CLEARING THE SLATE:

Seeking Effective Remedies for Criminalized Trafficking Victims

The City University of New York

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EXECUTIVE SUMMARY

At any given time, an estimated 4.5 million individuals around the world are trafficked into the sex trade[1] in violation of national and international criminal law and their basic human rights. As a result of the criminal nature of trafficking, the United States, like many other countries, focuses the bulk of its anti-trafficking resources on apprehending and prosecuting traffickers. However, an unfortunate consequence of focusing on maximizing arrests and prosecutions, without adequate allocation of resources to identifying victims and safeguarding their rights, is that victims of human trafficking frequently first come into contact with the criminal justice system when they are arrested. Rather than being recognized as victims, many are then prosecuted and convicted for prostitution and other related crimes.

In order to rectify the grave injustice of criminalizing trafficking victims for crimes that they were compelled to commit, New York and several other states throughout the U.S. have enacted novel legislation to allow victims of human trafficking to essentially erase prostitution and prostitution-related offenses from their criminal records, allowing them a clean slate to rebuild their lives and move beyond the trafficking experience. These laws are an important first step to remedying these violations, and the passage of similar laws in other states should be encouraged. In addition, as discussed below, the federal and state governments must work to change laws and policies to ensure that victims of trafficking are not arrested in the first instance and that they have access to adequate and appropriate services.

Trafficking in Persons: An Overview

Human trafficking occurs when one person is exploited for the personal or financial gain of another. Traffickers may use a variety of tools to facilitate this exploitation, ranging from physical violence to more subtle forms of deceit or pressure. While there is no single factor that defines trafficking victims, individuals rendered vulnerable by poverty or abuse may be particularly susceptible to trafficking, and gender-based discrimination, including gender-based violence, can heighten vulnerability to trafficking.

Because victims of trafficking into the sex trade are forced into an illegal work sector, they often live in fear of law enforcement raids and arrests. Traffickers will frequently exploit the fear of arrest or deportation to prevent victims from escaping their circumstances. Reinforcing this fear, individuals in the sex trade may find themselves in situations where they must pay off or provide sexual favors to police to avoid arrests and further police harassment. Traffickers may also instill a fear of retribution against

either the victims or their families, if the victims reveal to law enforcement the circumstances of their exploitation.

Criminal Justice System and Trafficking

Federal and state initiatives to combat human trafficking often prioritize prosecution of perpetrators at the expense of victims' needs and rights. While prosecution of traffickers is an important part of the government's efforts to combat trafficking, an over-emphasis on successful prosecutions without considering the rights and needs of trafficking victims can lead to traumatic arrests of trafficking victims. This criminal justice approach also contributes to victims being treated as "'instruments' of criminal investigation, rather than as holders of rights."[2] Trafficking victims may be swept up in police raids of brothels or may be arrested as part of current policing efforts to crackdown on misdemeanor offenses, including prostitution. Regardless of how they come into contact with law enforcement, these experiences are frequently traumatic and can fuel mistrust of law enforcement, effectively deterring cooperation with the investigation and prosecution of traffickers.

In addition to prioritizing prosecution over victims' rights and undermining trust of law enforcement, an overemphasis on a criminal justice approach frequently results in collateral harms for the victims themselves. All too often, trafficking victims are arrested, detained, prosecuted, and, in some cases, deported, without ever having been identified as a victim. Law enforcement, criminal defense attorneys, prosecutors, and criminal court judges often lack the necessary training or understanding of trafficking to effectively identify victims. High volumes of arrests, which overtax the criminal justice system, contribute to significant pressure on individuals arrested for prostitution to plead guilty. Even where efforts to screen for trafficking are made, a variety of factors—including trauma, language barriers, fear of authorities or fear of retribution—can impede victim identification upon arrest.

Prostitution and related convictions continue to haunt trafficking survivors long after they have escaped the trafficking situation, posing a serious hurdle to their ability to secure employment, safe housing, and other factors that are key to rebuilding their lives. In this way, criminal convictions often act as a significant barrier to recovery and reintegration for survivors of trafficking.

Vacatur Laws: Creating a Remedy

In recognition of the deep injustice of forcing trafficking survivors to carry a permanent criminal record for crimes they were forced to commit, legislators in New York State passed the first law in the country to allow victims of trafficking to vacate prostitution and loitering for prostitution convictions that were a direct result of having been trafficked.[3] While much remains to be done to ensure effective implementation of the law, this vacatur remedy has been instrumental in empowering trafficking survivors to have greater autonomy over their own lives and to reintegrate into society free from the stigma of a criminal record.

Since New York enacted its vacatur remedy in 2010, 15 other states—Connecticut, Florida, Hawaii, Illinois, Maryland, Mississippi, Montana, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Vermont, Washington, and Wyoming—have enacted similar legislation to allow trafficking survivors to clear their criminal records. Examining these laws and their implementation—and the realities that criminalized trafficking survivors face—this report identifies several best practices for vacatur remedies. In order to ensure the broadest form of relief, vacatur laws should:

- Define victim of trafficking broadly;
- Provide for vacatur of a range of criminal convictions that stem from the trafficking situation;
- Not impose unreasonable proof requirements;
- Not impose additional conditions on relief;
- Not impose unreasonable time limitations on seeking relief;
- Protect confidentiality of survivors who seek relief;
- Allow for the broadest form of relief possible under the law;
- Provide for judicial discretion to expand relief; and
- Include adequate resources to ensure implementation and availability of the remedy.

International Human Rights Framework

As a party to international human rights treaties, the United States has an obligation to not only criminalize human trafficking, but also to refrain from acts that criminalize trafficking victims. To comply with these obligations, the U.S. must ensure that its law enforcement policies do not violate the fundamental human rights of individuals who have been trafficked into the sex trade. To the extent trafficking victims are improperly prosecuted, the U.S. must ensure access to effective remedies—such as vacatur laws,

medical and psychological care, compensation, and recognition of the rights that have been violated—to redress the harms that stem from the criminalization.[4]

The U.S. has taken many steps to punish human trafficking. However, it must address the fact that, under its current policies, victims of trafficking continue to face arrest, detention, and prosecution for crimes they were compelled to commit, in contravention of its international obligations. The growing trend by individual states to allow trafficking survivors to vacate criminal convictions is a crucial first step to remedying these violations, but more remains to be done.

Recommendations

This report concludes with a series of recommendations aimed at the U.S. federal government, state governments, state law enforcement and police, District Attorneys, public defenders, service providers, and legal aid organizations to strengthen efforts to combat the criminalization of trafficking victims and to promote passage and implementation of effective vacatur remedies.

INTRODUCTION

"Trafficking in persons deprives victims of their most basic freedom: to determine their own future.

Our work in fulfilling the promise of freedom should be not only the pursuit of justice, but also a restoring of what was taken away. We should aim not only to put an end to the crime, but also to ensure that survivors can move beyond their exploitation and live the lives they choose for themselves."

– Secretary of State Hillary Clinton, Forward to the 2012 Trafficking in Persons Report

At any given time, an estimated 20.9 million people around the world are victims of human trafficking.[5] Of these, an estimated 4.5 million are trafficked into the sex trade.[6]

Human trafficking violates domestic and international criminal law and fundamental human rights. As a result of the criminal nature of trafficking, many countries focus the bulk of their anti-trafficking resources on apprehending and prosecuting traffickers. While the apprehension and arrest of traffickers are critical parts of protecting trafficking victims, an exclusive focus on maximizing arrests or a "criminal justice" approach frequently carries unintended collateral harms for the people who are trafficked.

Ironically, trafficking victims[+] often come into contact with the criminal justice system as a result of their own arrests, rather than being recognized as crime victims. The reasons for this are twofold. First, individuals trafficked into a variety of labor sectors may be compelled to engage in criminal activity, including prostitution. In addition, resources aimed at combating human trafficking are primarily directed at law enforcement efforts that can lead not only to an increase in arrests of traffickers, but also of individuals who have been trafficked into prostitution.[7] This criminalization can result in detention, deportation, and the long-term consequences of a criminal record. Criminal records can make it difficult for trafficking survivors to move beyond their exploitation, excluding them from certain jobs, housing options, and, for non-citizen survivors, hindering regularization of their immigration status.

Both federal law and international human rights law recognize that criminalizing trafficking victims is fundamentally unjust, but arrests of victims for crimes that they were

[+] Throughout this report, we use the term "victims" to refer to individuals at the point in time that they are victims of the crime of human trafficking. In contrast, we use the term "survivors" to refer to individuals who have escaped the trafficking situation.

forced to commit are all too common. In an attempt to rectify this grave injustice, in 2010, New York State enacted a novel remedy to allow victims of human trafficking to vacate criminal convictions for prostitution or loitering for the purposes of engaging in prostitution.[8] The law allows them to clear their criminal records and move beyond the exploitative experience. Since then, an increasing number of states have followed suit.

Drawing on the experiences of trafficking survivors who have been processed through New York's criminal justice system and advocates who work on their behalf, this report examines the collateral harms of criminalization and analyzes the recent efforts by New York and other states to remedy these harms. This report focuses on human trafficking into the sex trade. However, it is worth noting that the criminalization of trafficking victims is not unique to trafficking into the sex trade. Victims of all forms of trafficking are frequently at risk of being treated as criminals, because they are either forced into illegal work, such as prostitution or panhandling, or compelled to labor without the proper immigration or work documents.

Section I of this report provides a brief overview of human trafficking. The report then examines the intersections between the criminal justice system and trafficking into the sex trade in Section II. Section III assesses the extent to which New York's vacatur statute responds to the harms that a criminal record inflicts on trafficking survivors and identifies best practices for implementing effective vacatur remedies. Section IV analyzes the human rights obligations to ensure that trafficking victims are not treated as criminals in the first place, as well as the obligations to ensure that where victims have been criminalized, they have access to effective remedies to redress the specific harms of criminalization. The report concludes with recommendations for strengthening victim identification to prevent criminalization in the first instance and ensuring better access to effective remedies for victims of trafficking who have been criminalized.

SECTION I. TRAFFICKING IN PERSONS: AN OVERVIEW

What is Human Trafficking?

Trafficking is a human rights violation that impacts virtually every country in the world. Because trafficking is an underground enterprise,[9] and victims of human trafficking rarely come forward to report the crimes, the full extent of human trafficking is difficult to discern.[10] A conservative estimate by the International Labor Organization indicates that roughly 20.9 million people—or 3 out of every 1,000 people—are victims of trafficking in persons at any given time.[11] Of this number, an estimated 4.5 million individuals are trafficked into the sex trade.[12] It is estimated that between 14,500 and 17,500 foreign victims are trafficked into the U.S. on an annual basis, though this number fails to capture victims who are trafficked within U.S. borders.[13]

Human trafficking occurs when one person is exploited for the financial or personal gain of another.[14] Federal law in the U.S. defines human trafficking as the use of force, fraud, or coercion to compel an individual to engage in different forms of labor, including commercial sex work, and covers the full range of activities—"recruitment, harboring, transportation, provision, or obtaining"[15]—that facilitate this exploitation.[16]

Human trafficking can take a variety of forms. Traffickers may use overt violence or abduction. However, they frequently employ more subtle forms of deceit or pressure—including false offers of employment opportunities, promises of love and marriage, threats to victims or their families, confiscation of identity documents, and ever-mounting debt—to establish control over their victims.[17] A law passed by New York State criminalizing sex trafficking spells out some of the common tactics that are used to establish or maintain control over trafficking victims (*see* U.S. and New York Trafficking Laws*, below*).

While trafficking in persons can include movement across borders, such movement is not a necessary component of human trafficking.[18] Rather than focusing on the movement across borders, U.S. and international law emphasize that human exploitation is at the center of human trafficking.[19] Additionally, initial consent to perform work does not mean an individual cannot be a victim of trafficking if that person is compelled to continue laboring against their will.[20] If a person who voluntarily entered into sex work is subsequently maintained in sex work through force, fraud, or coercion, that person is legally considered a victim of sex trafficking.[21] As the U.S. Department of State (State Department) 2012 Trafficking in Persons Report explains, "[p]eople may be considered trafficking victims regardless of whether they were born into a state of

servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked."[22] Trafficking is defined by the exploitative action of the traffickers, rather than by the actions of the person being exploited.

The Experience of Individuals Trafficked into the Sex Trade

There is no single factor that defines trafficking victims. Individuals of any sex, gender identity, race, national or ethnic origin, or age can be affected by trafficking. At the same time, traffickers often target individuals rendered vulnerable by conditions of poverty or who lack adequate support systems.[23] Gender-based discrimination, including gender-based violence and disparities in access to education and employment, place women, girls, and gender non-conforming individuals at heightened vulnerability to trafficking.[24] Other factors, such as age, prior experiences of physical or sexual abuse, or alienation from one's family, can similarly expose individuals to a heightened risk of being trafficked.[25]

Recruiting Victims

While traffickers may use overt force or abduction to capture victims, more frequently, they recognize and prey on the factors that make individuals vulnerable to trafficking. Traffickers often recruit victims by offering them a better job, security, or love. The 2012 Trafficking in Persons Report explains, "through imbalances in power and information—and a willingness to use coercion and violence—[traffickers] take advantage of their victims' hopes for a better future."[26] The United Nations (U.N.) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (U.N. Trafficking Protocol), which the U.S. has ratified, recognizes that disparities in political, social, or economic power can fuel trafficking.[27] In addition to the force, fraud, or coercion required under U.S. federal law, the U.N. Trafficking Protocol provides that "the abuse of power or of a position of vulnerability" can also be a tool by which traffickers compel labor or sexual exploitation.[28]

Victims are often drawn in by false advertisements for opportunities abroad, or individuals facing poverty may be forced to migrate for work,[29] making them more vulnerable to trafficking. Often recruitment agencies advertise seemingly legitimate opportunities for employment in restaurants or childcare establishments in other countries, providing visa and travel services. When international trafficking victims arrive in the destination country, they may be forced, instead, to perform commercial sex work or to labor in inhumane conditions or with little or no remuneration.[30] Traffickers may

initially express concern for their victims or offer them a safe place to live and economic security.[31] Often, traffickers will express love for their victims, becoming boyfriends or, in some cases, spouses, before forcing or coercing them into the sex industry.[32]

A variety of factors—including poverty, debt, and restrictive immigration documents—can prevent victims from seeking help or attempting to enforce original employment agreements.[33] Traffickers may confiscate identity and travel documents, in some instances holding these documents as collateral until victims are able to pay off the "debt" incurred by arranging travel and visa documents.[34] The State Department's Trafficking in Persons Report from 2007 recognizes that "[w]ithout these vital documents, migrants are vulnerable to arrest, punishment and/or deportation. The threat of these punishments is used by traffickers or exploitative employers as a form of legal coercion or abuse of the legal system."[35]

Establishing and Maintaining Control Over Victims

Once they have recruited victims, traffickers employ consistent tactics to maintain control, ranging from physical and sexual abuse to psychological torment to facilitating a dependency on drugs and alcohol. Physical violence can be used to instill submission, to punish victims if they challenge their traffickers' authority, and as a reminder that the victim is entirely at the whims of the trafficker.[36]

Control tactics both dehumanize victims and make them entirely dependent on their traffickers. Such tactics may include branding victims with tattoos indicating that they are the trafficker's property,[37] restricting access to basic necessities,[38] and alienating victims from friends and family.[39] Traffickers will also rely on threats, including threats of physical harm to the victim or her family and friends[40] or threatening to call the police to have the victim arrested or deported if they do not submit to the trafficker's demands.[41]

Because trafficking victims are forced into an illegal work sector, they often live in fear of law enforcement raids and arrests.[42] Both traffickers and clients exploit the fear of arrest or deportation to prevent victims from escaping their circumstances or to demand unsafe practices, such as unprotected sex. Such fears may also prevent self-identification as victims. Reinforcing this fear, individuals in the sex trade may find themselves in situations where they must pay off or provide sexual favors to police to avoid arrests and further police harassment.[43]

In addition to instilling fear of arrests because they are being forced to work in an illegal sector, traffickers will often threaten the victims with bodily harm if they were to disclose

the exploitation to law enforcement. These threats deter victims from reporting the abuse if and when they do encounter the police. **Layla**[+], a 46-year-old woman from New York State, was afraid that her trafficker might kill her if she were to tell the police anything about him, stating "[my trafficker] said he'd already killed someone and wouldn't be afraid to do it again. He said he didn't want a third strike and would kill anyone who crossed him or tried to snitch on him."[44]

The complicated relationships that traffickers develop with their victims can similarly deter victims from reporting abuse to the police. **Krystal**, a 27-year-old woman also from New York, explained, "Each time I was arrested, I didn't say anything to the police or to my lawyer about [my trafficker]. This was both because I loved him and felt that I should protect him, but also because I was scared of what he might do to me if he found out I told anyone about him."[45]

Psychological and Physical Effects of Trafficking

Trafficked persons experience serious and long-term physical and emotional trauma as a result of their exploitation. Symptoms of post-traumatic stress disorder, depression, and anxiety are common among survivors of trafficking.[46] Survivors of trafficking into the sex trade often also experience shame and humiliation, due to the heavy stigma associated with sex work.[47]

Trafficking can also have significant physical consequences. Traffickers often restrict access to adequate food and sleep, which can lead to malnutrition, exhaustion and a compromised immune system.[48] People trafficked into the sex trade are also at a heightened risk for sexually transmitted infections, including HIV,[49] and other sexual and reproductive health-related issues, including unwanted pregnancy [50] and forced abortion.[51]

Given the lasting psychological and physical harms they have suffered and the fact that victims of trafficking may not be aware that the traffickers' actions were criminal, trafficked persons "will typically still be in crisis for some time after their release,"[52] and it may be some time before they are able to provide reliable information about what happened to them or able to seek or access support and available services.[53]

[+] Names have been changed to protect the identities of the individuals whose experiences we draw on throughout the report.

U.S. AND NEW YORK TRAFFICKING LAWS

Federal Trafficking Laws

Trafficking Victims Protection Act (TVPA)

The TVPA is the primary federal law concerning trafficking in persons.[54] It defines human trafficking and delineates the U.S. government's response. Initially enacted in 2000, the TVPA has been reauthorized several times—in 2003, 2005, 2008,[55] and, most recently, in 2013.[56] The TVPA uses a three-pronged approach to combat trafficking:

Prevention of the crime of trafficking, which focuses on public awareness and information programs, publication of the annual Trafficking in Persons Report to monitor countries' efforts to combat trafficking, and international economic development initiatives to provide alternative sources of employment to potential trafficking victims;[57]

Protection of trafficking survivors, which establishes immigration benefits for foreign survivors of trafficking and authorizes grants for a range of services for both U.S. citizens and foreign survivors of trafficking;[58] and

Prosecution of traffickers, which defines a federal crime of human trafficking and authorizes grants to state and local law enforcement to investigate and prosecute trafficking.[59]

The TVPA creates important protections under immigration law for trafficking victims. The T visa allows qualifying survivors of a "severe form of trafficking" to obtain legal immigration status and eventually pursue a path to citizenship,[60] provided the victim cooperates with law enforcement's investigation into the trafficker.[61] Although the scope of the TVPA is not limited to trafficking into the sex trade, the majority of cases that are investigated and prosecuted under the statute are cases involving trafficking into that sector.[62]

Definitions: The TVPA defines "sex trafficking" as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."[63] Sex trafficking is considered "severe" where the commercial sex act "is induced by force, fraud, or coercion," or where the victim is under 18 years of age.[64]

New York Trafficking Laws

The New York Anti-Human Trafficking Act

The New York Anti-Human Trafficking Act criminalized human trafficking in 2007.[65] The law encourages the investigation of trafficking, better identification of trafficking victims, and the establishment of victim services,[66] including health care, job training, food, clothing, and shelter.[67] Services may be provided to both citizen and non-citizen victims; however, access requires "confirmation" of a person's status as a trafficking victim by law enforcement.[68]

Definitions: The law defines "sex trafficking" as "advancing or profiting from prostitution" by:

Providing drugs to impair a victim's judgment;

Making false or misleading statements to induce a victim to engage in prostitution;

Taking a victim's passport or identity documents;

Keeping a victim in debt bondage; or

Using force, threats, and humiliation to make a victim engage in prostitution.[69]

Safe Harbor for Exploited Children Act

New York's Safe Harbor for Exploited Children Act of 2008 (SHA)[70] focuses on minors. It recognizes minors who are arrested for prostitution as "'sexually exploited [children]' who [are] entitled to services, rather than deserving of criminal prosecution."[71] The law makes it easier for minors to access services by waiving the requirement that they be "confirmed" as a victim,[72] and mandates "a short-term safe house with 24-hour crisis intervention, medical care, and other supportive services" for minor victims.[73] However, the law's protection is limited.

Proceedings regarding prostitution charges for minors

In January 2014, the New York State legislature amended the criminal procedure law to broaden the range of sentencing options for 16- and 17-year-olds who are arrested for prostitution or loitering for prostitution to include the range of special services also available under the SHA.[74] Additionally, the law mandates that any adverse findings against the minor must be expunged either when the child turns 18 or at the conclusion of the criminal court proceedings, whichever occurs later in time. However, the revised law still allows minors to be arrested for prostitution and loitering, processed through the criminal justice system, and treated as criminals.

SECTION II. CRIMINAL JUSTICE SYSTEM AND TRAFFICKING

Law Enforcement Approach to Trafficking

While there are a number of different approaches states can take to address human trafficking, the most common—and that taken by the U.S.—is a law enforcement approach. The principle federal law dealing with trafficking, the Trafficking Victims Protection Act (TVPA), calls for a three-pronged approach to trafficking: prevention, protection, and prosecution (*see* U.S. and New York Trafficking Laws, *above*). However, federal and state initiatives tend to focus on the third prong—prosecution of the perpetrators—rather than prioritizing the rights of victims.

The U.N. Special Rapporteur on trafficking has cautioned that such prioritization of prosecution can lead to trafficking survivors being "seen as 'instruments' of criminal investigation, rather than as holders of rights."[75] For example, after being raped by her trafficker as a form of punishment, **Layla** described the response by the local police:

> The police took pictures of my bruises from the rape. They told me that I would be arrested for prostitution if I didn't cooperate with their questioning. I didn't have any family or friends or a lawyer with me. I didn't want to be arrested or spend the night in jail, so I answered their questions. … In the following weeks, the police pressured me to testify against my traffickers. I did not want to testify because I was worried that they would come after me. … I was in a vulnerable emotional state. The police convinced me that if I testified, I would avoid being arrested.[76]

While prosecution of traffickers is an important part of the government's efforts to combat trafficking, an overemphasis on successful prosecutions without considering the rights and needs of trafficking victims can lead to further trauma and drive victims further underground. **Layla** reported that her negative experiences, combined with the fact that one of her regular clients was a police sergeant, discouraged her from cooperating with the police during later interactions, stating, "I came to believe that police were not to be trusted."[77]

Raids on brothels and other establishments presumed to employ individuals who have been trafficked into the sex trade are a common law enforcement approach to identifying traffickers and their victims.[78] An Urban Justice Center's Sex Workers Project (SWP) study revealed that law enforcement personnel determine "whether a raid is successful … by the collection of *evidence* rather than by positive outcomes for the

people affected by the raid."[79] In interviews, law enforcement agents "described the function of the raids as a tool for collecting evidence—including witnesses who may testify in prosecution of crimes such as trafficking and extortion."[80] Indeed, this view of victims as witnesses first and victims second is codified into the TVPA's requirement that victims cooperate with law enforcement agents in order to qualify for relief under the law.[81] In order to receive relief as a trafficking victim, an individual must demonstrate that he or she has complied with any reasonable request for assistance by law enforcement with the investigation and prosecution of the trafficker.[82] This requirement fails to recognize the complex relationship many trafficking survivors have with law enforcement. While the required cooperation includes an exception for minors under 18 years of age or individuals who are "unable to cooperate with such a request due to physical or psychological trauma,"[83] this exception is limited and ill-defined. Requiring cooperation ignores the dangers that victims may face as a result of their cooperation and places testimony and cooperation ahead of the victim's safety and psychological needs.[84]

While raids are viewed as a primary mechanism for protecting trafficking victims under the TVPA, they are not necessarily an effective method for identifying victims:[85] in an interview with the SWP, one service provider who works with trafficking survivors stated, "Ninety percent of our [trafficking] cases are not from raids, not even law enforcement identified."[86] Raids may also undermine victim cooperation in prosecutorial efforts. As discussed above, traffickers will often instill a fear of authorities in their victims, threatening to have the victims arrested or deported if they do not do as they are told. Law enforcement approaches such as raids can reinforce these fears,[87] and victims may be less likely to trust law enforcement agents after the trauma and confusion of a raid.[88]

In addition to raids, common policing strategies, driven by the "broken windows" theory that unchecked minor crimes will lead to an increase in overall criminal activity,[89] place a heavy emphasis on arrests for low-level misdemeanors, including prostitution. For example, in 2012, New York State arrested 2,962 individuals for prostitution or loitering for prostitution.[90] In contrast, only 34 individuals were prosecuted statewide for human trafficking offenses.[91] While doing very little to actually curb the sex trade,[92] policing strategies that emphasize arrests for misdemeanors like prostitution can be detrimental to efforts to prevent and prosecute traffickers.

The majority of prostitution arrests in New York City are made by "VICE squads, anti-crime, cabaret, and other units unfamiliar with the reality of sex trafficking," police units that are not adequately trained to screen those arrested for trafficking.[93] Furthermore,

policies that emphasize a high volume of misdemeanor arrests contribute to an overtaxed criminal justice system and a heightened pressure to dispose of cases through plea bargains.[94]

VICTIM OR CRIMINAL?: TRAFFICKING VICTIMS ARE OFTEN COMPELLED TO BREAK THE LAW

The TVPA recognizes that victims of trafficking should not be incarcerated or penalized for acts committed as a result of being trafficked.[95] All too often, though, trafficking victims are convicted and penalized for crimes they are compelled to commit.

Individuals Trafficked into Prostitution Often Face Non-Prostitution Arrests

Because sex work is criminalized throughout the majority of the U.S., individuals trafficked into the sex trade are at risk of arrest for prostitution. In addition, they may be compelled to commit a range of other crimes as a result of the trafficking. Victims of trafficking are at risk of arrest for vagrancy, trespass, disorderly conduct, crimes against nature, larceny, and drug and immigration offenses.[96] Laws seeking to provide remedies for trafficking victims should recognize this reality and allow trafficking victims relief from all convictions that are committed as a direct result of being trafficked, rather than limiting relief to prostitution offenses.

Individuals are often arrested for "lesser" offenses such as vagrancy, trespass, or disorderly conduct when law enforcement is unable to document sufficient facts for a prostitution charge. **Margarita**, a 34-year-old trafficking survivor from Latin America, was arrested for trespass under circumstances virtually identical to her arrests for prostitution, such that she was never aware that she was charged with a non-prostitution crime.[97]

The New York Anti-Human Trafficking Act recognizes that drug use is a common tactic used by traffickers to exert control over their victims, making trafficking victims especially vulnerable to drug convictions.[98] In *People v. G.M.*, the Court recognized that **G.M.**, a trafficking survivor, had been forced to purchase illegal drugs for her trafficker because he did not want to risk arrest himself.[99] In addition to being compelled to purchase drugs to supply their traffickers, trafficking victims may also purchase drugs to satisfy addictions developed as a result of being trafficked.[100]

Victim or Criminal?: Trafficking Victims are Often Compelled to Break the Law (continued)

Due to risks of violence and rape from clients, individuals trafficked into the sex trade may also be compelled to carry a weapon for self-defense. In *People v. L.G.*, the Court recognized that "human trafficking victims are frequently arrested and charged for a variety of offenses based on actions which the victims were unwillingly coerced into committing by their traffickers," and accordingly found that **L.G.**'s "conviction for criminal weapons-possession was clearly the result of her having been trafficked and therefore the arrest charge could be considered a prostitution-related offense."[101]

Due to the challenges that a criminal record poses for finding lawful work, lack of work authorization, and the stigma attached to sex work, trafficking survivors may be compelled to engage in illegal activity in order to survive—including returning to commercial sex work—after escaping their traffickers. They may also continue to face coercion from their traffickers. **Angela**, a 29-year-old Caribbean woman, was suspended from her job as a home health aide when her employer learned of her prostitution convictions.[102] Her trafficker repeatedly threatened her and her family if she failed to give him money. Unable to obtain stable employment and unwilling to return to sex work, Angela was compelled to steal to satisfy her trafficker's financial demands. Her criminal record now includes larceny charges, which serve as additional obstacles to gainful employment.[103]

Criminalizing Victims

In addition to prioritizing prosecution over victims' rights and undermining trust of law enforcement agents, an overemphasis on a criminal justice approach, with insufficient resources and efforts aimed at victim identification and assistance, can often result in collateral harms for the victims themselves, including arrest or deportation. Despite U.S. statements that "trafficking victims should not be punished for crimes that are a direct result of being trafficked,"[104] all too often, victims of trafficking are arrested, detained, prosecuted, and, in some cases, deported without ever having been identified as a victim.[105]

Failure to Identify Victims Upon Arrest

Despite the anti-trafficking resources committed to brothel raids, when trafficking victims are arrested in raids, the criminal justice system is poorly equipped to identify and assist them. The SWP report documents the cases of nine confirmed trafficking victims, who were repeatedly arrested for prostitution or prostitution-related offenses without ever having been screened for trafficking.[106] One of these women was in jail for several months for prostitution before her criminal defense attorney learned more about her situation and identified her as a potential trafficking victim.[107] **Margarita** was arrested in 10 separate raids on brothels where she was brought to work, yet each time she was processed as a criminal without any effort to identify her as a trafficking victim.[108]

Law enforcement, criminal defense attorneys, prosecutors, and criminal court judges often know very little about trafficking and may not be able to identify victims or ask the right questions to determine their status.[109] Even when efforts to screen for trafficking are made, a variety of factors can impede victim identification upon arrest. Fear of authorities instilled by traffickers—or fear of retaliation by the trafficker against a victim or his or her family—can prevent victims from speaking about their experiences.[110] Law enforcement spends limited time with victims when arrested, and there is seldom an opportunity to gain enough trust for victims to share their experiences, which are many times humiliating, dehumanizing, and sexual in nature.[111]

Further, victims may be traumatized by raids and arrests and may not trust that law enforcement officials are on their side. Language barriers often inhibit communication. When victims do share their experiences, it can be difficult for untrained authorities to recognize them as trafficking victims.[112]

Common misconceptions about human trafficking may result in authorities focusing "solely on … whether or not [individuals initially] consented to their situation," rather than examining whether force, fraud, or coercion was used to prevent them from exiting their work in the sex trade, thus failing to identify them as victims of trafficking.[113] Further, trafficking situations often are complex, and law enforcement may not recognize the broad scope of criminal activities trafficking victims may be compelled to engage in (*see* Victim or Criminal?: Trafficking Victims are Often Compelled to Break the Law, *above).* These complexities result in many victims of trafficking being processed through the criminal justice system as criminals.

Criminal Proceedings

The experience of being arrested can be particularly traumatic for trafficking victims. Upon being arrested in New York City, individuals are taken to a police precinct and then transferred to a central booking facility where they can be held for up to 24 hours before arraignment before a judge.[114] The New York Court of Appeals has recognized the horrific conditions of central booking facilities where "detainees are consigned, often in chains, to chronically overcrowded and squalid holding facilities where they will likely be subjected to extraordinary physical and emotional strain."[115] Individuals arrested for prostitution are often subjected to inappropriate comments or language from police officers, and may be forced to remain unclothed for long periods of time in front of other officers and other arrestees.[116] Transgender individuals are generally not recognized by their preferred gender, and are therefore placed in particularly abusive, exploitative, and violating conditions.[117]

By the time arraignment takes place, the individual is usually poorly clothed, tired, hungry, and has endured miserable conditions overnight.[118] The arrest compounds the trauma that a victim of trafficking is already experiencing. Not only is a victim of trafficking being charged for a crime he or she was forced to commit, the individual is also being forced to endure the often humiliating experiences of arrest and incarceration.

Once a trafficking victim is charged with a prostitution offense, the circumstances around the arrest and the overtaxed criminal court system create tremendous pressure on the victim to plead guilty, rather than contesting the charge or revealing the trafficking situation. The experience of arrest and detention, prior to being arraigned before a judge or making contact with legal counsel, makes it unlikely that victims will fully disclose their circumstances to an attorney they are just meeting for the first time.[119] Even if an individual would like to reveal their trafficking experience to their attorney, the high volume of misdemeanor arrests creates significant pressure for defense attorneys to dispose of cases quickly with a plea to avoid additional court dates, harsher penalties, and jail time, leaving little time for a victim of trafficking to be able to share emotionally charged and difficult stories.[120] Often victims are pressured to plead guilty for a lesser offense than the arresting charge, without being fully informed of the full consequences of such a plea.[121] In 2012, 51% of cases in New York City, the vast majority of which are misdemeanor cases including prostitution, were resolved by plea bargains at the initial court appearance.[122]

Monica, a 53-year-old American woman, described her experience of going through the New York City court system:

> I always pled guilty at the outset. That's what the lawyers told me to do. The people in court knew me, since I was always getting arrested. I would always just get time served. One time I got time, and they got ready to take me to Rikers and put the chains on me, but the guy who was the captain of corrections was one of my johns, and he pointed me out and two girls I was with and he said to the officers to leave us. He pushed my paperwork around for me. He never stopped me from getting arrested, but he stopped me from going to Rikers.[123]

Specialized courts, such as the Human Trafficking Intervention Court discussed below (*see* Snapshot: Creative Approaches to Support Trafficking Survivors in New York City, *below*), can provide alternatives to incarceration and better facilitate victim identification. However, the use of criminal courts to provide support services to suspected victims of trafficking "suggests that recipients of such services should be monitored by the criminal justice system."[124] For individuals who have been trafficked into the sex trade, the threat of arrest and incarceration that permeates these proceedings can reinforce a fear of law enforcement and a belief that they cannot turn to law enforcement for help, because they are engaged in a criminalized sector.

Immigration Consequences

Victims of trafficking who have entered the U.S. illegally may face additional consequences on arrest, as prostitution is a deportable offense.[125] In instances where the U.S. Immigration and Customs Enforcement agency is alerted to an arrest of an undocumented immigrant for prostitution, trafficking victims may be held in immigration detention centers, and ultimately deported, as a result of their arrests.[126] Many trafficking victims are held for long periods of time in detention centers that are poorly equipped to address basic health needs, let alone provide victims services, before being deported to their country of birth.[127] Deportation may place victims of trafficking in great risk of danger from their traffickers, especially if they had escaped from a trafficker's control.[128] Further, after deportation, survivors of trafficking may have difficulty re-integrating into their families or communities in their home country if their participation in sex work and criminal record are discovered.[129]

Failure to properly screen or identify victims as victims allows these individuals to "be swept into a system that views all persons in prostitution or undocumented immigrants

as criminals and treats them accordingly,"[130] which can expose victims to police misconduct and abuse[131] and leads to detention, deportation, and a criminal record.

LUZ'S EXPERIENCE WITH CRIMINALIZATION

Luz, a 33-year-old woman trafficked into the U.S. from Latin America, had multiple encounters with the New York Criminal Justice System that left her feeling scared, confused, and disempowered. She explained:

"Each time [the police] raided a place I was working, I was very scared. The police would take me and the other women working there to a police precinct, where they would take our fingerprints and hold us in a cell overnight. … Sometimes, the owner of the house would send a lawyer to represent us. … He would speak to all of the women together and tell us that when we went before the judge, we should say we were guilty. … When I went before the judge, [the lawyer] would do all the talking in English. I didn't say anything. There was an interpreter, but I didn't really understand what was happening. I was nervous and confused the whole time."[132]

Even after escaping her trafficking situation, Luz was trapped by the poverty and hardships that resulted from having been trafficked into the sex industry, exposing her to continued exploitation:

"I had no money and an infant son to support, and so I had to continue working. Although I desperately wanted to stop working in prostitution, I was unable to do so immediately because I owed money for rent and food for my family. I tried to find other work, but I didn't speak English, I wasn't in the country legally, and I didn't know what else to do. Without any friends, financial support, or work documents, I had no other way to take care of myself and my son. Therefore, I regrettably continued in the only thing I knew to do."[133]

When Luz finally was able to break free from engaging in prostitution, she found that her convictions posed a huge barrier to moving forward with her life:

"I have worked many different jobs since I stopped working in prostitution, but it is always hard to find work that pays enough for me to meet my expenses and care for my children. … I completed a program to be certified as a home health care attendant. As soon as I received the certification, I submitted an application to be listed by a home health care agency, but they rejected my application because of my criminal record. I believe a big reason I have had such a hard time finding and keeping a job is because of the prostitution-related criminal convictions that are on my record."[134]

What Does a Criminal Record Mean for Trafficking Victims?

"[Human trafficking] is about people; and the way the world chooses to fight it must also be about people—restoring their hopes, their dreams, and most importantly, their freedom."

- 2012 Trafficking in Persons Report

Survivors of trafficking not only face imprisonment or deportation, but also suffer the long-term consequences of having a criminal record. Ironically, even after escape from a trafficking situation, a criminal record can continue to restrict survivors' self-determination and ability to put the past behind them. Criminal convictions constitute enduring barriers to obtaining housing and loans and pursuing educational and employment goals. Convictions also may carry consequences for immigration and child custody and expose victims to the discrimination and stigma of being "criminals."[135]

Criminal convictions pose significant barriers to obtaining employment. While it is illegal to deny employment based on past criminal convictions in New York State, with a few exceptions, it is not illegal to inquire about them.[136] Many employers require criminal background checks or inquire about past criminal convictions as part of job applications.

CRIMINALIZATION OF SEX WORK IMPOSES ADDITIONAL HARMS

Prostitution is criminalized in every state in the U.S., with the exception of Nevada, which allows regulated brothels in some small counties. The criminalization of prostitution leads not only to arrests and detention, but also carries a number of other negative consequences for trafficking victims.

Heightened Risk of Violence

Imposing criminal penalties for sex work places individuals involved in the sex trade—whether involved voluntarily or as a result of trafficking—at greater risk of violence. To avoid arrests, those engaged in the sex trade are often forced to work in dangerous locations, out of reach of law enforcement protection.[137] They also face violence, harassment, and discrimination from law enforcement because of the illegality of their work. Police are often less likely to respond to reports of violence against them.[138] As a result, sex workers and trafficking victims are at a high risk of violence, including sexual assault, rape, robbery, exploitation, and trafficking.[139]

Barriers to Health Care Services

Individuals engaged in the sex industry frequently lack access to health care services.[140] Because they are not employed in a legal industry, they encounter significant barriers to obtaining health insurance, putting the cost of even basic health care out of reach. Discrimination by health care providers and fear of fully disclosing necessary health information because of possible criminal repercussions can lead to sub-standard care. In addition, working conditions lack safety regulations and standards that exist in other industries that protect individuals from injures in the workplace.[141]

Condoms Used as Evidence in Criminal Cases

Police and prosecutors use possession of condoms by individuals arrested for prostitution offenses as evidence of intent to engage in prostitution or of violation of sex trafficking laws.[142] Even in districts where prosecutors will not introduce condoms into evidence for individual prostitution arrests, District Attorneys have contended that condoms—for instance, the presence of condoms in a massage parlor—are necessary evidence to prosecute traffickers for promoting prostitution.[143]

As a result, traffickers may be less likely to allow those they control to use condoms when engaging in prostitution, as it might expose the trafficker to criminal liability. Trafficking victims, in turn, risk either arrest for condom possession or the negative consequences of unprotected sex, including sexually transmitted infections and unwanted pregnancies.

Lack of Assistance for Trafficking Victims

Sex workers are in a good position to identify and assist persons who have been trafficked.[144] Individuals in the sex industry often have information about individuals forced into sex work and can report situations of exploitation and trafficking. Yet, fear of arrest or police harassment can pose a huge barrier to providing assistance for trafficked individuals.

This deters many survivors of trafficking from applying for jobs for fear of having to discuss past convictions. Employment in certain fields, such as security, childcare, and cosmetology, require licenses, which may not be obtained if an individual has been convicted of certain crimes in the past.[145] Criminal convictions for drug offenses prevent individuals from receiving federal student loans for education or vocational training.[146]

Criminal convictions may also bar receipt of government assistance in the form of housing and welfare benefits. The federal government considers past convictions and evidence of criminal activity when individuals apply for public housing.[147] Individuals with certain drug-related convictions (*see* Victim or Criminal?: Trafficking Victims are Often Compelled to Break the Law, *above*) are barred from receiving federal welfare benefits.[148] Being unable to access public assistance can pose a huge hurdle to survivors trying to rebuild their lives. The barriers that criminal convictions impose to seeking gainful employment, secure housing, or other benefits may also place victims in a situation where they may be vulnerable to either further coercion or returning to sex work or other illegal or unauthorized work in order to subsist.[149]

In addition to not wanting to share their backgrounds with future employers and government entities, trafficking survivors may not want family or friends to know about their experiences due to the shame and humiliation they feel and the stigma attached to sex work. Survivors with criminal records may be haunted by the fear that their criminal record could expose a past that they are seeking to put behind them.[150]

Convictions for prostitution or related offenses can also be used against trafficking survivors in Family Court proceedings. For example, traffickers have used prostitution convictions as grounds for seeking custody of children they have in common.[151]

The experiences of several trafficking survivors who were convicted of prostitution or related offenses highlight the barriers that a criminal record can erect.

Anna, a 39-year-old Central Asian trafficking survivor, described how her criminal record prevents her from moving on with her life and pursuing her interest in applying for beauty school:

> I am worried my past will hurt my application. … I hope to get my prostitution conviction vacated so that employers cannot find out about my past. I cannot apply for babysitting jobs because they will do background checks, as well. If my conviction is not vacated, I won't be able to move on, go to school, and get a job as I have been planning. … I want to be free of my difficult past.[152]

Marta, a 32-year-old Latina woman trafficked into the U.S., described her convictions as "serious obstacles to obtaining an education and moving forward."[153] She would like to apply to be a home health attendant to make enough money to afford her daughter's speech therapy and dreams of owning a house one day.[154] However, she explained:

> The convictions make it difficult for me to complete courses to become a home attendant. The application for a home attendant program requires information about criminal records. I do not want to lie about my criminal record, but I also don't want to reveal it and be rejected from the courses. So I put the papers away. I can't go back, and I can't go forward.[155]

G.M. was fired from her position as a home health care attendant when the Department of Health carried out a background check and discovered her criminal record, leading to embarrassment, humiliation, and financial hardship.[156] She was finally reinstated, but only after years of advocacy.

Krystal similarly found her convictions to be a barrier to many positions, even those that do not require special licensing. After having an offer as a home health aide rescinded as a result of her prostitution convictions, Krystal explained:

> I have also attempted to seek many other types of employment. I went through an entire course and completed the process in order to become a school safety aide. I got fingerprinted, and was in the last stage of the hiring and orientation process, when I was told that I was ineligible due to my criminal record. … I started to look for any type of employment, even though I had dedicated so much time to getting specific training. I applied for a retail position at Target Department Store. I indicated on the job application that I had previously been convicted of a crime. … I was denied the position. I continue to apply for work everywhere I can. More recently, I was offered a position as an Admissions Associate at the New York Aquarium. … Soon after I was offered the position, I received an email … indicating that they had to rescind my job offer as a result of the background check that I had undergone.[157]

Inability to obtain regular employment can take a significant psychological and emotional toll on survivors. **Krystal** recalled, "I began to get incredibly depressed and felt almost as stuck as I did when I was [being trafficked]."[158]

A criminal record also carries emotional consequences for trafficking survivors, serving as a constant reminder of the trauma they suffered. **Marta** explained:

> My experience and my criminal record affect me emotionally as well. I have many nightmares. Sometimes, I dream about passing by the house where [my trafficker] held me captive. Other times, I fear that the police are coming to arrest me. … This is the burden I have carried around every day, marking me that I was in this type of work.[159]

Survivors of trafficking into the sex trade frequently experience shame and humiliation as a result of their experiences and criminal record, often leading to stigmatization, including self-stigmatization. One trafficking survivor explained, "'I always felt like a criminal. I never felt like a victim at all. Victims don't do time in jail, they work on the healing process. I was a criminal because I spent time in jail.'"[160]

In these ways, criminal records pose a significant barrier to recovery and reintegration for survivors of trafficking.

SECTION III. VACATUR LAWS: CREATING A REMEDY

"Vacating my conviction would give me freedom. It means everything to me. It means I get to live my life without having my difficult past with me all the time."

- Anna, 39-year-old trafficking survivor from Central Asia

The New York State legislature recognized the deep injustice of forcing trafficking victims to bear the burden of their exploitation by carrying a permanent criminal record for crimes they were forced to commit, and in August 2010, New York became the first state in the U.S. to allow victims of trafficking to vacate prostitution and related convictions that were a direct result of having been trafficked. [161] In passing the law, the legislature recognized that "[e]ven after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve."[162]

This section describes the impact that vacatur laws can have on the lives of trafficking victims, sharing the experiences of survivors who have sought relief under the New York law. It also describes laws in other states and identifies best practices for policy makers seeking to adopt, improve, or implement vacatur laws.

Impact of New York's Vacatur Law

Trafficking victims suffer severe harms as a result of arrest, detention, and the long-term consequences of a criminal record. Prostitution-related convictions can hinder a survivor's ability to find employment and safe housing, pursue educational goals, and overcome the stigma and trauma of the trafficking experience. Since 2010, New York's vacatur law has had a significant impact on women's lives and represents an important step in the movement to empower trafficking survivors.[163] As of October 9, 2013, 32 survivors of trafficking have collectively had almost 300 convictions for prostitution and related offenses vacated under New York's vacatur law.[164] Some of their experiences with the vacatur remedy are told below.

Luz was unable to obtain work as a home health care attendant—even after completing a certification program—because many potential employers discovered her prostitution-related convictions during background checks.[165] Speaking about the impact vacatur would have on her life and her family, Luz said, "I worked very hard for my home health care attendant certification, and I would very much … like to start working to support

myself. Most importantly, I want my children to grow up in a happy and healthy home."[166]

Monica suffers from a variety of medical conditions as a result of her trafficking experience, which require regular attention from physicians.[167] Explaining her need to have her convictions vacated, Monica said, "I need a good job with health insurance, and I can't obtain that with my current criminal record."[168] Monica was "overjoyed" after being granted vacatur.[169] She recalled, "[w]alking out with my lawyer and the [Assistant District Attorney], I felt like I was a new person. I felt like I was like them."[170] In addition to allowing her to seek employment that offers health insurance, Monica is now able to access safe housing and feels the freedom to relocate. "When you go into certain communities," she explained, "they want to check you out."[171] After vacatur, Monica said she feels like "a new person," and that erasing the convictions changed her "whole life for the best."[172]

Survivors with criminal records may be haunted by the fear that their criminal record could expose their past to family and friends.[173] **Anna**'s brother told her that her experience with trafficking "brought shame to [their] entire family" back in Central Asia, and that if she returned, she "would be a pariah among them, living in humiliation."[174] Vacatur allowed Anna to move on with her life, and she now visits regularly with her family in New York and keeps in touch with her family back home in Central Asia.[175] "When I heard about this new law, I was so excited to start this process," Anna remembers, "I want to be free of my difficult past."[176]

For many survivors, the vacatur process restores a sense of faith in the criminal justice system that was lost when they were treated like criminals. **Cara**, an American woman whose arrests occurred when she was 18 and 19 years old, admitted, "A large part of me wanted the process to fail to keep anger alive and highly fueled. That part of me wanted another thing to point at and say 'see I knew it would not work' …."[177] Cara described the process of vacating her convictions as "humbling," "powerful," and "life-changing."[178] One of the most significant aspects of the process for Cara was the bond she developed with her attorney at SWP. Speaking about the vacatur process, Cara said, "I can never in a million words describe what it felt like to walk into that courtroom and have [my attorney] by my side, an attorney I trust."[179] Looking toward her own future, she said, "The judge's comments that she expects only good things from me in [the] future will never leave me."[180]

SNAPSHOT: CREATIVE APPROACHES TO SUPPORT TRAFFICKING SURVIVORS IN NEW YORK CITY

New York is the first state to adopt a law permitting trafficking survivors to wipe their records clean of prostitution-related crimes and has seen other innovative collaborations among nonprofits and courts to provide a holistic response to the harms of criminalization.

The Sex Workers Project at the Urban Justice Center

Created in 2001, the Sex Workers Project (SWP) at the Urban Justice Center is the first U.S. program to focus on providing legal services, legal training, documentation, and policy advocacy for sex workers.[181] SWP uses a combined harm reduction and human rights model to protect the rights and safety of sex workers who by choice, circumstance, or coercion remain in the industry.[182] SWP coauthored New York's vacatur law with Assembly Member Richard N. Gottfried with the stated goal of providing relief for survivors of trafficking who face tremendous barriers in trying to rebuild their lives.[183] SWP Co-Director Sienna Baskin said, "These survivors have suffered enough and simply want to move on with their lives—by finding a good job and a safe place to live." SWP co-authored the bill to "help them find that economic security and escape being victimized again."[184] In addition to representing clients in clearing their criminal records under New York's vacatur law, SWP helps clients access safer working conditions and employment options, secure legal immigration status, fight police misconduct and hate crimes, maintain stable housing, and understand their legal rights on a host of issues through direct services, advocacy, and referrals.[185] A holistic provider of services, SWP also employs a team of social workers to provide long-term supportive therapy for their clients. As of October 7, 2013, SWP has assisted nine clients in clearing their criminal records.[186]

The Trafficking Victims Advocacy Project at Legal Aid Society

In March 2011, the Legal Aid Society of New York City created the Trafficking Victims Advocacy Project ("TVAP") with the sole focus of advocating for those arrested and charged with prostitution offenses—a particularly marginalized group within the criminal justice system. TVAP seeks to better identify and represent survivors of trafficking into the sex trade who have been charged with prostitution.[187]

According to lead attorney, Kate Mogulescu, the project responds to "a massive system failure" within New York City's criminal justice system, whereby trafficking victims are shuffled in and out of courtrooms, branded as criminals with little regard for their circumstances.[188] "For many of them," Mogulescu said, "[the process] just reinforces the abuse and degradation they face from their exploiters and society at large."[189] The first project of its kind, TVAP uses an interdisciplinary team of attorneys and social workers to screen each case and connect clients to necessary services to address the emotional, psychological, and legal harms of trafficking.[190] The project seeks to slow the pace of the criminal court process to allow time for clients to be adequately assessed and build closer relationships with the project team. It works closely with service providers to ensure that this marginalized client group has options for assistance and support.[191] As of October 9, 2013, Legal Aid has assisted 21 clients in clearing their criminal records.[192]

The Human Trafficking Intervention Court in Queens County, New York

The Human Trafficking Intervention Court (HTIC), a diversion part in the Queens County Criminal Court that exclusively hears prostitution and loitering cases, provides alternatives to criminal punishment for individuals arrested on prostitution charges.[193] The court consists of an assigned judge, a regularly assigned prosecutor authorized to determine defendants' eligibility for alternatives to incarceration, dedicated defense attorneys, and a variety of service providers. According to Judge Toko Serita, who presides over the HTIC, these dedicated parties are essential "because consistency ensures a deeper understanding of the issues facing defendants … [as well as] the difficulties of escaping the commercial sex trade."[194] Each case is viewed individually, with the prosecutor and judge offering and recommending dispositions tailored to its unique facts. The court partners with service providers to allow defendants to participate in counseling sessions as an alternative to incarceration.[195] The providers have experience working with different populations. Girls Educational & Mentoring Services (GEMS) provides services for women and girls aged 24 and younger. Mount Sinai's Sexual Assault and Violence Intervention (SAVI) Program works with adult victims of trafficking and domestic violence. While much work remains to be done in New York City to properly identify trafficking victims to prevent arrest and prosecution in the first place, a prostitution diversion part, such as the HTIC, can make identification of and provision of services for trafficking survivors a more realizable goal.[196]

The vacatur remedy has been instrumental in enabling trafficking survivors to break away from their status as victims and take ownership of their lives free from the stigma of criminalization. Despite these successes, however, more must be done to ensure that the remedy is available to those who need it. New York City's Police Department made an average of 2,700 arrests annually for prostitution or loitering for the purpose of engaging in prostitution between 2008 and 2012,[197] and many of those arrested are likely eligible to have their convictions vacated. Yet, organizations bringing these cases are extremely limited in capacity for both outreach and representation, and the Legal Aid Society and SWP are the only two organizations that are regularly representing individuals eligible for vacatur.[198] Further, as of October 2013, all of the individuals who have been granted relief under New York's vacatur law have been cisgender[199] females,[200] and more must be done to reach out to male and transgender survivors of trafficking. Continued awareness-raising about the availability of the remedy—as well as increased resources for implementation of the law—is necessary to ensure that all individuals who are eligible for vacatur are able to access it.

Best Practices for Vacatur Laws

Between 2010, when New York enacted its vacatur remedy, and October 2013, 15 other states—**Connecticut**,[201] **Florida**,[202] **Hawaii**,[203] **Illinois**,[204] **Maryland**,[205] **Mississippi**,[206] **Montana**,[207] **Nevada**,[208] **North Carolina**,[209] **New Jersey**,[210] **Ohio**,[211] **Oklahoma**,[212] **Vermont**,[213] **Washington**,[214] and **Wyoming**[215]—have enacted similar legislation to allow trafficking survivors to clear their criminal records. As public understanding of the need to redress these unjust convictions increases, there is a growing trend to enact vacatur laws. Given the fundamental injustice of criminal convictions for crimes that trafficking victims were compelled to commit, it is essential that available remedies allow for the broadest possible relief, rather than impose additional hurdles that prevent survivors from "mov[ing] beyond their exploitation and liv[ing] the lives they choose for themselves."[216]

Based on interviews with trafficking survivors and their advocates, this section identifies important issues that should be addressed by vacatur laws to ensure the broadest form of relief and recommends best practices for enacting such legislation. SWP, which helped author the New York law, has outlined essential elements for a vacatur law to provide an effective remedy for trafficking survivors,[217] which helped inform this analysis. The section then analyzes existing laws to assess how well these laws provide relief from these unjust convictions.

Best Practices

- **Broad definition of victim of trafficking**. Federal and state laws often define trafficking slightly differently. In order to provide the broadest possible remedies, statutes should allow for vacatur for survivors who meet the definition of trafficking victims under either state law or federal law, rather than restricting relief to victims under the state law definition.

- **Broad scope of convictions vacated**. Trafficking survivors are often forced to perform a range of criminal activities in addition to prostitution (*see* Victim or Criminal?: Trafficking Victims are Often Compelled to Break the Law, *above*). In order to provide the appropriate scope of relief, statutes should allow for vacatur of all convictions that arise out of the trafficking situation.[218] They should also apply retroactively to convictions that occurred prior to the passage of vacatur laws.[219]

- **No unreasonable proof requirements**. The hidden nature of trafficking, coupled with fear of law enforcement and trafficker retaliation, makes it difficult for trafficking survivors to provide corroborating evidence or report victimization in a timely manner. Statutes should not require a specific type of documentation, proof, or corroborating evidence. However, they should create a presumption that a survivor's convictions resulted from the trafficking situation where there is official documentation certifying the survivor as a trafficking victim.[220]

- **No additional conditions on relief**. Statutes should not require that survivors obtain permission from prosecutors to seek relief, cooperate with law enforcement, or prove that they have left the sex industry or been rehabilitated as conditions of relief.[221]

- **No unreasonable time limitations on seeking relief**. Trauma, fear of retaliation, or other situations may prevent trafficking survivors from seeking out services or pursuing remedies. Given the complex circumstances of survivors, statutes should not impose absolute time limitations (statutes of limitations) on motions seeking to vacate convictions.

- **Confidentiality**. Statutes should include confidentiality provisions to protect the survivor's identity.[222]

- **Relief should effectively erase convictions**. To provide the strongest relief for survivors, statutes should require vacatur when the statutory requirements are satisfied.[223]

- **Judicial discretion to expand relief**. Given that it may be impossible to anticipate the circumstances facing a trafficking survivor, courts should be authorized to take additional action consistent with the purposes of the vacatur remedy.[224]

- **Resources to ensure availability of remedy**. A vacatur statute is meaningless if survivors are not able to file motions seeking relief. Legislatures should ensure availability of the remedy by funding legal representation for individuals eligible for relief.[225]

Analysis of State Vacatur Laws

This section analyzes current vacatur laws and the cases and practice in New York, which is currently the only state with significant experience applying a vacatur statute.[226]

Definition of victim of trafficking

State and federal laws define sex trafficking slightly differently (*see* U.S. and New York Trafficking Laws*, above*). In order to ensure that trafficking is broadly interpreted, the **New York** law, as well as laws enacted by **Connecticut**, **Florida**, **Hawaii**, **Illinois**, **Maryland**, **Nevada**, **New Jersey**, **Ohio**, **Vermont**, **Washington**, and **Wyoming**, allow survivors to seek relief as long as they meet the definition of a trafficking victim under either state law or the TVPA. **Oklahoma** has taken a different approach and does not define who qualifies as victims of human trafficking. While this could lead to progressive interpretation of who qualifies as a trafficking victim, lack of legal clarity could also lead to unequal application of the law or overly narrow interpretations.

Scope of convictions vacated

In **New York** and the majority of other states that provide relief for trafficking survivors, the statutes do not explicitly authorize vacatur of non-prostitution offenses. The New York law provides for vacatur where the "arresting charge" was for prostitution or loitering for the purposes of engaging in prostitution. This allows some leeway where individuals were arrested for prostitution or loitering offenses and plead guilty to lesser offenses following arrest, as the statute provides for vacatur of those lesser offenses.[227] However, individuals who have been trafficked into the sex trade can be arrested for a

range of non-prostitution charges[228] that are not expressly included in vacatur statutes (*see* Victim or Criminal?: Trafficking Victims are Often Compelled to Break the Law, *above*),[229] and victims of trafficking into other labor sectors may similarly be compelled to engage in illegal conduct, such as laboring without work authorization or panhandling.

Recognizing that the purpose of the vacatur remedy is to allow survivors of trafficking to move on with their lives without being haunted by criminal records,[230] one New York court has exercised its discretion to allow vacatur of non-prostitution convictions.[231] In particular, the presiding judge in that court noted that "[a]ny interpretation of [the vacatur statute] that would narrow the definition of 'arresting charge' to include *only* prostitution offenses … would certainly neither address the coercive forces confronting trafficking victims nor comport with the ameliorative legislative purposes of providing 'relief and justice … to sex trafficking victims,'"[232] and the judge accordingly found that "the statute grants to the court discretion to consider non-prostitution crimes for vacatur."[233] However, in an earlier case in a different jurisdiction, the defense attorney withdrew a request to vacate a conviction for resisting arrest after the District Attorney refused to consent to vacatur, despite the fact that the conviction was a direct consequence of the trafficking situation.[234] Thus, while courts may and should exercise their discretion to vacate a broader range of convictions, legislatures should consider expressly amending vacatur laws to make clear that they apply to all convictions that arise out of a trafficking situation, including trafficking into labor sectors other than the sex trade.

New Jersey provides slightly broader relief. Its statute explicitly provides for vacatur of convictions under local ordinances "similar" to the prostitution and loitering offenses set forth in the statute.[235] **Florida** takes a more expansive approach, providing for the expunction of "an offense committed while [an individual] was a victim of human trafficking [that] was committed as a part of the human trafficking scheme…," with some exceptions for serious felonies.[236]

Proof requirements

The trauma, shame, and humiliation that trafficking survivors experience after escaping their situation can make recounting trafficking experiences a fraught endeavor. Recognizing this, the **New York** statute creates a statutory presumption that the survivor's participation in the underlying offense was a result of the trafficking if federal, state, or local authorities have certified him or her as a trafficking victim, thus lessening the burden to provide additional proof of the trafficking situation.

At the same time, the law does not *require* documentation certifying the survivor as a trafficking victim.[237] This recognizes that many survivors may not have official documentation. For example, U.S. citizens may not need to be certified as trafficking victims to receive public benefits,[238] survivors may have decided not to report their traffickers or to cooperate with law enforcement,[239] and administrative barriers may prevent individuals from obtaining official documentation.[240] **Florida**, **New Jersey**, and **Vermont** similarly provide that, while official documentation of trafficking status is persuasive evidence, it is not required to grant a motion to vacate a conviction.[241]

Although vacatur statutes do not require that survivors present corroborating evidence to prove they were trafficking victims, there is a danger that prosecutors and courts may implicitly require corroborating evidence. In **New York,** District Attorneys' offices have opposed motions when they are deemed to lack sufficient corroborating evidence.[242] Fortunately, a New York court has emphasized that trafficking survivors are not required to supply corroborating evidence and that the court has discretion to grant relief based solely the survivor's testimony if it is deemed credible.[243]

Additional conditions on relief

Some statutes explicitly condition the ability to obtain relief on requirements that victims cooperate with law enforcement, obtain prosecutor approval, or not have other criminal charges or convictions. **Washington** restricts who can seek a motion to vacate, excluding from eligibility those who have pending criminal charges, have been convicted of another crime or a crime in another state, or have previously had other prostitution convictions vacated.[244]

Both **Hawaii** and **Maryland** require signed consent from the prosecutor before the court can consider the motion for vacatur.[245] This requirement can be used to coerce survivors to cooperate with law enforcement. The **New York** statute does not require that survivors cooperate with law enforcement. However, New York District Attorneys' offices often implicitly require such cooperation before they will consent to motions to vacate. While prosecuting traffickers is a laudable and important goal, requirements that survivors cooperate with law enforcement in order to obtain relief from criminal convictions ignore the fact that many survivors have legitimate reasons for declining to cooperate in investigations. Survivors often fear and have mistrust of law enforcement.[246] This may result from prior experiences with the police or from the fact that traffickers often instill a fear of law enforcement in their victims to prevent them from seeking help. Survivors may also fear trafficker retribution against themselves or their families.[247]

Vacatur statutes should recognize that, as a fundamental principle of justice, trafficking survivors have a right to vacate convictions that stem from a trafficking situation. This right should not be conditioned on whether they assist in criminal investigations or have other criminal convictions.

Time limitations

After a survivor has escaped a trafficking situation, it may be some time before she or he is in a position to seek out services or pursue remedies.[248] Requiring that survivors must seek relief under a vacatur statute within a set time period fails to take these realities into account. Rather than providing an explicit statute of limitations, the **New York** statute requires that a motion be filed with due diligence, "subject to reasonable [safety] concerns," after a survivor has escaped the trafficking situation or has sought services. The due diligence requirement recognizes that there may be just cause for delays in filing motions and grants trafficking survivors the leniency they may need to ensure they are in safe space—both physically and emotionally—to avail themselves of this remedy.[249] This flexible standard also allows for retroactive application of the statute, which allows survivors to vacate convictions that occurred before the **New York** law went into effect.[250]

Most states mirror **New York's** flexible due diligence requirement, but **Hawaii** imposes a statute of limitation of six years, starting from the moment the survivor escaped the trafficking situation.[251]

Confidentiality

Most statutes lack explicit confidentiality protections, such as a presumption that allows vacatur motions to be filed under seal. The omission of confidentiality protections places a survivor's convictions and his or her trafficking situation set forth in court proceedings in the public domain even after it has been vacated.[252] In **New York**, practitioners have been able to rely on a provision in the New York Civil Rights Law that forbids the public disclosure of identifying documents in cases involving sex offenses and allows motions to be filed under seal.[253] While human trafficking is not one of the listed offenses,[254] many trafficking survivors are also survivors of rape and sexual abuse, which are covered under the Civil Rights Law.[255]

An explicit presumption to file motions to vacate under seal would create an added layer of protection for trafficking survivors seeking relief, to ensure that they are able to move

on with their lives without fear of their past resurfacing, and would be in line with the legislature's intent in enacting the vacatur law.

Impact of relief

There are different ways states can provide relief from convictions. **New York** and the majority of state statutes vacate convictions. Vacatur results in the complete removal of the arrest and conviction from a survivor's record, enabling them to pursue employment, housing, and immigration opportunities without any fear that their record could still be used against them.[256] The **Florida** and **Oklahoma** statutes only allow survivors to expunge their convictions.[257] Expunction of convictions only seals the records of the convictions. While the convictions are kept from the public, law enforcement can still view the prior charges. Further, convictions can still be used to deny employment in certain fields, and expunction does not change the immigration consequences of convictions.[258]

Under the **New York** statute, when a motion is granted the court must vacate the conviction and dismiss the accusatory instrument. This provides the fullest relief for a trafficking survivor. By contrast, the **Maryland** statute grants the court discretion to vacate the conviction, modify the sentence, or grant a new trial.[259] Modifying a sentence for a crime a trafficking survivor was compelled to commit does not provide complete relief and results in continued criminal punishment and stigma. A new trial could re-victimize a survivor, who has to recount the trauma of trafficking experiences, and may limit the possibility for relief.

Judicial discretion

The **New York** statute allows the court to "take such additional action as is appropriate in the circumstances."[260] This judicial discretion is critical to addressing questions of justice that are not explicitly covered by the statute, such as the arrests for offenses other than prostitution and loitering for prostitution discussed above. The **Illinois** and **Nevada** statutes also grant judicial discretion to take additional appropriate actions.[261]

Resources

Lack of resources to implement the vacatur statutes in **New York** and other states presents a significant barrier to providing an effective remedy. Funding is necessary to do outreach, to inform survivors of the remedy, and to identify those able to file for relief.[262] Further, there is a need for more attorneys who are willing and able to file these motions.[263] Filing a motion to vacate is difficult and time-consuming, due to the sensitive

nature and unique circumstances of each case.[264] Because the motions are often fact-specific, they do not lend themselves to use of a set template. Additionally, it takes time to educate courts and prosecutors about the law and sensitize them to the realities of trafficking into prostitution. Lawyers must also be trained to gather sufficient information from clients while still ensuring that they are adequately supported and protected from additional trauma.[265] Funding is necessary to adequately train a sufficient number of attorneys to prepare and file these motions in a manner appropriate to the sensitive nature of the issues at hand.[266]

SECTION IV. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Survivors of human trafficking have suffered severe violations of their fundamental human rights.[267] But all too often, instead of being recognized as victims of human rights abuses, they are treated like criminals. Despite having been forced to engage in criminal acts by their traffickers, they are arrested, detained, and prosecuted, and then burdened with the stigma and collateral harms of a criminal record. This practice has been strongly criticized by human rights experts. The U.N. Special Rapporteur on trafficking has emphasized that governments have an obligation not only to criminalize trafficking, but also to refrain from acts that criminalize trafficking victims.[268] The Office of the High Commissioner on Human Rights (OHCHR) has further called upon governments to guarantee "that law enforcement efforts do not place trafficked persons at risk of being punished for offenses committed as a consequence of their situation."[269] The U.N. Trafficking Protocol requires that nations that ratify the Protocol establish comprehensive policies, programs, and measures to protect survivors of trafficking from re-victimization.[270]

As a party to international human rights treaties,[271] the U.S. has obligations to respect, protect, and fulfill the rights of all individuals under its jurisdiction. These obligations require that the U.S. refrain from violating human rights and exercise due diligence to protect individuals from rights violations committed by non-governmental actors. In the trafficking context, in addition to its obligation to investigate and prosecute traffickers, the U.S. also an obligation to provide redress for trafficking victims. To comply with these obligations, the U.S. must refrain from criminalizing victims of trafficking and ensure that its law enforcement policies do not violate their fundamental human rights. To the extent trafficking victims continue to be improperly prosecuted, the U.S. must ensure access to effective remedies—such as vacatur laws, medical and psychological care, compensation, and recognition of the rights that have been violated—to redress the harms that stem from the criminalization.[272]

The U.S. has taken many steps to punish human trafficking. However, it must address the fact that, under its current policies, victims of trafficking continue to face arrest, detention, and prosecution for crimes they were compelled to commit, in contravention of these international obligations. The growing trend by individual states to allow trafficking survivors to vacate criminal convictions is a crucial first step to remedying these violations, but only 13 states have enacted these laws, and even where such remedies exist, more remains to be done.

Law Enforcement Responses to Trafficking

"People who have been trafficked have lived through incredible hardship, abuse, and violations of their human rights. Current law enforcement approaches often sacrifice their wellbeing in favor of prioritizing criminal justice proceedings."

- Sex Workers Project, *Kicking Down the Door*

Law enforcement methods of raids, arrests, detention, and rushed arraignments—and the consequences that such actions carry for trafficking victims—amount to violations of fundamental human rights, including the rights to be free from slavery, from arbitrary detention, from cruel, inhuman, or degrading treatment or punishment, and the right to a fair hearing. The Committee on the Rights of the Child (CRC), the body responsible for overseeing compliance with an Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, has criticized U.S. law enforcement methods that criminalize children under 18 who are involved in prostitution and called on the U.S. government to ensure that in such situations children are "protected and not arrested or detained."[273]

The U.S.'s Failure to Identify Trafficking Victims Violates Obligations to Prevent Slavery

Human trafficking is recognized as a form of slavery under international law.[274] The U.S. has an obligation to prevent, investigate, and punish trafficking as a form of slavery. Ineffective victim identification and inadequate investigation and prosecution of trafficking violate the U.S.'s obligation to combat slavery.

Human rights bodies have emphasized that the duty to combat slavery requires governments not only to enact prevention measures and impose sanctions on the perpetrators, but also to extend protective measures to victims of human trafficking[275] and to refrain from acts that criminalize trafficked persons.[276] The *OHCHR Recommended Principles on Human Trafficking* calls upon governments to guarantee "that law enforcement efforts do not place trafficked persons at risk of being punished for offenses committed as a consequence of their situation."[277] Governments must protect trafficking victims from continued exploitation and harm by properly screening and providing referrals to victim-centered programs—such as voluntary shelters and access to physical and psychological care—at the first point of contact.[278] Police officers, border guards, and immigration officials are often the first point of non-

exploitative contact for many victims, and therefore these officials have a crucial window of opportunity to stop the cycle of exploitation and protect victims from further harm.

Over-policing of prostitution and the U.S.'s reliance on raids deter the identification of victims of trafficking and ultimately undermine the prosecution of traffickers. Raids and arrests instill an inherent fear of law enforcement in victims (*see* Law Enforcement Approach to Trafficking, *above*). After experiencing contacts with the police through raids and arrests, victims of trafficking are more likely to go further underground and less likely to turn to law enforcement.[279] Instead of identifying victims and providing them protection and necessary support and services, raids often result in jail time and release right back into the hands of their traffickers. Although anti-trafficking training for law enforcement personnel is growing, these efforts have not led to a significant increase in the identification of trafficking victims. By failing to properly identify victims of trafficking, the U.S. is in violation of its obligations to protect individuals from slavery.

Arrest and Detention of Trafficking Victims Violate the Right to be Free from Arbitrary Detention

International human rights law prohibits arbitrary detention.[280] The right to be free from arbitrary arrest and detention is intrinsically linked to the criminalization of trafficking victims. The *OHCHR Recommended Principles on Human Trafficking* calls on states to "ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody."[281] The Special Rapporteur on trafficking has expressed that states must take affirmative measures to prevent the criminalization of victims of trafficking for status-related offenses such as begging, immigration violations, or crimes relating to the sex work.[282]

The U.S.'s failure to institute effective methods of victim identification by law enforcement when arresting and detaining individuals at risk of trafficking too often lead to the arbitrary arrest and detention of victims of trafficking.[283] The U.S. must implement mechanisms to accurately identify and assist victims,[284] especially in situations involving police raids. Training and capacity-building are particularly important for "front-line officials" who encounter trafficking victims during raids and arrests.[285]

In addition, despite protections in the TVPA that mandate that victims of trafficking should "not be detained in facilities inappropriate to their status as crime victims,"[286] individuals who have been trafficked may be detained in facilities or shelters in order to elicit victim cooperation with law enforcement and to gather information on their traffickers.[287] Victims may also be detained in such circumstances if they are unwilling

or unable to cooperate in investigations of their traffickers.[288] This form of detention constitutes illegal arbitrary detention, and the U.S. has an obligation to prevent such violations.

Treatment of Trafficking Victims Arrested for Prostitution Constitutes Cruel, Inhuman, or Degrading Treatment

The right to be free from cruel, inhuman, or degrading treatment is a fundamental right protected under the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), both of which have been ratified by the U.S.[289] The American Convention on Human Rights, which the U.S. has signed, further affirms the right of the individual to have their physical and mental integrity protected.[290] Cruel, inhuman, or degrading treatment occurs when a public official—which includes police or other law enforcement officials—commits an act that causes severe pain or suffering or is aimed at humiliating the victim.[291]

Victims of trafficking frequently encounter police mistreatment, harassment, and discrimination during raids and arrests for prostitution,[292] leading to severe mental anguish, trauma, and feelings of fear, helplessness, and uncertainty. During an arrest for prostitution, law enforcement personnel frequently expose persons engaged in prostitution—many of whom are trafficking victims—to inappropriate police conduct, including lewd comments, forcing the arrested individuals to "remain naked or unclothed in front of various officers for extended periods of time," propositioning the arrested individuals, or requesting sex in exchange for not arresting them.[293] Further, the chaos and violence of the raids can leave victims confused and frightened and reinforce the fear of law enforcement instilled by traffickers, and victims may lose any hope they have of escaping the trafficking situation.[294]

International human rights bodies have recognized that degrading and humiliating treatment of detainees constitutes cruel, inhuman, and degrading treatment.[295] U.N. human rights bodies have emphasized that police officers must be given appropriate training and instruction on how to prevent cruel, inhuman, or degrading treatment from happening when individuals are subjected to any form of arrest, detention, or imprisonment.[296] Additionally, the *OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking* affirms that governments should ensure that law enforcement officers receive sensitivity training to address the needs of trafficking victims, and no raid should take place unless the state has taken adequate measures to ensure that victims' rights are protected.[297]

The U.S. has Obligations to Ensure Fair and Impartial Hearings

The right to a fair, public, and impartial hearing is a clearly established human right.[298] The right requires access to all relevant legal information. This includes interpretations of information, such as explanations of rights, legal charges, legal obligations, and information on all court proceedings.[299] The U.N. Trafficking Protocol emphasizes that trafficking survivors engaging with the judicial system must be provided with comprehensible information on all relevant judicial proceedings.[300] The *OHCHR Recommended Principles on Human Trafficking* reinforces these standards by requiring that proceedings that involve survivors of trafficking be conducted with particular concern so as to not further re-victimize them.[301]

The circumstances surrounding the arrest, arraignment, and prosecution of trafficking victims arrested for prostitution fail to guarantee their right to a fair hearing. Due in large part to the high volume of arrests for low-level offenses, trafficking victims arrested for prostitution often lack sufficient access and time with their defense attorneys to develop the trust necessary to disclose the circumstances of their exploitation.[302] In New York City, police make an average of 2,700 arrests each year for prostitution or loitering for the purpose of engaging in prostitution,[303] clogging the criminal justice system. Insufficient time with defense attorneys, combined with deplorable conditions in central booking facilities and harassment by police, breed mistrust of the whole system and translate into substandard representation and insufficient access to legal information and counsel (*see,* Law Enforcement Approaches to Trafficking, *above*). Additionally, in many cases, attorneys are not properly trained on how to identify victims of trafficking, further impeding access to adequate counsel.[304] As a result, many individuals arrested for prostitution may be advised to plead guilty to a lesser charge without their attorneys being provided adequate time or space to assess their clients' situations or develop the trust necessary to determine whether they are victims of trafficking.

Collateral Consequences of Convictions

Criminal records impose additional trauma and barriers on trafficking victims seeking to move beyond the exploitation they have suffered. Burdening trafficking victims with an unjust criminal record violates their human rights by exposing them to further degrading treatment and humiliation, preventing them from being able to access basic necessities, such as employment and housing, and ultimately placing them at risk of being re-trafficked.

A Criminal Record Subjects Trafficking Victims to Degrading Treatment and Prevents Access to Basic Necessities

In addition to the cruel, inhuman, and degrading treatment that trafficking victims suffer as a result of arrest, detention, and prosecution for crimes they were compelled to commit, survivors of trafficking experience long-term mental suffering and humiliation as a result of having a criminal record. Because prostitution is a highly stigmatized activity, survivors face prolonged fear and anxiety that their pasts will be exposed. Further, a criminal record hinders a trafficking victim's ability to rebuild their life by preventing them from obtaining stable employment and safe housing.

Criminal background checks frequently are pre-requisites to employment and housing, especially subsidized housing, in the U.S. As discussed above, **G.M.**, a trafficking survivor, was fired when her prostitution convictions were discovered. She suffered prolonged feelings of humiliation, inadequacy, embarrassment, and trauma from having her trafficking experience resurface.[305]

Appropriate long-term housing options and stable employment are critical for the recovery of trafficking survivors.[306] The U.N. Trafficking Protocol recognizes housing and employment opportunities as remedial rights of victims of trafficking.[307] The Special Rapporteur on trafficking explains that "the means for as full a rehabilitation as possible" must include both access to appropriate housing and assistance and training for the purpose of improved employment opportunities.[308]

In order for survivors to rebuild their lives and recover from the harms suffered from trafficking, they must be able to put the psychological, social, and economic harms behind them. Exposing survivors to the emotional and mental trauma and barriers to employment and housing resulting from criminal convictions violates their human rights.

Convictions Fuel Re-trafficking and Prevent Escape from the Sex Trade

As discussed above, governments have an obligation to prevent trafficking. When law enforcement improperly prosecutes victims, the collateral harms—including barriers to stable employment and safe housing—may return survivors to the vulnerable situations that contributed to the trafficking in the first place, exposing them to re-trafficking and further exploitation. Survivors are particularly vulnerable to exploitation and abuse when convictions prevent them from accessing services, such as community support programs, legal employment, and safe housing. Failure to protect against factors that contribute to poverty and hardship can lead to the same circumstances that contributed to the survivor's initial trafficking. Burdened with a criminal record, survivors like **Luz**

face significant barriers to obtaining legal employment and often have no option but to continue engaging in the sex trade (*see*, Luz's Experience with Criminalization, *above*).

Effective Remedies

Under international law, governments have a duty to provide effective remedies to victims of human rights violations. Human rights treaties and instruments recognize that the right to an effective remedy includes the substantive right to restitution, rehabilitation, and compensation, as well as a procedural right to access remedies.

As demonstrated above, treating trafficking victims as criminals violates their fundamental rights to be free from cruel, inhuman, or degrading treatment or punishment, from arbitrary arrest and detention, and from slavery, and the right to a fair hearing. Human rights law requires that governments provide an effective remedy to individuals whose rights have been violated.[309] The Committee on the Elimination of Discrimination against Women has emphasized that effective remedies, including penal provisions against traffickers and preventive and rehabilitative measures, are a necessary component to combating human trafficking.[310]

In addition to bringing traffickers to justice,[311] effective remedies for victims of trafficking include offering compensation and rehabilitative services[312] and providing "adequate access by victims to lawyers and interpreters, health care and counseling, and to other forms of assistance and support…."[313] Where a state has further violated the rights of a trafficking victim by treating her or him as a criminal, the obligation to remedy the harm of trafficking must respond to the distinctive harms of the criminalization. The following actions should be taken to provide effective remedies to trafficking victims:

> **Trafficked persons should not be prosecuted, and convictions should be vacated.**[314] The Special Rapporteur on trafficking has clarified that states should not prosecute *any crime* that was committed as a result of being trafficked, and should allow convicted survivors to vacate any such convictions, including convictions for "sex crimes, begging, working or immigration violations."[315]
>
> **Proper training to prevent recurrence.** States must prevent recurrence of the violations,[316] including by training law enforcement to recognize victims[317] and populations at a high risk for trafficking. The Special Rapporteur on trafficking recommends the use of identification tools developed by the International Labor Organization, the International

Organization for Migration, and the United Nations Office on Drugs and Crime.[318]

Medical and psychological care and compensation. States must provide medical and psychological care and social services to survivors,[319] or offer compensation for expenses incurred in accessing these services, to remedy the mental harms resulting from criminalization and contacts with police.[320]

Recognition of rights violation. Victims of rights abuses may also be entitled to a declaration acknowledging the violations of the survivors' rights and accepting responsibility.[321] This symbolic remedy is particularly appropriate in the context of unjust criminalization, as it calls upon police departments, prosecutors, and judges to recognize and apologize for treating survivors of trafficking as criminals, instead of as victims of a crime. The process of vacating convictions can satisfy this requirement when the process includes judicial recognition that an individual should never have been convicted in the first place.

New York's vacatur law and similar state laws comprise a crucial first step to remedying the effects of criminalization on survivors of trafficking, and the U.S. should encourage the passage of similar vactur laws throughout the country. Alone, however, such laws do not fulfill the federal government's obligation to provide effective remedies for trafficking survivors who have been criminalized throughout the U.S. The Special Rapporteur on trafficking has said that states should not prosecute any crime—not just prostitution—that was committed as a result of being trafficked and should allow convicted survivors to vacate such convictions when they do occur.[322]

To ensure a more effective remedy, available vacatur laws should allow for the vacatur of a range of convictions, not just prostitution-related offenses, in addition to meeting the other best practice elements outlined above. A complete remedy would also acknowledge the mental harm survivors endure and should include funding for medical and psychological care,[323] compensation for any physical or mental harm and moral damage that can be economically assessed, [324] as well as judicial declaration acknowledging the violations of the survivor's rights and accepting responsibility.[325]

RECOMMENDATIONS

The U.S. Federal Government

U.S. government ***agencies specializing in law enforcement*** should:

- strengthen training programs for state and federal law enforcement to better identify and work with trafficking victims, as law enforcement is often their first point of contact;

- provide training for state and federal law enforcement to ensure that victim interaction is sensitive to the victim's gender, sexual orientation, and experience with trauma, and responsive to language and cultural differences; and

- develop alternative methods to identify victims of trafficking in a non-arrest setting, to avoid harmful raids by fostering greater collaboration with civil society and service providers who have experience working with and identifying trafficking victims.

The ***Department of Homeland Security*** should immediately cease the prosecution and removal of non-citizens convicted of prostitution on the grounds that they have committed a Crime Involving Moral Turpitude under the Immigration and Nationality Act.

The ***U.S. Congress*** should eliminate the requirement that trafficking survivors cooperate with law enforcement in order to be certified as a trafficking victim and eligible for immigration relief or any other survivor services during the next reauthorization of the Trafficking Victims Protection Act.

State Governments

- In states where no vacatur law exists, legislatures should pass a vacatur law that follows the model vacatur guidelines in order to provide relief for criminalized trafficking victims.

- In states with a vacatur law, legislatures should provide adequate funding to legal service providers and the court system for implementation. State legislatures should also encourage the broadest interpretation of the remedy to ensure that trafficking survivors have effective redress for the criminalization they have suffered.

State Law Enforcement and Police

- Where law enforcement encounter individuals at risk of trafficking, they should provide them with information on services and resources available to trafficking survivors in a discreet and sensitive manner.

- Law enforcement should immediately cease confiscating and using condoms as evidence of both prostitution and trafficking, as this practice can cause further injury to a population at risk of unplanned pregnancies and sexually transmitted infections.

- Authorities should address the destructive impact of policing strategies that prioritize a high volume of low-level arrests on marginalized communities, and work to improve relationships with members of those communities in non-arrest settings.

- Police should avoid holding individuals arrested for prostitution and loitering for prostitution in a booking facility until arraignment by allowing them to get a "Desk Appearance Ticket" (or its state equivalent) instead. This would provide safer, more humane treatment and facilitate greater victim identification and improved trust in the criminal justice system.

District Attorneys

- District Attorneys should attend sensitivity and awareness trainings to better understand the causes and realities of trafficking to better identify victims and work with survivors of trafficking.

- In states with a vacatur law, District Attorneys should support judicial exercise of broad discretion to allow the most comprehensive relief. They should also establish protocols within their offices to ensure that vacatur motions are handled by someone specially trained in trafficking-related issues and responded to in a timely manner.

- District Attorneys should not require that trafficking survivors cooperate with law enforcement in the prosecution of their traffickers before consenting to motions to vacate.

Public Defenders and Legal Advocates

- Public Defenders and other legal advocates should attend trainings on the topic of trafficking in persons in order to better identify and relate to clients who may have been trafficked.

- Public Defenders should allow for more time to meet with clients who are at risk for being trafficked, such as clients arrested for prostitution-related conduct, in order to better recognize signs of trafficking and to give clients an opportunity to confide in their counsel.

- Given the time constraints of meeting with clients, Public Defenders should also provide those arrested for prostitution with contact information for service providers that assist victims of trafficking, if the client states that it is safe to provide such information.

- Public Defenders should no longer consider prostitution-related cases "disposable cases"—cases that can be resolved quickly and without much consideration—as that fosters a system in which defense attorneys encourage their clients to plead guilty without adequate screening for trafficking.

- Legal advocates interested in working on a motion to vacate should educate themselves about the experiences of trafficking victims and the filing of such motions before representing a client.

Service Providers and Legal Aid Organizations

- Legal aid organizations should increase opportunities for staff to learn about trafficking and the representation needs of trafficking survivors, including by sponsoring CLEs and other training opportunities.

- Legal aid organizations must ensure that their defense attorneys have adequate time and resources to screen clients who may be at risk of trafficking.

- Service providers who have the potential to directly reach trafficking survivors should conduct outreach to inform potential beneficiaries of the motion to vacate remedy where available. Providers should also train legal advocates to work with trafficking survivors and identify victims.

- Organizations working with trafficking survivors should offer trainings for law enforcement on the root causes of trafficking, how to better identify trafficking victims, and how to work with potential victims in a sensitive manner.

Implementing New York State's Vacatur Law

New York Judges and the Criminal Court System

- New York Judges who review motions to vacate should use their discretion under C.P.L. § 440.10(6) broadly to vacate all convictions that stem directly from the trafficking.

- New York Criminal Courts should develop Uniform Court Rules governing the review and filing of motions to vacate to better protect survivors of trafficking and to facilitate filing.

New York State Legislature

- The New York State legislature should fund the dissemination of information about the vacatur law to public defense organizations, New York Criminal Courts, and judges.

- The New York State legislature should ensure that the new law governing criminal proceedings of minors charged with prostitution offenses is implemented consistent with the protections offered under the Safe Harbor for Exploited Children Act and the mission to end criminalization of trafficked minors.

ANNEX I. NEW YORK CRIMINAL PROCEDURE LAW § 440.10

New York's Criminal Procedure Law § 440.10(1)(i) provides that the court may vacate a judgment where:

> The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (U.S. Code, title 22, chapter 78); provided that
>
> (i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and
>
> (ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.

The amended statute further provides in § 440.10(6) that "[i]f the court grants a motion under paragraph (i) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances."

NOTES

[1] INTERNATIONAL LABOR ORGANIZATION (ILO), ILO 2012 GLOBAL ESTIMATE OF FORCED LABOUR: EXECUTIVE SUMMARY 1 (2012).
[2] Joy Ngozi Ezelio, Special Rapporteur on trafficking in persons, especially women and children, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, ¶ 61, U.N. Doc. A/HRC/17/35 (Apr. 13, 2011) [hereinafter Special Rapporteur on trafficking, Effective Remedy Report].
[3] N.Y. CRIM PROC. LAW § 440.10(1)(i) (2012).
[4] *See*, *e.g.*, International Covenant on Civil and Political Rights, art. 2.3, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR]; Joy Ngozi Ezeilo, Special Rapporteur on trafficking in persons, especially women and children, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, ¶¶ 28-29, U.N. Doc. A/HRC/20/18 (June 6, 2012) [hereinafter Special Rapporteur on trafficking, Criminal Justice Report]; *see generally* Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2.
[5] ILO 2012 GLOBAL ESTIMATE OF FORCED LABOUR, *supra* note 1, at 1.
[6] *Id.*
[7] MELISSA DITMORE, URBAN JUSTICE CTR., KICKING DOWN THE DOOR: THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS 7 (2009).
[8] N.Y. CRIM PROC. LAW § 440.10(1)(i) (2012).
[9] Jill Laurie Goodman, *What We Know about Human Trafficking: Research and Resources*, *in* LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS 1, 4 (Jill Laurie Goodman and Dorchen A. Leidholdt eds., 2011) [hereinafter LAWYER'S MANUAL].
[10] *See, e.g.*, Joy Ngozi Ezeilo, Special Rapporteur on trafficking in persons, especially women and children, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 7, U.N. Doc. A/HRC/10/16 (Feb. 20, 2009) [hereinafter Special Rapporteur on trafficking, Global Perspective on Trafficking Report]; Amy Barasch & Barbara C. Kryszko, *The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation*, *in* LAWYER'S MANUAL, *supra* note 9 at 83, 88. Victims of trafficking are often too traumatized from their experiences to feel that they are able to come forward to report what happened to them. The risk of re-traumatization in addition to potential stigma from the community can hinder a victim's ability to seek justice and support services. Additionally, victims of trafficking are often wary of authorities if and when they are able to escape their traffickers, presenting another obstacle to ascertaining the magnitude of the problem.
[11] ILO 2012 GLOBAL ESTIMATE OF FORCED LABOUR, *supra* note 1. *See also*, U.S. DEP'T OF STATE, 2012 TRAFFICKING IN PERSONS REPORT 45 (2012) [hereinafter TIP REPORT 2012].
[12] ILO 2012 GLOBAL ESTIMATE OF FORCED LABOUR, *supra* note 1.
[13] Clare Ribando Seelke & Alison Siskin, CONG. RESEARCH SERV., RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, 16 n.38 (2008).
[14] TIP REPORT 2012, *supra* note 11, at 9.
[15] Trafficking Victims Protection Act of 2000 ("TVPA"), 22 U.S.C. § 7102 (2013).
[16] TIP REPORT 2012, *supra* note 11, at 33.
[17] *See, e.g.*, Dorchen A. Leidholdt & Katherine P. Scully, *Defining and Identifying Human Trafficking*, *in* LAWYER'S MANUAL, *supra* note 9, at 27, 36, 38; U.S. DEP'T OF STATE, THE 2007 TRAFFICKING IN PERSONS REPORT 22 (2007) [hereinafter TIP REPORT 2007].
[18] *See, e.g.*, TIP REPORT 2012, *supra* note 11, at 33; Special Rapporteur on trafficking, Global Perspective on Trafficking Report, *supra* note 10, ¶ 8.
[19] Alison Siskin & Liana Sun Wyler, CONG. RESEARCH SERV., RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, 3 (2012).
[20] Special Rapporteur on trafficking, Global Perspective on Trafficking Report, *supra* note 10, ¶ 15.
[21] Goodman, *supra* note 9, at 33.
[22] TIP REPORT 2012, *supra* note 11, at 33.

[23] Joy Ngozi Ezeilo, Special Rapporteur on trafficking in persons, especially women and children, *Trafficking in persons, especially women and children*, ¶ 34, Human Rights Council, U.N. DOC. A/64/290 (Aug. 12, 2009) [hereinafter Special Rapporteur on trafficking, Identification, Protection and Assistance Report].
[24] U.S. DEP'T OF STATE, 2009 TRAFFICKING IN PERSONS REPORT 36 (2009); Goodman, *supra* note 9, at 4, 7.
[25] Goodman, *supra* note 9, at 8.
[26] TIP REPORT 2012, *supra* note 11, at 11.
[27] Leidholdt & Scully, *supra* note 17, at 28.
[28] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a), G.A. Res. 55/25, U.N. Doc. A/RES/55/25, 2237 U.N.T.S. 319 (*entry into force* Dec. 23, 2000) [hereinafter U.N. Trafficking Protocol].
[29] *See, e.g.*, Special Rapporteur on trafficking, Global Perspective on Trafficking Report, *supra* note 10, ¶¶ 48-49; Goodman, *supra* note 9, at 7-9.
[30] Leidholdt & Scully, *supra* note 17, at 37.
[31] Goodman, *supra* note 9, at 9; Barasch & Kryszko, *supra* note 10, at 85.
[32] Goodman, *supra* note 9, at 9; Leidholdt & Scully, *supra* note 17, at 35.
[33] Leidholdt & Scully, *supra* note 17, at 37.
[34] *Id.* at 36.
[35] TIP REPORT 2007, *supra* note 17, at 22.
[36] Goodman, *supra* note 9, at 10.
[37] Leidholdt & Scully, *supra* note 17, at 34.
[38] Goodman *supra* note 9, at 11; TIP REPORT 2012, *supra* note 11, at 17.
[39] Goodman, *supra* note 9, at 10; TIP REPORT 2012, *supra* note 11, at 17.
[40] Goodman, *supra* note 9, at 10.
[41] DITMORE, *supra* note 7, at 40.
[42] Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 41, Human Rights Council, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010) [hereinafter Special Rapporteur on the right to health, Criminalization of Sex Work Report].
[43] *See* DITMORE, *supra* note 7, at 43-44.
[44] Affidavit of Layla ¶ 26 (Aug. 22, 2012) (on file with the Legal Aid Society).
[45] Affidavit of Krystal ¶ 39 (Aug. 27, 2012) (on file with the Legal Aid Society).
[46] Goodman, *supra* note 9, at 12; TIP REPORT 2012, *supra* note 11, at 12, 17.
[47] Barasch & Kryszko, *supra* note 10, at 88.
[48] Goodman, *supra* note 9, at 12; TIP REPORT 2012, *supra* note 11, at 17.
[49] Goodman, *supra* note 9, at 12.
[50] Amanda Norejko, *Representing Adult Trafficking Victims in Family Offense, Custody, and Abuse/Neglect Cases*, *in* LAWYER'S MANUAL, *supra* note 9, at 193, 197.
[51] Barasch & Kryszko, *supra* note 10, at 86.
[52] TIP REPORT 2012, *supra* note 11, at 17.
[53] Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, ¶ 27 (noting that "empirical evidence suggests that a minimum period of 90 days is required in order to ensure that the cognitive functioning of trafficked persons improves to a level at which they are able to make informed and thoughtful decisions about their safety and well-being, and provide more reliable information about trafficking-related events.").
[54] Polaris Project, *Trafficking Victims' Protection Act (TVPA): Fact Sheet* (2008) [hereinafter Polaris Project, *TVPA Fact Sheet*].
[55] *Id.*
[56] Violence Against Women Reauthorization Act of 2013, Pub.L. No. 113-4.
[57] 22 U.S.C. § 7104. *See also*, Polaris Project, *TVPA Fact Sheet*, *supra* note 54.
[58] 22 U.S.C. § 7105(e).

[59] 22 U.S.C. § 7109.
[60] 22 U.S.C. § 7105(e).
[61] 22 U.S.C. § 7105(b)(1)(E)(i)(I).
[62] U.S. DEP'T OF STATE, 2013 TRAFFICKING IN PERSONS REPORT 382-383 (June 2013).
[63] 22 U.S.C. § 7102(10).
[64] 22 U.S.C. § 7102(9)(a).
[65] N.Y. PENAL LAW § 230.34 (2007).
[66] NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, BUREAU OF REFUGEE AND IMMIGRANT ASSISTANCE, NYS RESPONSE TO HUMAN TRAFFICKING, http://otda.ny.gov/programs/bria/documents/trafficking-NYS-Response.pdf (last visited Oct. 9, 2013).
[67] *Id.*
[68] Andra Ackerman & Christa Stewart, *New York State's Human Trafficking Law*, *in* LAWYER'S MANUAL, *supra* note 9, at 51, 55. The state agencies involved in the confirmation process are the Office of Temporary and Disability Assistance (OTDA) and the Division of Criminal Justice Services (DCJS).
[69] N.Y. PENAL LAW § 230.34.
[70] N.Y. SOC. SERV. LAW § 447-a (2010).
[71] Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Trafficking*, 36 N.Y.U. REV. L. & SOC. CHANGE 635, 645 (2012).
[72] Ackerman & Stewart, *supra* note 68, at 57.
[73] *Id.* at 58.
[74] N.Y. CRIM. PROC. LAW § 170.80.
[75] Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, at ¶ 61.
[76] Affidavit of Layla, *supra* note 44, ¶¶ 31, 34.
[77] *Id.* ¶ 54.
[78] TIP REPORT 2007, *supra* note 17, at 30; DITMORE, *supra* note 7, at 6.
[79] DITMORE, *supra* note 7, at 36 (emphasis added).
[80] *Id.*
[81] 22 U.S.C. § 7105(b)(1)(E)(i)(I).
[82] *Id.*
[83] *Id.*
[84] *See, e.g.*, DITMORE, *supra* note 7, at 51.
[85] *Id.* at 6.
[86] *Id.* at 10.
[87] TIP REPORT 2012, *supra* note 11, at 29; DITMORE, *supra* note 7, at 59.
[88] DITMORE, *supra* note 7, at 9.
[89] *See, e.g.*, Mae C. Quinn, *Revisiting Anna Moscowitz Kross's Critique of New York City's Women's Court: The Continued Problem of Solving the "Problem" of Prostitution with Specialized Criminal Courts*, 33 FORDHAM URB. L.J. 665, 701 (Jan. 2006).
[90] DCJS, Computerized Criminal History Oracle File.
[91] *Id.*
[92] *See, e.g.*, Quinn, *supra* note 89, at 707-709.
[93] *Oversight: Combatting Sex Trafficking in NYC: Examining Law Enforcement Efforts – Prevention and Prosecution: Testimony before the City of New York Comm. on Women's Issues and the Comm. on Public Safety* 8 (2011) (statement of Kate Mogulescu & Katherine Mullen) [hereinafter Testimony of Mogulescu & Mullen].
[94] *See, e.g.*, Quinn, *supra* note 89, at 716; Testimony of Mogulescu & Mullen, *supra* note 93, at 8.
[95] 22 U.S.C. § 7101 (b)(19).
[96] Melissa Broudo & Sienna Baskin, Sex Workers Project, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators* 3 (2012).
[97] Affidavit of Margarita ¶ 33 (on file with IWHRC).
[98] N.Y. PENAL LAW § 230.34(1).
[99] *People v. G.M.*, 922 N.Y.S.2d 761, 766 (N.Y. Crim. Ct. 2011).

[100] Goodman, *supra* note 9, at 11.
[101] *People v. L.G.*, __ N.Y.S.2d __, 2013 WL 4402830, *6-7 (N.Y. Crim. Ct. July 12, 2013).
[102] Affidavit of Angela ¶ 59 (Dec. 13, 2012) (on file with IWHRC).
[103] *Id.* ¶¶ 48-49.
[104] TIP REPORT 2007, *supra* note 17, at 36.
[105] TIP REPORT 2012, *supra* note 11, at 14; Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 23; Letter from Alison Parker and Meghan Rhoad, Human Rights Watch, to Mark Taylor, U.S. Dep't of State, on 2010 Trafficking in Persons Report (Apr. 19, 2010) [hereinafter Letter from Human Rights Watch].
[106] DITMORE, *supra* note 7, at 24.
[107] DITMORE, *supra* note 7, at 26-27.
[108] Affidavit of Margarita, *supra* note 97 ¶¶ 32, 40.
[109] Courtney Bryan, *Representing and Defending Victims of Commercial Sexual Exploitation in Criminal Court*, *in* LAWYER'S MANUAL, *supra* note 9, at 183, 184.
[110] DITMORE, *supra* note 7, at 37.
[111] DITMORE, *supra* note 7, at 35; Special Rapporteur on trafficking, Identification, Protection and Assistance Report, *supra* note 23, ¶ 36.
[112] TIP REPORT 2012, *supra* note 11, at 21.
[113] *Id.* at 25.
[114] Interview with Kate Mogulescu, Supervising Attorney, Trafficking Victims Advocacy Project, Legal Aid Society, in New York City, N.Y. (Apr. 24, 2013) (on file with IWHRC).
[115] *People ex rel. Maxian v. Brown*, 561 N.Y.S.2d 418, 422 (N.Y. App. Div. 1990), *aff'd* 570 N.E.2d 223 (1991).
[116] Interview with Kate Mogulescu, *supra* note 114; Testimony of Mogulescu & Mullen, *supra* note 93, at 3.
[117] Interview with transgender client, in New York City, N.Y. (Oct. 2, 2013) (on file with IWHRC).
[118] Interview with Kate Mogulescu, *supra* note 114.
[119] *Id.*
[120] Bryan, *supra* note 109, at 184.
[121] *See, e.g.*, Broudo & Baskin, *supra* note 96, at 1; *People v. Vickers*, 923 N.Y.S.2d 497, 499 (N.Y. App. Div. 2011).
[122] OFF. OF THE CHIEF CLERK OF NEW YORK CITY CRIMINAL COURT, CRIMINAL COURT OF THE CITY OF NEW YORK ANNUAL REPORT 2012 30 (May 2013).
[123] Affidavit of Monica ¶ 43 (Nov. 2012) (on file with the Urban Justice Center).
[124] *Id.* at 719.
[125] 8 U.S.C. § 1182(a)(2)(D)(i).
[126] April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J. L. & GENDER 231, 243 (2007).
[127] Letter from Human Rights Watch, *supra* note 105.
[128] Rieger, *supra* note 126, at 243.
[129] *Id.*
[130] TIP REPORT 2012, *supra* note 11, at 14.
[131] DITMORE, *supra* note 7, at 20, 26-27.
[132] Affidavit of Luz ¶¶ 95-96 (May 15, 2012) (on file with the Legal Aid Society).
[133] *Id.* ¶ 99.
[134] *Id.* ¶¶ 109-10.
[135] Polaris Project, *Human Trafficking Legislative Issue Brief: Vacating Convictions* (2012).
[136] CHRISTINE TRAMONTANO, JUSTICE ACTION CENTER, A PRACTITIONER'S GUIDE TO COLLATERAL CONSEQUENCES OF CONVICTIONS 21 (2006).
[137] Special Rapporteur on the right to health, Criminalization of Sex Work Report, *supra* note 42. *See also*, The Freedom Network, *Human Trafficking and Sex Workers Rights* (Sept. 2010).
[138] *See* DITMORE, *supra* note 7, at 20, 26-27, 45.

[139] *See, e.g.*, Special Rapporteur on the right to health, Criminalization of Sex Work Report, *supra* note 42, ¶ 41; *see also*, The Freedom Network, *supra* note 137.
[140] Special Rapporteur on the right to health, Criminalization of Sex Work Report, *supra* note 42, ¶ 43.
[141] *Id.*
[142] *See, e.g.*, HUMAN RIGHTS WATCH, SEX WORKERS AT RISK 16 (2012).
[143] *See, e.g.*, *id.* at 25; J. David Goodman, *Police in Brooklyn Are Told Not to Seize Condoms of Prostitutes,* N.Y. TIMES, May 29, 2013, A20 (quoting the New York Police Department's chief spokesperson as saying: "We do not rule out [the] evidentiary value [of condoms] when going after pimps and sex traffickers. If there is a bowlful of condoms in a massage parlor, we want our officers to be able to seize them as evidence against the trafficker.").
[144] *See, e.g.*, ANNA-LOUISE CRAGO, OPEN SOCIETY INSTITUTE, OUR LIVES MATTER: SEX WORKERS UNITE FOR HEALTH AND RIGHTS 36 (2008).
[145] *Id.* at 29.
[146] *Id.* at 15.
[147] *Id. at* 3.
[148] *Id. at* 11.
[149] *See, e.g.*, TIP REPORT 2012, *supra* note 11, at 22; Broudo & Baskin, *supra* note 96, at 4-5.
[150] *See, e.g.*, Affidavit of Marta ¶ 76 (Dec. 5, 2011) (on file with IWHRC).
[151] Testimony of Mogulescu & Mullen, *supra* note 93, at 7.
[152] Affidavit of Anna ¶¶ 55-57 (Dec. 9, 2011) (on file with IWHRC).
[153] Affidavit of Marta, *supra* note 150, ¶ 74.
[154] *Id.* ¶ 72.
[155] *Id.* ¶ 75.
[156] *People v. G.M.*, 922 N.Y.S.2d 761, 763 (N.Y. Crim. Ct. 2011).
[157] Affidavit of Krystal, *supra* note 45, ¶¶ 63-64, 66-67.
[158] *Id.* ¶ 68.
[159] Affidavit of Marta, *supra* note 150, ¶¶ 77, 79.
[160] TIP REPORT 2012, *supra* note 11, at 35.
[161] Broudo & Baskin, *supra* note 96, at 1.
[162] N.Y. ASSEMB., N.Y. SPONSORS MEM., 2009 A.B. 7670 (2009).
[163] Testimony of Mogulescu & Mullen, *supra* note 93, at 3.
[164] Email from Kate Mogulescu, Supervising Attorney, Trafficking Victims Advocacy Project, Legal Aid Society, to Suzannah Phillips, Clinical Fellow and Staff Attorney, IWHRC (Oct. 9, 2013) (on file with IWHRC).
[165] Affidavit of Luz, *supra* note 132, ¶ 110.
[166] *Id.* ¶ 111.
[167] Affidavit of Monica, *supra* note 123, ¶ 56.
[168] *Id.*
[169] Testimonial of Monica (on file with Urban Justice Center).
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *See, e.g.*, Affidavit of Marta, *supra* note 150, ¶ 76.
[174] Affidavit of Anna, *supra* note 152, ¶ 52.
[175] *Id.* ¶ 53.
[176] *Id.* ¶ 57.
[177] Testimonial of Cara (on file with Urban Justice Center).
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] Sex Workers Project Home Page, http://sexworkersproject.org.
[182] *Id.*

[183] Sex Workers Project, Urban Justice Center, *Press Release: Governor Paterson Signs First in the Nation Bill Allowing Survivors of Sex Trafficking to Clear Prostitution Convictions* (Aug. 16, 2010).
[184] *Id.*
[185] Sex Workers Project, About the Sex Workers Project, http://www.sexworkersproject.org/info.
[186] Email from Melissa Broudo, Staff Attorney, Sex Workers Project, Urban Justice Center, to Suzannah Phillips, Clinical Fellow and Staff Attorney, IWHRC (Oct. 7, 2013) (on file with IWHRC).
[187] Testimony of Mogulescu & Mullen, *supra* note 93, at 4.
[188] Laurel Bellows, *Op-Ed: Victims of human trafficking need our help*, Republished on the Legal Aid Society's Website (Jan. 17, 2013), http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/greatworkofkatemogulescu.aspx.
[189] Interview with Kate Mogulescu, *supra* note 114.
[190] Testimony of Mogulescu & Mullen, *supra* note 93, at 4.
[191] *Id.*
[192] Email from Kate Mogulescu, *supra* note 164.
[193] Serita, *supra* note 71, at 652.
[194] *Id.* at 654-55.
[195] *Id.* at 652.
[196] *Id.* at 659.
[197] DCJS, Computerized Criminal History Oracle File (as of Mar. 20, 2013).
[198] Interview with Kate Mogulescu, *supra* note 114.
[199] The term *cisgender* refers to individuals whose self-perception of their gender identity is consistent with the sex that they were assigned at birth.
[200] Interview with Kate Mogulescu, *supra* note 114.
[201] Conn. Pub. Acts N. 13-166 (House Bill 5666).
[202] FLA. STAT. § 943.0583 (2013) (effective Jan. 1, 2014).
[203] HAW. REV. STAT. § 712-1209.6 (West 2013).
[204] 725 ILL. COMP. STAT. 5/116-2.1 (West 2013).
[205] MD. CODE ANN., CRIM. PROC. § 8-302 (West 2013).
[206] MISS. CODE ANN. § 97-3-54.6 (2013).
[207] MONT. CODE ANN. § 46-18-608 (2013).
[208] NEV. REV. STAT. ANN. § 176.515 (West 2011).
[209] N.C. GEN. STAT. § 15A-1416.1 (2013).
[210] N.J. STAT. ANN. § 2C:44-1.1 (West 2013).
[211] OHIO REV. CODE § 2953.38 (2013).
[212] OKLA. STAT., tit. 22, § 19c (2013).
[213] VT. STAT. ANN. tit. 13, § 2658 (West 2011).
[214] WASH. REV. CODE ANN. § 9.96.060 (West 2012).
[215] WYO. STAT. ANN. § 6-2-708 (2013).
[216] Hillary Rodham Clinton, U.S. Sec'y of State, *Forward* to TIP REPORT 2012, *supra* note 11.
[217] Broudo & Baskin, *supra* note 96, at 2-3.
[218] *Id.* at 3.
[219] *Id.* at 8.
[220] *Id.* at 4.
[221] *Id.* at 5.
[222] *Id.* at 6.
[223] *Id.* at 7.
[224] *Id.* at 7-8.
[225] *Id.* at 9.
[226] As of October 2013, Illinois is the only other state whose statute has resulted in vacatur of trafficking survivors' criminal convictions, with the first vacatur under Illinois' statute occurring in the spring of 2013.
[227] *See, e.g.*, Broudo & Baskin, *supra* note 96, at 3.
[228] *Id.*

[229] *Id.*
[230] N.Y. ASSEMB., *supra* note 162.
[231] *People v. L.G.*, __ N.Y.S.2d __, 2013 WL 4402830 (N.Y. Crim. Ct. July 12, 2013); *People v. G.M.*, 922 N.Y.S.2d 761, 765-66 (N.Y. Crim. Ct. 2011).
[232] *People v. L.G.*, __ N.Y.S.2d __, 2013 WL 4402830, *6.
[233] *People v. L.G.*, __ N.Y.S.2d __, 2013 WL 4402830, *7.
[234] *People v. Gonzalez*, 927 N.Y.S.2d 567, 569-70 (N.Y. Crim. Ct. 2011).
[235] N.J. STAT. ANN. § 2C:44-1.1 (West 2013).
[236] FLA. STAT. § 943.0583(3) (2013).
[237] New York City Bar Ass'n, *Report on Legislation by the Committee on Sex and Law* 4 (Mar. 2010).
[238] Broudo & Baskin, *supra* note 96, at 4.
[239] *Id.*
[240] New York City Bar Ass'n, *supra* note 237, at 4.
[241] VT. STAT. ANN. tit. 13, § 2658(e) (West 2011); N.J. STAT. ANN. § 2C:44-1.1(c)(2)(a) (West 2013); FLA. STAT. § 943.0583(5).
[242] *People v. Gonzalez*, 927 N.Y.S.2d 567 (N.Y. Crim. Ct. 2011).
[243] *Id.*
[244] WASH. REV. CODE ANN. § 9.96.060(3)(a)-(c) (West 2012).
[245] HAW. REV. STAT. § 712-1209.6(2)(e) (West 2012); MD. CODE ANN., CRIM. PROC. § 8-302 (b)(2) (West 2011).
[246] DITMORE, *supra* note 7, at 12.
[247] TIP REPORT 2012, *supra* note 11, at 15.
[248] *People v. Gonzalez*, 927 N.Y.S.2d 567, 570 (N.Y. Crim. Ct. 2011).
[249] Broudo & Baskin, *supra* note 96, at 8; New York City Bar Ass'n, *supra* note 237, at 2.
[250] *See, e.g.*, Broudo & Baskin, *supra* note 96, at 8.
[225] HAW. REV. STAT. § 712-1209.6(2)(e) (West 2012).
[252] *See, e.g.*, Broudo & Baskin, *supra* note 96, at 6.
[253] *Id. See also*, N.Y. CIV. RIGHTS LAW § 50-b(1) (2006).
[254] N.Y. CIV. RIGHTS LAW § 50-b; N.Y. PENAL LAW § 130.
[255] Broudo & Baskin, *supra* note 96, at 5.
[256] *Id.* at 6.
[257] FLA. STAT. § 943.0583(3) (2013); OKLA. STAT. tit. 22, § 19c (2013).
[258] Broudo & Baskin, *supra* note 96, at 6.
[259] MD. CODE ANN., CRIM. PROC. § 8-302(d)(1) (West 2011).
[260] N.Y. CRIM. PROC. LAW § 440.10(6).
[261] 725 ILL. COMP. STAT. 5/116-2.1(c); NEV. REV. STAT. ANN. § 176.515(7)(b).
[262] Interview with Melissa Broudo, Sex Workers Project, Urban Justice Center, in New York City, N.Y. (Apr. 16, 2013).
[263] Interview with Kate Mogulescu, *supra* note 114.
[264] Interview with Melissa Broudo, *supra* note 262.
[265] Broudo & Baskin, *supra* note 96, at 9.
[266] *Id.*
[267] *See,* ICCPR, *supra* note 4, art. 8; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 6, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (*entered into force* Sept. 3, 1981); and Convention on the Rights of the Child, art. 34, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).
[268] Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶¶ 16-30.
[269] U.N. Office of the High Comm'r for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principle 7, Guideline 5(5), U.N. Doc. E/2002/68/Add.1 (20 May 2002) [hereinafter OHCHR Recommended Principles on Human Trafficking].
[270] U.N. Trafficking Protocol, *supra* note 28, art. 9.

[271] *See, e.g.,* ICCPR, *supra* note 4; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46, UN GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984) (*entered into force* June 26, 1987) [hereinafter Convention against Torture]; U.N. Trafficking Protocol, *supra* note 28; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, G.A. Res 54/263, Annex II, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/263 (Jan. 18, 2002); American Declaration of the Rights and Duties of Man, OEA/Ser.L.V/II.82 doc.6 rev.1 (1948) [hereinafter American Declaration].
[272] *See, e.g.*, ICCPR, *supra* note 4, art. 2.3; Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶¶ 28-29; *see generally* Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2.
[273] Committee on the Rights of the Child, *Concluding Observations: United States*, ¶ 34(c), U.N. Doc. CRC/C/OPSC/USA/CO/2 (2013).
[274] ICCPR, *supra* note 4, art. 8. *See also*, U.N. Trafficking Protocol, *supra* note 28, art. 3(a).
[275] Human Rights Committee, *Concluding Observations: Slovakia*, ¶ 10, U.N. Doc. CCPR/CO/58/SVK (2003).
[276] *See* Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶¶ 23-30.
[277] OHCHR Recommended Principles on Human Trafficking, *supra* note 269, Guideline 5(5).
[278] *Id.* Guideline 6(6).
[279] *See* DITMORE, supra note 7, at 47.
[280] ICCPR, *supra* note 4, arts. 9.1, 10.1. *See also*, American Declaration*, supra* note 271, art. XXV.
[281] OHCHR Recommended Principles on Human Trafficking, *supra* note 269, Guidelines 2(6), 6(1).
[282] Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 25.
[283] *Id.* ¶ 24.
[284] *Id.* ¶ 88.
[285] *Id.*
[286] 22 U.S.C. §7105(c)(1)(A).
[287] OHCHR, U.N. HIGH COMM'R FOR REFUGEES, ET AL., PREVENT. COMBAT. PROTECT: HUMAN TRAFFICKING 37-38 (2011).
[288] *Id.* at 38.
[289] *See* ICCPR, *supra* note 4, art. 7; Convention against Torture, *supra* note 271, art. 16.2.
[290] American Convention on Human Rights, art 5.1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.
[291] *See, e.g.*, *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, ¶ 68 (Mar. 11, 2005).
[292] *See* DITMORE, *supra* note 7, at 43; Testimony of Mogulescu & Mullen, *supra* note 93, at 5-6.
[293] Testimony of Mogulescu & Mullen, *supra* note 93, at 2, 5-6.
[294] *See* DITMORE, *supra* note 7, at 24.
[295] *See, e.g.*, *Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160 ¶ 308 (Nov. 25, 2006).
[296] *See* Convention against Torture, *supra* note 271, art.16; Human Rights Committee, *General Comment No. 20, Article 7*, ¶ 10, U.N. Doc. HRI/GEN/1/Rev.1 (1994). *See also,* Committee against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, ¶ 24, U.N. Doc. CAT/C/GC/2 (2008).
[297] OHCHR Recommended Principles on Human Trafficking, *supra* note 269, Guideline 5(2).
[298] ICCPR, *supra* note 4, art. 14.1; American Declaration, *supra* note 271, art. XXVI.
[299] Human Rights Committee, *General Comment 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)*, ¶ 2, *reprinted* in U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994).
[300] U.N. Trafficking Protocol, *supra* note 28, art. 6.2.
[301] OHCHR Recommended Principles on Human Trafficking, *supra* note 269, Guideline 6(4).
[302] *See, e.g.*, Interview with Kate Mogulescu, *supra* note 114; Bryan, *supra* note 109, at 184.
[303] DCJS, Computerized Criminal History Oracle File (as of Mar. 20, 2013).
[304] Interview with Kate Mogulescu, *supra* note 114.
[305] *People v. G.M.*, 922 N.Y.S.2d 761, 763 (N.Y. Crim. Ct. 2011).
[306] *See, e.g.*, DITMORE, *supra* note 7, at 45.

[307] U.N. Trafficking Protocol, *supra* note 28, art. 6.3; *see also*, Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, ¶ 25.
[308] *See* Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, ¶¶ 24-25.
[309] ICCPR, *supra* note 4, art. 2.3; Convention against Torture, *supra* note 271, art. 14.
[310] CEDAW Committee, *General Comment 19: Violence against Women*, ¶ 24, U.N. Doc. A/47/38 (1992).
[311] Human Rights Committee, *General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.13; *see also*, Committee against Torture, *General Comment 3: Implementation of article 14 by States parties,* ¶ 6, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II), 2012.
[312] Human Rights Committee, *Concluding Observations: The Kyrgyz Republic*, ¶ 14, U.N. Doc. CCPR/CO/69/KGZ (2000).
[313] Human Rights Committee, *Concluding Observations: Serbia*, ¶ 16, UN Doc. CCPR/C/UNK/CO/1 (2006).
[314] Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶¶ 27-28.
[315] Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 89.
[316] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law, ¶ 23, G.A. Res. 60/147, U.N. GAOR, 60th Sess., U.N. Doc. A/RES/60/147 (2005) [hereinafter Principles and Guidelines on the Right to a Remedy]; U.N. Trafficking Protocol, *supra* note 28, art. 9; Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 34; *see also*, CEDAW Comm., Concluding Observations: Mauritius, ¶ 25, UN Doc. CEDAW/C/MUS/CO/6-7 (2011).
[317] U.N. Trafficking Protocol, *supra* note 28, art. 10; Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 31.
[318] Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 33.
[319] Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, ¶¶ 24-26; Principles and Guidelines on the Right to a Remedy, *supra* note 313, ¶ 21.
[320] Principles and Guidelines on the Right to a Remedy, *supra* note 313, ¶¶ 20, 21; Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, at ¶¶ 24, 26, 28.
[321] Principles and Guidelines on the Right to a Remedy, *supra* note 313, ¶ 21.
[322] Special Rapporteur on trafficking, Criminal Justice Report, *supra* note 4, ¶ 89; Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, ¶¶ 27-28.
[323] Special Rapporteur on trafficking, Effective Remedy Report, *supra* note 2, ¶ 24; Principles and Guidelines on the Right to a Remedy, *supra* note 313, ¶ 21.
[324] Principles and Guidelines on the Right to a Remedy, *supra* note 313, ¶ 20.
[325] *Id.* ¶ 22.

"Vacating my conviction would give me freedom. It means everything to me. It means I get to live my life without having my difficult past with me all the time."

- Anna, trafficking survivor from Central Asia

All too often, victims of trafficking into the sex trade find themselves swept up into the criminal justice system as a result of common policing strategies and brothel raids. Efforts to prosecute traffickers are essential to combating human trafficking. At the same time, the almost-exclusive focus on prosecution of traffickers without ensuring adequate safeguards to protect the rights of those most affected by trafficking—the victims—can result in trafficking victims being treated as criminals or instruments of the prosecution.

Once they escape the trafficking situation, survivors of trafficking are then haunted by the long-term collateral harms of a criminal record for prostitution and related offenses, including barriers to stable employment and safe housing.

Recognizing the fundamental injustice of criminalizing victims, New York and several other states have enacted novel laws that allow survivors of trafficking to erase these unjust convictions from their records.

Drawing on the experiences of trafficking survivors in New York State, *Clearing the Slate* provides an overview of how trafficking victims get caught up in the criminal justice system and the harmful consequences of these convictions. The report assesses the impact of New York's law permitting vacatur of these offenses and identifies best practices for states seeking to adopt similar remedies.

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