditional gender stereotypes render women and girls especially vulnerable to physical violence and sexual abuse.⁴⁷

Similarly, the Organization for Security and Cooperation in Europe's (OSCE) Special Representative for Combating Trafficking in Human Beings observed, "the ever increasing demand for domestic workers in Europe leads to excessive working hours, low salaries, lack of private life for most home-based domestic workers, and terrible abuses for some."⁴⁸ Those terrible abuses are

⁴⁶ On the feminization of migration, see CARITAS INTERNATIONALIS, *THE FEMALE FACE OF MIGRATION: BACKGROUND PAPER* (2010), www.caritas.org/includes/pdf/backgroundmigration.pdf; see also Aiko Joshi, *The Face of Human Trafficking*, 13 HASTINGS WOMEN'S L.J. 31, 33-36 (2002).

⁴⁷ Noeleen Heyzer, Executive Director UN Development Fund for Women, Plenary Address at The Human Rights Challenge of Globalization; Asia-Pacific-US; The Trafficking in Persons, Especially Women and Children: Combating Trafficking in Women and Children – A Gender and Human Rights Framework (Nov. 13-15 2002), http://www.childtrafficking.org/pdf/user/unifem_gender_and_human_rights_framework.pdf.

⁴⁸ OSCE Rep., *supra* note 19.

fundamentally human rights abuses. The UN Special Rapporteur on Migrant Workers made this connection some time ago.

The complex phenomenon of international migration obeys a simple principle: migratory flows originate in socio-economic inequality and unequal human rights, and are swelled by the attraction of more developed countries, which offer well-being, opportunities and democratic freedoms. The Special Rapporteur holds that legal migration flows should be managed since they allow the human rights of migrants to be protected effectively.⁴⁹

As those seeking to abolish forced labor know only too well, migrant workers may flow to developed, democratic nations in search of well-being and democratic freedoms, but there is no guarantee that the human rights will be effectively protected once they arrive in those countries. The Special Rapporteur recognizes this as well: “The only way to halt the continuing deterioration in immigrants’ situation, particularly that of illegal immigrants, is to recognize the human rights of this group and apply the principle of non-discrimination.”⁵⁰

IV. Discrimination and Human Trafficking

The principle of non-discrimination is at the core of the human rights idea: that “all human beings are born free and equal in dignity and rights.”⁵¹ Discrimination, viz., the rejection of the idea

⁴⁹ Secretariat of the Asian-African Legal Consultative Organization, *Rep. on Legal Protection of Migrant Workers*, ¶ 21, AALCO/45/Headquarters Session (New Delhi)2006/SD/S 5 (2006) [hereinafter AALCO Rep.]; citing Special Rapporteur on Migrant Workers, *Rep. on Migrant Workers*, Comm’n on Hum. Rts., U.N. Doc. E/CN.4/2004/76 (Jan. 12, 2004).

⁵⁰ AALCO Rep., *supra* note 49, at ¶ 22.

⁵¹ Universal Declaration of Human Rights, art. 1, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR]; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. Similarly, provisions of the ICCPR prohibit slavery and include state obligations with respect to these practices under the category of non-derogation. ICCPR, *supra*, arts. 6,

of the inherent dignity and equal worth of every human person, is a fundamental cause of human rights abuses, including abuses associated with human trafficking in all its forms. Discrimination can be examined under three aspects: its impact on human dignity and rights; state obligations under international human rights law to eliminate all forms of discrimination; and the mentality and motivations of those who abuse and exploit those they deem to be inferior.

Those most likely to be held in domestic servitude or others forms of labor trafficking fall under a triple curse: they are migrants, they are racial or ethnic minorities, and they are women. To these three can be added a fourth: their status, or rather lack of legal status, as domestic workers. The CERD⁵² and the CEDAW⁵³ define discrimination in terms of distinctions, exclusions, restrictions or preferences⁵⁴ that have the purpose or effect of nullifying or impairing the recognition, exercise or enjoyment of human rights and fundamental freedoms.⁵⁵ These distinctions, exclusions, restrictions or preferences matter insofar as they are incorporated into national law or operate as prejudices in the mentality of those who exploit and abuse others. Applied to domestic servitude, the distinctions that matter are distinctions on the basis of race or ethnicity, gender, migrant status and employment as a domestic worker. These are fundamentally prejudices. Exclusions and restrictions, especially those incorporated into law, matter to the extent they deny categories of persons recognition before the law or equal protection of the law. Migrant workers, especially undocumented migrant workers, may be especially impacted in this regard because of the limitations on legal

7(1)-(2).

⁵² CERD, *supra* note 5, at art. 1.

⁵³ CEDAW, *supra* note 6, at art. 1.

⁵⁴ CERD, *supra* note 5, at art. 1. The category "preference" is unique to the CERD and does not appear in the CEDAW. *Id.*

⁵⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter CMW]. While the CMW does not define discrimination, the definitions set forth in the CERD and CEDAW may reasonably apply to migrants as well. CERD, *supra* note 5, at art. 1; CEDAW, *supra* note 6, at art. 1.

rights for non-citizens.⁵⁶ This may be pertinent to domestic workers as well because of the ill-defined and under-regulated nature of domestic work, the situation the Convention Concerning Decent Work for Domestic Workers was framed to remedy.⁵⁷

The crux of the matter of discrimination is the nullification or impairment of the recognition, exercise, or enjoyment of human rights. Discrimination impacts human dignity. As a motivating factor behind domestic servitude and less severe forms of labor exploitation and abuse, discrimination manifests itself in profound human suffering. First and foremost, victims of the most severe form of labor trafficking are held in captivity and enslavement through force, fraud and coercion. The forms of psychological coercion, for example threats against the life and physical integrity of the trafficking victim or members of her family, are often as terrorizing as an actual physical assault. The conditions of confinement and the patterns of exploitation and abuse are tantamount to cruel, inhuman and degrading treatment and punishment.⁵⁸ The previously cited remarks of the Office of the OSCE's Representative and Coordinator for Combating Trafficking in Human Beings are worth recalling here: Poor living and working conditions, extremely long hours, systematic lack of sleep, real starvation, no wages beyond mere subsistence, psychological and sexual abuse, violent punishment, and continuous humiliation. These are the indignities that discrimination, viz. the denial of the inherent dignity and equal worth of all persons, produces.

The CERD and the CEDAW, in identical language, set forth

⁵⁶ As Kristen Hill Maher observes, "the violations and vulnerabilities of migrant rights . . . can be understood as extensions of a cultural logic in which even human rights are framed as entitlements exclusive to citizens." Kristen Hill Maher, *Who Has a Right to Rights? Citizenship's Exclusion in an Age of Migration*, in GLOBALIZATION AND HUMAN RIGHTS, 21 (Alison Brysk, ed., 2002).

⁵⁷ Cf. Kevin Shawn Hsu, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL'Y 489, 504 (2007) (discussing the exclusion of domestic work from the National Labor Relations Act).

⁵⁸ The phrase "cruel, inhuman and degrading treatment and punishment" is invoked to reestablish the analogy with torture.

the general obligation of states parties to those conventions to “condemn” and “pursue by all appropriate means and without delay a policy of eliminating” racial discrimination or discrimination against women.⁵⁹ Accordingly, states must “amend, rescind or nullify laws or regulations” which perpetuate racial discrimination⁶⁰ and incorporate provisions that “embody the principle of equality between men and women in their national constitutions or other appropriate legislation.”⁶¹ Thus, states must void from their laws the distinctions, exclusions, restrictions or preferences which nullify or impair the full enjoyment of human rights. The Convention on the Rights of All Migrant Workers and Their Families (CMW) is less forceful than the CERD or the CEDAW in that it does not call on states to condemn discrimination or to pursue policies to eliminate it without delay; rather it merely obligates states “to respect and ensure to all migrant workers and the members of their families the rights provided for in the present Convention.”⁶²

The invocation of these conventions raises the complex problem associated with the public/private dichotomy in human rights law. This dichotomy is especially problematic with respect to women’s rights insofar as violations of women’s dignity and rights frequently occur in the private sphere.⁶³ Human trafficking is a crime committed by private actors for illicit financial gain rather than a criminal state practice such as torture. But this problem is not insurmountable. The CERD, CEDAW and CMW all contain economic rights provisions that are pertinent to labor abuse and exploitation.⁶⁴ These provisions certainly extend into the private sphere. Moreover, article 6 of the CEDAW explicitly references “all

⁵⁹ CERD, *supra* note 5, at art. 2(1); CEDAW, *supra* note 6, at art. 2(a)-(c).

⁶⁰ CERD, *supra* note 5, at art. 2(1)(c).

⁶¹ CEDAW, *supra* note 6, at art. 2(a).

⁶² CMW, *supra* note 55, at art. 7.

⁶³ See Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, 85-115 (Rebecca J. Cook, ed., 1994).

⁶⁴ CERD, *supra* note 5, at art. 5(e); CEDAW, *supra* note 6, at art. 11; CMW, *supra* note 55, at arts. 25-27; *see also* Convention on the Rights of the Child, art. 32, Nov. 20, 1989, 1577 U.N.T.S. 3.

forms of traffic in women and exploitation of prostitution of women,” while article 11 of the CMW explicitly references slavery, involuntary servitude and compulsory labor. Notably, CERD is silent on these egregious human rights abuses.

More importantly, the CERD and especially CEDAW contain provisions that go to the heart of the matter of discrimination: the prejudices embedded in culture and transmitted through socialization that motivates the abuse and exploitation of minorities, women and migrants. Article 5 of CEDAW binds states to modify social and cultural patterns of conduct and customary practices that perpetuate the idea of the inferiority of women. Similarly, article 4 of the CERD demands the criminalization of the dissemination of ideas or theories of racial supremacy. Thus, these conventions recognize a causal relationship between culture, custom, and ideas or theories that perpetuate notions of the inferiority of women and racial minorities; a dynamic which produces discrimination and human rights violations like human trafficking.

There is a need for research into the psychological dynamics of human trafficking that would enable trafficking victims’ advocates to restore and rehabilitate the victims.⁶⁵ Similarly, there is a need for research into the mentality of human traffickers that would provide insight into the motivations for the cruel, inhuman and degrading treatment they inflict on those they enslave. Attention to the social and cultural factors, as well as individual psychological factors, that underlie human trafficking is critically important for the purpose of prevention. According to OSCE much of the research into labor trafficking, including trafficking for purposes of domestic servitude, focuses on the “push and pull” dynamics of the labor market in the context of globalization.⁶⁶ There is a need for a complementary approach which focuses on discriminatory attitudes and social practices. A study published by Save the Children Sweden addresses these factors in a way that again calls attention to state obligations

⁶⁵ Gozdzia et al., *supra* note 2. The authors observe that “[t]here is a need for both qualitative and quantitative research that would provide macro- and micro-level understanding of the trafficking phenomenon” but the authors limit their discussion to research on trafficking victims. *Id.* at 122.

⁶⁶ OSCE Rep., *supra* note 19.

under the CERD and the CEDAW to eliminate prejudices and modify social and cultural patterns of conduct and customary and other practices that perpetuate discrimination.

Those who wish to employ cheap labour (especially those who want to employ someone to cheaply undertake forms of labour that are socially devalued) tend to seek out members of groups that not only lack social protection but that are also socially stereotyped as “naturally” servile or otherwise “naturally” suited to working in poor conditions for little recompense. This kind of demand is grounded in and reproduces wider social attitudes towards gender, age, race, ethnicity, nationality and caste. Again, we can say that states play a role in the construction of such demand, either through policies that institutionalise discriminatory attitudes or through their failure to effectively challenge discriminatory social practices.⁶⁷

The adoption of the Palermo Protocol has cast human trafficking as a crime, and more generally as an illicit activity of transnational criminal syndicates. This has great merit. It is imperative to investigate, prosecute and punish human trafficking as a crime, viz., an act that not only violates penal law but also violates duties towards society in a moral sense. Prosecutors may be content to establish a *mens rea*, i.e., criminal mentality or intent; but, for the purposes of prevention, it is equally important to identify the deeper cultural influences behind and beneath the criminal mentality associated with human trafficking. There is promising research in this regard. For example, a study of the rise of Albanian sex trafficking syndicates suggests that the abiding influence of the centuries-old Albanian moral-legal code conditions some Albanian men to disvalue and disrespect women to such an extent that trafficking women does not constitute a violation of a moral prohibition in their minds. Indeed, this same moral-legal code may

⁶⁷ BRIDGET ANDERSON & JULIA O’CONNELL DAVIDSON, *SAVE THE CHILDREN SWEDEN, TRAFFICKING – A DEMAND LED PROBLEM? A MULTI-COUNTRY PILOT STUDY* 25 (2002), available at <http://gaatw.org/publications/The%20Demand%20Side%20part1.pdf>.

condition women to view their submission and exploitation as culturally acceptable.⁶⁸ Similarly, research on the Restavek phenomenon in Haiti calls attention to the influence of social and cultural patterns of conduct and customary practices.⁶⁹ Cultural traditions have been shown to entrap children in domestic servitude and other forms of labor.⁷⁰ This holds true also for familial complicity in enforced prostitution in Cambodia,⁷¹ and bonded labor in India.⁷²

All of this supports the inference that social, cultural, and customary patterns of conduct play a role in the phenomenon of human trafficking, including trafficking for the purposes of domestic servitude. This is true in the United States as well. The high incidence of Hispanic men (48%) engaged in the trafficking of Hispanic women in the United States,⁷³ has been partially attributed to the persistence of “chauvinistic attitudes and practices” among Latino men, among other factors.⁷⁴ In many known cases of

⁶⁸ Jana Arsovska, *Understanding a Culture of Violence and Crime: The Kanun of Lek Dukagjini and the Rise of the Albanian Sexual-Slavery Rackets*, 14 EUR. J. CRIME CRIM. L. & CRIM. JUST. 161, 176-77 (2006). Arsovska also expresses doubts about the efficacy of a top-down approach to changing these aspects of Albanian culture, a conclusion that has obvious implications in terms of the Albanian government obligations to modify social and cultural patterns of conduct between men and women for the purpose of eliminating gender discrimination. *Id.* at 183.

⁶⁹ LESLIE ANDERSON ET AL., MINNESOTA LAWYERS INTERNATIONAL HUMAN RIGHTS COMMITTEE., *RESTAVEK: CHILD DOMESTIC LABOR IN HAITI 2-3* (1990) available at [https://www.restavekfreedom.org/assets/restavek/files/\\$cms\\$/104/1543.pdf](https://www.restavekfreedom.org/assets/restavek/files/cms/104/1543.pdf).

⁷⁰ OSCE Rep., *supra* note 19.

⁷¹ See generally SOMALY MAM & RUTH MARSHALL, *THE ROAD OF LOST INNOCENCE* (Spiegel & Grau, eds., 1st ed. 2008) (providing a compelling personal account).

⁷² Ravi S. Srivastava, *Bonded Labour in India: Its Incidence and Pattern*, ILO InFocus Programme on Promoting the Declaration on Fundamental Principles & Rights at Work, Working Paper No. 43, 2005, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081967.pdf. As Srivastava observes, the phenomenon of bonded labor can be attributed to both custom and force. *Id.* at 2.

⁷³ H.T. INCIDENTS 2008-10, *supra* note 25.

⁷⁴ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., RL33200, *TRAFFICKING*

domestic servitude in the United States the traffickers as well the trafficking victims were foreign nationals, and the involvement of diplomats from Asia and the Middle East has been observed. So, it is reasonable to surmise that cultural factors influenced their attitudes towards the women they compelled to toil in their homes.

This last observation is not meant to attribute human trafficking exclusively to pernicious aspects of specific cultures. Rather, it is meant to reinforce the assertion that deeply held prejudices embedded in culture and transmitted through socialization, motivate the abuse and exploitation of minorities, women and migrants. Americans also buy, sell, and exploit human beings.⁷⁵ Fundamentally, the existence of domestic servitude and other forms of human trafficking in the United States, as elsewhere, reflects the rejection of the idea of the inherent dignity and equal worth of every human person.⁷⁶ Thus, research into contemporary

IN PERSONS IN LATIN AMERICA AND THE CARIBBEAN 5 (2012), *available at* <http://www.fas.org/sgp/crs/row/RL33200.pdf>.

⁷⁵ U.S. Dep't of State, *Trafficking in Persons Rep.* (2011), <http://www.state.gov/documents/organization/164458.pdf>.

The United States is a source, transit, and destination country for men, women, and children subjected to forced labor, debt bondage, document servitude, and sex trafficking. Trafficking occurs for commercial sexual exploitation in street prostitution, massage parlors, and brothels, and for labor in domestic service, agriculture, manufacturing, janitorial services, hotel services, hospitality industries, construction, health and elder care, and strip club dancing. Vulnerabilities are increasingly found in visa programs for legally documented students and temporary workers who typically fill labor needs in the hospitality, landscaping, construction, food service, and agricultural industries. There are allegations of domestic workers, foreign nationals on A-3 and G-5 visas, subjected to forced labor by foreign diplomatic or consular personnel posted to the United States.

Id. at 372.

⁷⁶ For an interesting discussion of discrimination in the construct of "otherness," see Jonathan Todres, *Law, Otherness and Human Trafficking*, 49 SANTA CLARA L. REV. 605 (2009). Less persuasive is Todres' attempt to apply this concept to either the inaction or selective nature of United States law enforcement officials' response to trafficking. *Id.* at 607-08.

forms of domestic servitude and other forms of human trafficking in the United States must explore “social attitudes towards gender, age, race, ethnicity, nationality and caste” (to paraphrase the previously cited Save the Children Sweden study)⁷⁷ or, more concisely, the persistence of “racism, sexism and classism.”⁷⁸ The phenomenon of domestic servitude has a deep historical connection to slavery and the “servant problem” in the United States.⁷⁹ But, as important as those cultural influences may be, other aspects of contemporary American culture may also explain the existence of labor trafficking, and specifically domestic servitude, in the United States.

It may be asked whether a perverse form of the culture of consumerism may also explain labor abuse and exploitation and labor trafficking in the United States and elsewhere. In this explanation the application of “criteria of utility and ownership” reduces workers to a “simple commodity or an impersonal element of production.”⁸⁰ Such an attitude may be construed as a pattern of conduct or even a customary practice in American society. In this way, consumerism negates the idea of the inherent dignity and equal worth of all human beings and therefore nullifies or impairs the enjoyment of human rights and fundamental freedoms. This explanation does not dismiss the effect of racial, ethnic, gender, or other prejudices. Rather, socially embedded stereotypes about migrants, racial or ethnic minorities, or women serve to provide morally permissive rationalizations for abuse and exploitation. This explanation comports with Save the Children Sweden’s previously cited observation that those who wish to employ cheap and socially devalued forms of labor seek out persons who are socially stereotyped as naturally servile or naturally suited to working in poor

⁷⁷ ANDERSON & DAVIDSON, *supra* note 67, at 24.

⁷⁸ Hsu, *supra* note 57, at 490.

⁷⁹ See generally Mary Romero, *Immigration, the Servant Problem and the Legacy of the Domestic Labor Debate: “Where Can You Find Good Help These Days?”*, 53 U. MIAMI L. REV. 1045 (1998-1999).

⁸⁰ PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, ¶¶ 202, 271, 360 (Libreria Editrice Vaticana, ed., 2004) [hereinafter COMPENDIUM] (introducing an urgently needed moral perspective on the problem of labor abuse and exploitation).

conditions with little pay.⁸¹ Thus, stereotypes remain important, but the first cause of the cruel, inhuman and degrading treatment of domestic servants is fundamentally the abusers' desire for possessions and their immediate gratification of artificial needs.⁸²

The modification of attitudes, rooted in social and cultural patterns of conduct and customary practices, addresses one aspect of the demand side of trafficking that complements economic analyses of push pull factors related to poverty, migration and trafficking. Advocates working to abolish sex trafficking have wisely begun to address the demand side of human trafficking for the purpose of sexual exploitation. That is, they have begun to adopt strategies that focus on the desire for immediate sexual gratification and deeply engrained males attitudes toward women as sexual objects. This analysis of labor trafficking indicates the importance of this approach for the prevention of labor trafficking as well.

V. An Integral Approach to Prevention of Domestic Servitude and Other Forms of Labor Trafficking

The first part of this article indicated the importance of the Convention on Decent Work for Domestic Workers, and other ILO conventions, in the integral scheme of labor trafficking prevention. Specifically, it illustrated the necessity of strictly enforcing labor laws and regulations aimed at reducing all forms of labor abuse. Parts two and three highlighted the role of discrimination as a motivating factor behind labor abuse and exploitation. These sections also explained the importance of the CERD, CEDAW, CMW, and other human rights instruments, designed to eliminate state practices that perpetuate discrimination and produce human rights violations.

These observations reveal the contours of an integral approach to the prevention of human trafficking and other grave human rights violations, an approach that draws out the synergies of

⁸¹ ANDERSON & DAVIDSON, *supra* note 67, at 24.

⁸² COMPENDIUM, *supra* note 80, at ¶¶ 334, 375.

international legal regimes that are generally invoked in isolation from one another.

The Palermo Protocol, the operative convention in the modern abolitionist movement, adopts a law enforcement approach to trafficking prevention.⁸³ But while this is necessary, the Palermo Protocol alone is insufficient. The Convention Concerning Decent Work for Domestic Workers and other relevant ILO conventions contain important measures of labor rights protection which, if strictly enforced at the national level, could contribute to the prevention of labor trafficking. Yet, while these measures are important, they are also insufficient. The CERD, CEDAW, CMW, and other international human rights conventions, address the fundamental question of discrimination and equal economic equality. Moreover, the CEDAW, in particular, envisions the full development and advancement of women, an outcome that would have a substantial effect on the prevention of trafficking by reducing women's vulnerabilities to economic abuse and exploitation. Thus an integral approach to prevention multiplies the normative (moral, as well as legal) force of these legal instruments, adds reinforcing layers of legal protection and prevention, and intensifies the collaboration of intergovernmental bodies and non-governmental organizations working on distinct aspects of what, in the final analysis, is a common set of issues.

The adoption of the Palermo Protocol was a historic achievement. The protocol frames a comprehensive definition of trafficking in persons, encompassing elements that were absent from previous efforts to address institutions and practices similar to slavery; most prominent, the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.⁸⁴ Moreover, it established a framework of international cooperation to combat trafficking in persons under the auspices of the United Nations

⁸³ Palermo Protocol, *supra* note 4.

⁸⁴ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3210, 266 U.N.T.S. 3. (addressing debt bondage, serfdom, and abuses associated with arranged marriages).

Office of Drugs and Crime. It contains provisions for both the prevention and suppression of trafficking in persons, and the protection of trafficking victims. However, the Palermo Protocol alone is insufficient to prevent human trafficking in all its complexities.

As to prevention, the protocol only contemplates a narrow set of preventive measures within an overall law enforcement framework. These measures, set forth in articles 10 through 13, generally involve the cooperation of law enforcement, immigration and other authorities in the areas of border security, transportation and document security and control. While these measures are necessary to address the problem of trafficking, or more specifically cross-border transportation of trafficking victims, they fail to address labor abuse and exploitation in the destination country. Thus migrants, racial and ethnic minorities, and women who are vulnerable to trafficking would benefit from the protections set forth in various ILO conventions.

The ILO Convention Concerning the Abolition of Forced Labour⁸⁵ and the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour⁸⁶ directly address trafficking, vis-a-vis., forced labor. The Convention on Decent Work for Domestic Workers is likewise important because it mandates the establishment of a legal and regulatory framework for the protection of the rights of labor and human rights of domestic workers. The strict enforcement of the labor regulations contemplated in this convention would substantially reduce the incidence of domestic servitude.

A number of other ILO Conventions provide protection against labor abuse and exploitation as well; however, a comprehensive analysis of the all relevant conventions is not possible here.⁸⁷ But even a summary examination of a sampling of

⁸⁵ ILO, Convention Concerning the Abolition of Forced Labour, Jan. 17, 1959, 320 U.N.T.S. 291.

⁸⁶ ILO, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Nov. 19, 2000, T.I.A.S. 13045.

⁸⁷ See generally Virginia Mantouvalou, *Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers*, 35 IND. L.J. 395 (2006)

instruments reveals their potential to curtail labor abuse and exploitation and, therefore, their importance for labor trafficking prevention. The ILO Convention Concerning Discrimination in Respect of Employment and Occupation directs members to adopt national policies to promote equal opportunity and treatment in respect to employment and occupation “with a view to eliminat[ing] any discrimination.”⁸⁸ Thus, this convention implicitly prohibits the exclusion or exemption of certain categories of workers, such as those employed in domestic work, from labor laws or regulations that would protect other categories of workers from abuse and exploitation. Those measures of protection can ultimately serve as measures of prevention. The Migrant Workers (Supplementary Provisions) Convention directs members to address “migrations in abusive conditions,” and “to respect the basic human rights of all migrant workers.”⁸⁹ Among other things, this convention contemplates the suppression of clandestine smuggling of undocumented migrant workers. The legal distinction between smuggling is valid insofar as it involves the element of consent on the part of an undocumented migrant.

However, clandestine human smuggling presents a particularly insidious opportunity to enslave an unwary migrant through fraud or debt bondage. In this regard, the ILO Migrant Workers (Supplementary Provisions) Convention contains provisions that are substantially similar to provisions set forth in the

(providing a good overview of ILO labor standards does not cover the ILO conventions discussed below.

⁸⁸ ILO, Convention Concerning Discrimination in Respect of Employment and Occupation, art. 2, June 25, 1958, ILO No. 111, *available at* http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/generi_cdocument/wcms_114189.pdf.

⁸⁹ ILO, Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, art. 1, *adopted* June 24, 1975, ILO No. 143, *available at* <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143> (last visited June 12, 2012) [hereinafter Migrant Workers (Supplementary Provisions) Convention]. Notably the Preamble of Convention No. 143 declares that “labour is not a commodity,” an issue addressed in the previous section of this article. Moreover, the Preamble attributes migration for work to “underdevelopment and structural and chronic unemployment,” as discussed in more detail below. *Id.* at Pmbl.

International CMW. Article 68(a) of the CMW binds states to take “appropriate measures against the dissemination of misleading information relating to emigration and immigration” a measure which could counteract trafficking through fraud.⁹⁰ Article 68(c) binds states to “impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.”⁹¹ Violence, threats and intimidation, viz. force and coercion together with fraud, are the means traffickers apply to enslave victims. The Working Conditions (Hotels and Restaurants) Convention, adopted to protect hotel and restaurant workers, stipulates these workers must “not be [be] excluded from the scope of any minimum standards” with respect to minimum wages, working hours, overtime provisions, rest, and other basic labor rights.⁹² Here again, strict enforcement of these labor standards would substantially reduce the incidence of labor trafficking in the hospitality industry. In their most extreme form, the withholding of wages, the demand for excessive working hours, the denial of rest and other workers’ rights constitutes involuntary labor. Thus, enforcement of these protections represents another important anti-trafficking prevention measure. As a final example, enforcement of the Private Employment Agencies Convention⁹³ would serve the purpose of the prevention of labor trafficking through fraud. Article 7 specifically prohibits private employment agencies from charging directly or indirectly, in whole or in part, any fees or costs to workers.”⁹⁴ By prohibiting the imposition of fees that could readily lead to debt bondage, this convention could remove unscrupulous employment agencies from the labor trafficking supply chain.

⁹⁰ CMW, *supra* note 55, at art. 68(a).

⁹¹ *Id.* art. 68(c).

⁹² ILO, Convention Concerning Working Conditions in Hotels, Restaurants and Similar Establishments, art. 3(2), *adopted* June 25, 1991, ILO No. 172, *available at* <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C172> (last visited June 12, 2012).

⁹³ ILO, Convention Concerning Private Employment Agencies, June 19, 1997, 2115 U.N.T.S. 249.

⁹⁴ ILO, Convention Concerning Private Employment Agencies, *supra* note 93, art. 7.

As this review illustrates, the enforcement of the labor protections set forth in a number of ILO conventions can serve to prevent the most severe form of labor abuse and exploitation: labor trafficking. These measures surpass the narrow measures of protection envisioned in the law enforcement approach reflected in the Palermo Protocol. However, the industry-specific ILO measures do not address underlying factors that contribute to human trafficking: poverty and discrimination. This is the purview of international human rights law.

Article 4 of the Universal Declaration of Human Rights mandates the absolute prohibition of slavery and servitude.⁹⁵ This prohibition is reflected in article 6 of CEDAW: “states shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁹⁶ Thus, the adoption of national laws and the implementation of anti-trafficking policies are obligatory under international human rights law. This is critically important. But more important are the provisions under the CEDAW and the CERD which directly address the factors that increase women’s and racial and ethnic minorities’ vulnerability to trafficking: discrimination and poverty.⁹⁷ State obligations to modify social and cultural patterns of conduct, the elimination of prejudices and similar obligations under both the CEDAW and the CERD have been discussed. Like the elimination of discrimination, the promotion of the economic rights of women and racial and ethnic minorities is critical to the prevention of all forms of human trafficking. Thus, an economic and social rights-based approach to trafficking is a much-needed compliment to the law enforcement approach of the Palermo Protocol.⁹⁸

⁹⁵ UDHR, *supra* note 51, at art. 4.

⁹⁶ CEDAW, *supra* note 6, at art. 6.

⁹⁷ *Id.* at arts. 1-4, 7, 8, 12-14, 16; CERD, *supra* note 5, at arts. 1, 2, 4-7, 16.

⁹⁸ Palermo Protocol, *supra* note 4; *see generally* A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN ST. INT’L L. REV. 809 (2004-2005); Bernadette McSherry & Susan Kneebone, *Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights*, 12 INT’L J. HUM. RTS. 67 (2008). Here the authors make an argument similar to the one present in this article: “The benefit of a human rights approach is that. . . it

Article 9(4) of Palermo Protocol obligates member-states to “take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”⁹⁹ However, while the Palermo Protocol does not describe such measures, the CEDAW and the CERD are very explicit about such measures. Part III of the CEDAW, encompassing articles 11-14, covers a range of issues. Ultimately, these measures are intended to “the eliminate discrimination against women in order to ensure to them equal rights with men.”¹⁰⁰ Article 5 (e) (i-vi) of the CERD covers a similar range of rights.¹⁰¹ In both Conventions, guarantees of equality with respect to economic rights are meant to establish equal opportunities for women and minorities, and ultimately to reduce poverty and underdevelopment as called for in the Palermo Protocol.¹⁰² Indeed, both Conventions bind states, when appropriate, to adopt special measures either to accelerate equality, *de facto* gender equality, or to ensure the adequate development of racial groups.¹⁰³ Article 3 of the CEDAW makes it quite clear that the fundamental objective of all the measures set forth in the convention is “to ensure the full development and advancement of women.”¹⁰⁴ In this regard, it may be worthwhile to state the obvious: nothing could be more effective in reducing the vulnerability of women, as well as racial and ethnic minorities, to trafficking than their “full

provides a framework for exploring the conditions that may give rise to trafficking such as poverty, unemployment, discrimination and persecution.” McSherry & Kneebone, *supra*, at 82.

⁹⁹ Palermo Protocol, *supra* note 4, at art. 9(4). Similarly, as has been noted, the ILO Migrant Workers (Supplementary Provisions) Convention recognizes that “underdevelopment and structural and chronic unemployment” are structural factors that drive migrants from their countries in search of work. Migrant Workers (Supplementary Provisions) Convention, *supra* note 84, at Pmb1. But the convention does not specifically codify a state obligation to address those factors.

¹⁰⁰ CEDAW, *supra* note 6, at art. 10.

¹⁰¹ CERD, *supra* note 5, at art. 5(e) (addressing “[e]conomic, social and cultural rights, in particular”).

¹⁰² Palermo Protocol, *supra* note 4.

¹⁰³ CEDAW, *supra* note 6, at art. 4; CERD, *supra* note 5, at art. 2(2).

¹⁰⁴ CEDAW, *supra* note 6, at art. 3.

development and advancement.”¹⁰⁵

VI. Conclusion

Academic researchers, trafficking victims’ advocates, intergovernmental and governmental agencies concur that the number of slaves around in the world is unconscionably high. No continent is immune from the scourge of human trafficking. Modern-day slavery, resulting from the contempt and disregard of human rights, is a crime that shocks the conscience of humankind to invoke the preamble of the Universal Declaration of Human Rights. Thus, the rescue of those held in captivity is a moral imperative of the first order. Prevention is equally important. This article has argued for an integral approach to prevention. This approach draws out the synergies of the Palermo Protocol, international labor law and international human rights law. It reflects the recognition that labor trafficking, including trafficking for the purpose of domestic servitude, is the severest form of labor abuse and exploitation. Moreover, it reflects the recognition that human trafficking can be explained in large part by the persistence of discrimination against migrants, racial and ethnic minorities and women. Thus, the prevention of modern-day slavery demands the strict enforcement of the labor rights protections set forth in various ILO Conventions, as well as efforts to promote the full development and advancement of racial and ethnic groups and women as envisioned in the CERD and the CEDAW. Global cooperation to prevent the trafficking of persons under the terms of the Palermo Protocol is an integral part of the global abolitionist strategy. But the implementation of the Palermo Protocol alone and in isolation from other measures to protect and promote human rights, cannot prevent the trafficking of persons in light of the sheer magnitude and complexity of the crime.

Efforts at the national and international levels must include efforts to modify social and cultural practices that perpetuate discrimination and motivate labor abuse and exploitation and the

¹⁰⁵ CEDAW, *supra* note 6, at art. 3.

trafficking of human beings. For, ultimately, labor trafficking reflects the application of criteria of ownership and utility and the perverse idea that some human beings can be reduced to mere commodities. This disregard and contempt of the idea of human rights—that all human beings are born free and equal in dignity and rights—motivates the cruel, inhuman and degrading treatment that some inflict upon those they enslave on farms, in factories or in the home.