

COMBATING HUMAN TRAFFICKING IN POLAND: WHEN VICTIMS ARE LOST IN TRANSLATION

Near the beautiful Adriatic coast of Italy, outside the cities of Foggia and Bari, nearly a thousand Polish workers experienced a nightmare.¹ Toiling fifteen hours a day, earning one euro per hour, and living in unsanitary barracks,² these Poles were not able to escape from the armed guards patrolling the fruit farms.³ When the Polish workers working on these fields notified the police, Polish and Italian law enforcement agencies refused to act.⁴ It was only after numerous victims voiced their concerns that Polish and Italian authorities began an investigation.⁵ The facts of this case occurred in 2006, two years after Poland had entered the European Union and one year after Italy had ratified the Council of Europe Convention on Action Against Trafficking in Human Beings, which took place in Warsaw, Poland.⁶

Despite ten years of the international community's efforts to combat human trafficking, the exploitation of men, women, and children has not abated.⁷ Even though most nations have adopted legislation criminalizing

1. These facts are taken from the 2006 joint Polish and Italian operation, "Terra Promessa," which dismantled a trafficking network that recruited mainly Polish, but also Ukrainian, Algerian, and Italian citizens through newspaper ads to work on agricultural farms. Zbigniew Lasocik & Łukasz Wieczorek, *Trafficking for Forced Labour in Poland*, in *TRAFFICKING FOR FORCED LABOUR AND LABOUR EXPLOITATION IN FINLAND, POLAND AND ESTONIA* 165, 202 (Anniina Jokinen et al. eds., 2010), available at www.heuni.fi/Etusivu/Publications/1290610598184. The criminal network recruited 880 women and men to work on fruit farms. Urszula Kozłowska, *Analiza statystyk dotyczących zjawiska handlu ludźmi* [Analysis of the statistical data concerning the issue of trafficking in human beings], in *MINISTERSTWO SPRAW WEWNĘTRZNYCH I ADMINISTRACJI, HANDEL LUDŹMI W POLSCE: MATERIAŁY DO RAPORTU 2009* [MINISTRY OF THE INTERIOR, HUMAN TRAFFICKING IN POLAND: MATERIALS TO THE 2009 REPORT] 38 (2009).

2. United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, 211, 215 (2d ed. 2008), available at [http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook\[1\].pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf); Lasocik & Wieczorek, *supra* note 1, at 220–21. The victims were also forced to pay €120 per month to live in unsanitary barracks. *Id.* at 197.

3. Lasocik & Wieczorek, *supra* note 1, at 205.

4. *Id.* at 221. In fact, local Italian police officers were aware that these Poles were being exploited for labor, but they refused to act. The victims saw that the perpetrators had contacts with local police, which contributed to their inability to escape. *Id.* at 204.

5. *Id.* at 221.

6. May 16, 2005, C.E.T.S. 197 [hereinafter CECATHB]. Poland did not ratify the CECATHB until November 17, 2008. Filip Radoniewicz, *Przestępstwo handlu ludźmi* [The Crime of Human Trafficking], 10 *PROKURATURA I PRAWO* 134, 149 (2011).

7. See LOUISE SHELLEY, *HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE* 37–59 (2010); Meredith Flowe, *The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand*, 35 *N.C. J. INT'L L. & COM. REG.* 669, 679–81 (2010).

human trafficking, prosecution rates are low despite the large estimates of people who are trafficked across borders.⁸ This Note analyzes how Poland has developed and implemented legislation criminalizing human trafficking. Part I will describe the crime of human trafficking from a global perspective by providing the scale of the crime worldwide, a description of the victims and perpetrators, and the services for which the victims are exploited. It will also describe the legislative measures that the United Nations, the European Union, and the United States have taken to combat human trafficking. Part II will look at the effects of these measures in Poland.⁹ The history of incorporating human trafficking into Poland's penal code reveals that international agreements do effectively influence governments to codify human trafficking as a crime. However, analysis of Polish criminal proceedings reveals that enforcement of such laws has been largely inconsistent despite the Ministry of the Interior's efforts to create an effective program to combat human trafficking. This Note will argue that inconsistent application of the law is due to Polish society's lack of understanding of the crime, which has led to inconsistent and mismanaged prosecution of human trafficking cases. Translating and transplanting the definition of human trafficking from the international agreements into the Polish penal code will not lead to effective prosecution in Poland. For effective prosecutions, Poles must understand the nature of trafficking and the purpose of criminalizing the practice. I argue that, in Poland, human trafficking case law and mismanaged criminal proceedings reveal at best a misunderstanding of the crime and at worst a disregard of victims' rights and protections. Until the crime is understood as a human rights violation, human trafficking prosecutions will not be effective in Poland. However, the May 2010 amendment that, for the first time, codified the definition of human trafficking into the Polish penal code provides an avenue through which prosecutions can become more effective.

8. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 1*, 53–58 (2012), available at <http://www.state.gov/documents/organization/192587.pdf> [hereinafter TIP REPORT 2012].

9. Poland is an interesting case study because the country serves equally as a destination, a source, and a transit country for victims. Human trafficking in countries is often analyzed through the migration of victims. For more information, see ALEXIS A. ARONOWITZ, *HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS* 7 (2009). Source countries are countries from which victims originate whereas destination countries are where the victims are eventually exploited for labor or sexual services. Transit countries are temporary destinations for victims making their journey to another usually more prosperous country.

I. AN INTRODUCTION TO HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE

Through the use of force or through consent obtained by fraud, deception, or coercion, human traffickers recruit victims and exploit them for either labor or sexual services.¹⁰ Organized criminal groups most often recruit victims by promising them employment opportunities abroad.¹¹ Not surprisingly, the same factors that contribute to the migration of people contribute to human trafficking.¹²

A. *Victims, Perpetrators, and the Scope of the Problem*¹³

Before discussing general trends, it is important to note that victims of human trafficking do not fit one profile. Generally, victims may work in any sector that demands cheap labor.¹⁴ Globally, 80% of human trafficking

10. See Flowe, *supra* note 7, at 671. Human trafficking also includes the sale of children through illegal adoption and the sale of organs; they are outside the scope of this Note. In 2000, the United Nations defined “trafficking in persons” as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/383, art. 3, U.N. Doc. A/RES/55/25, (Nov. 15, 2000), available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf [hereinafter Palermo Protocol].

11. See ARONOWITZ, *supra* note 9, at 7. While traffickers do recruit victims and exploit victims within the bounds of a single nation, this note will only discuss human trafficking as it relates to victims exploited outside of their home countries.

12. In fact, the “push” and “pull” factors contributing to migration are used to analyze the factors that lead to human trafficking. See *id.* at 11. On the one hand, “push” factors account for people migrating out of their home countries and put them at risk of becoming victims of trafficking. *Id.* On the other hand, “pull” factors present the opportunities for a better life abroad. *Id.* at 12. For victims of trafficking, the following five factors contribute to their recruitment: “(1) government corruption, (2) high infant mortality, (3) a very young population, (4) low food production (an indication of poverty), and (5) conflict and social unrest.” *Id.* The list of “pull” factors contributing to human trafficking are less clear, but they are all related to the economic stability and well-being of the destination country. They include, among others: (1) the ease of crossing the border linked with government corruption, (2) the male population older than sixty, (3) low government corruption, (4) food production, (5) energy consumption, and (6) low infant mortality. *Id.* at 12–13.

13. The following section contains a statistical analysis, but it must be noted that statistics regarding human trafficking are a dubious business. ARONOWITZ, *supra* note 9, at 34; Flowe, *supra* note 7, at 673; SHELLEY, *supra* note 7, at 5. Relying only on reported cases of human trafficking in analyzing the practice does not represent its reality. While the statistics for human trafficking for forced labor are lower, this may be because of the nature of commercial sex work, which always involves contact with clients who have no relationship to the traffickers. ARONOWITZ, *supra* note 9, at 34.

14. See Flowe, *supra* note 7, at 675; ARONOWITZ, *supra* note 9, at 31.

victims are women and children.¹⁵ In the majority of cases they come from economically depressed areas,¹⁶ and two-thirds of the victims are exploited for commercial sex work while the other third provides unskilled labor.¹⁷ Generally victims live in poverty and have poor access to education.¹⁸ According to the International Labor Organization (ILO), the largest number of victims come from Asia, and these victims are trafficked both within and outside the region.¹⁹

In Europe, the biggest industry with the greatest demand for victims is the sex industry, which recruits both women and children.²⁰ After the collapse of the Soviet Union, trafficking within Europe greatly increased.²¹ Furthermore, the expansion of the European Union has increased trafficking because of the porous borders between member states.²² Victims from outside the region are recruited from the former

15. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (2008), available at <http://www.state.gov/documents/organization/105501.pdf>. [hereinafter TIP REPORT 2008]. There are several causes for such a gender distribution. First, while men are exploited for commercial sex, the figures are much lower than for women. ARONOWITZ, *supra* note 9, at 35. For example, in 2005, 1% of adult males were exploited for sexual purposes worldwide. *Id.* Second, a greater number of females are migrating than males due to women having less access to the labor market than men. *Id.* at 43. Third, women are discriminated against in their home countries in terms of education and job training. *Id.*

16. INT'L LAB. ORG., *REPORT OF THE DIRECTOR GENERAL: A GLOBAL ALLIANCE AGAINST FORCED LABOR 10–12* (2005), available at <http://www.ilo.org/public/ENGLISH/standards/reln/ilc/ilc93/pdf/rep-i-b.pdf>. However, the cases of forced labor are underreported and these statistics may not be accurate. *See supra* note 13.

17. ARONOWITZ, *supra* note 9, at 34.

18. Flowe, *supra* note 7, at 675.

19. SHELLEY, *supra* note 7, at 5.

20. ARONOWITZ, *supra* note 9, at 88. Central Europe, including the Czech Republic, Hungary, Poland, Slovakia, and Slovenia, and Southeastern Europe, comprising Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, FYR Macedonia, Moldova, Montenegro, Romania, and Serbia serve as origin, transit, and destination countries. *Id.* Victims from these countries usually provide sexual services in Western European countries such as Germany, Belgium, and Italy. *Id.* However, victims supply services in both legitimate and illegitimate markets. Legitimate markets include domestic services such as housekeeping services, and other unskilled labor industries as found in factories, farms, hotels, restaurants, etc. *Id.* The illegitimate economy consists of the sex industry and usually involves prostitution. *Id.*

21. *Id.* The collapse of the Soviet Union facilitated the ability to move across borders, which constitutes an important “pull” factor for victims. *See supra* note 12.

22. From 2004 to 2007, the European Union expanded to include: the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, Slovenia, Bulgaria, and Romania. *Enlargement*, EUROPEAN COMMISSION (Sept. 24, 2012), http://ec.europa.eu/enlargement/policy/from-6-to-28-members/index_en.htm. The free movement of persons is a fundamental right guaranteed to European Union citizens by various treaties. *European Legislation*, EUROPA, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/index_en.htm (last visited Feb. 13, 2013).

Commonwealth of Independent States.²³ On the other hand, in the United States, victims most commonly come from Thailand, India, the Philippines, Haiti, Honduras, El Salvador, and the Dominican Republic.²⁴ The majority of victims are young girls who provide domestic and sexual services.²⁵

Similar to victims, traffickers do not all resemble each other.²⁶ Because trafficking involves the recruitment, transportation, and exploitation of victims, one trafficker may play just a single role in this complex process.²⁷ Traffickers are highly organized businessmen. Traffickers form their networks by (1) joining international criminal syndicates, (2) running family operations with family networks living across borders, (3) creating independent business with agents and contractors, (4) making acquaintances, and (5) working individually.²⁸ The majority of these traffickers would meet the United Nations' definition of an "organized criminal group."²⁹

In general, traffickers are men, and they have the same nationality and ethnicity as the victims; this is especially true at the recruitment stage, where traffickers take advantage of corrupt government officials.³⁰

23. ARONOWITZ, *supra* note 9, at 88. The Commonwealth of Independent States includes Russia and countries in the former USSR such as Ukraine, Estonia, Lithuania, Latvia, and Kazakhstan. *Id.* at 85.

24. TIP REPORT 2012, *supra* note 8.

25. ARONOWITZ, *supra* note 9, at 98.

26. See United Nations Global Initiative to Fight Human Trafficking, *The Vienna Forum Report: A Way Forward to Combat Human Trafficking*, ¶¶ 122–23 (2008), available at <http://www.un.org/ga/president/62/ThematicDebates/humantrafficking/ebook.pdf> [hereinafter *Vienna Forum Report*].

27. While the U.N. recognizes human trafficking as an international crime, it should not be considered a single offense. ARONOWITZ, *supra* note 9, at 9. The first stage in international trafficking is abduction or recruitment; the second is transportation and entry of the individual into another country; and the third is exploitation of the victim for labor, sexual services, forced adoption, or their organs. *Id.*

28. *Vienna Forum Report*, *supra* note 26, ¶ 123. Increasingly, traffickers organize sophisticated and complex trafficking units involved in all stages of the trafficking process. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 710(b)(8) (2008).

29. The U.N. Convention against Transnational Organized Crime defines "organized criminal groups" as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit." United Nations Convention Against Transnational Organized Crime art. 2, Nov. 15, 2000, T.I.A.S. No. 13127, 2225 U.N.T.S. 209.

30. See ARONOWITZ, *supra* note 9, at 55, 61. Recruitment often involves establishing a relationship with the victim where the trafficker gains the confidence of the victim through the false promise of a better life including employment, education, and marriage opportunities for them or their children. Flowe, *supra* note 7, at 678; ARONOWITZ, *supra* note 9, at 55. In a minority of cases, perpetrators kidnap their victims. ARONOWITZ, *supra* note 9, at 55. While the majority of traffickers are men, women play an important role in exploiting other women in domestic servitude or in brothels.

Recruiting often involves the victims' consent. Victims believe they will receive decent pay for sexual, labor, or domestic services.³¹ Once in the destination country, traffickers use a broad range of mechanisms to exploit their victims, debt creation being the most common.³² Debt creation involves either victims working to repay travel costs to the destination country on the false assumption that they will be freed once the costs are reimbursed³³ or victims paying for rent, food, and other services at unreasonable prices.³⁴

Traffickers further maximize their profits by maintaining control over the victims, mainly through the use of violence or threat of violence against them or their families.³⁵ In recent years, traffickers' conduct has evolved from the traditional violent means of control, in order to escape detection.³⁶ Sex traffickers will seduce young women and men by generously providing for them, and then subsequently lure them into prostitution.³⁷

Determining the prevalence of trafficking and its profits presents tremendous obstacles for researchers. Estimates vary, but most experts agree that trafficking is a significant problem and that globalization

Often women who were once victims recruit and train the next generation of prostitutes. SHELLEY, *supra* note 7, at 17.

31. See ARONOWITZ, *supra* note 9, at 55; Flowe, *supra* note 7, at 678. In some cases, women recruited for sexual services were unaware of it and believed they would be working in domestic services. Flowe, *supra* note 7, at 678. In West Africa, parents sell children into prostitution or labor believing that the child will be provided with a better life, while in other areas parents knowingly sell children for items. ARONOWITZ, *supra* note 9, at 55.

32. ARONOWITZ, *supra* note 9, at 57. Debt creation occurs in both forced labor and sex trafficking. *Id.*

33. *Id.* However, there are cases where victims must work their entire lives, and they are never able to repay the debt. *Id.*

34. *Id.* For example, in the case Terra Promessa, involving hundreds of Polish workers exploited in Calabria, Italy, the victims had to pay \$120 per month for their accommodation despite making approximately \$13 per day. Lasocik & Wiczorek, *supra* note 1, at 197. The workers lived in squalor: filthy, moldy premises, with no heating and no hot water. *Id.*

35. Other means of control are cultural and context specific. See ARONOWITZ, *supra* note 9, at 58–60. For example, traffickers often practice “juju” (black magic) on the Nigerian women. Research shows that Nigerian women transported to the Netherlands will not escape or go to the police for fear that the trafficker will curse them or their family. *Id.* at 60.

36. *Id.* This does not mean that traffickers have stopped using brutal violence against victims. *Id.* For example, cases of prostitutes being severely beaten for trying to escape continue to be documented. See *id.* at 58–59.

37. *Id.* at 61. The romantic relationship will often develop into “trauma bonding” where the trafficker will exhibit both generous and violent behavior towards the victim, which will lead the victims to be grateful for the trafficker having the power to kill them, but choosing not to exercise it. *Id.* at 59.

facilitates the process.³⁸ For example, in 2006, the ILO estimated that 12.3 million people were in forced bonded labor, child labor, and sexual servitude.³⁹ The victims came from 127 countries and were exploited in 137 destination countries.⁴⁰ In 2005, the ILO estimated that the profits generated from human trafficking were \$217.8 billion, or \$23,000 per victim—figures that reveal the impunity of traffickers.⁴¹

B. International Legal Measures Designed to Combat Human Trafficking

The international community has addressed the problem of indentured servitude and slavery for almost two centuries.⁴² The following three international legal measures address human trafficking or trafficking in persons directly: the Palermo Protocol,⁴³ the Trafficking and Violence Protection Act of 2000 (TVPA),⁴⁴ and the Council of Europe Convention on Action against Trafficking in Human Beings (CECATHB).⁴⁵ The TVPA and the two international agreements parallel each other. All three provide for the criminalization of human trafficking, and approach combating the problem with the “three Ps approach”—prosecution, prevention, and protection.⁴⁶

All three measures facilitate prosecuting traffickers by providing a definition of trafficking and requiring criminalization of the practice. The TVPA’s definition of “Severe Trafficking in Persons” parallels the

38. See SHELLEY, *supra* note 7, at 4, 37–58; Flowe, *supra* note 7, at 679–80. Globalization creates faster communication and easier access to goods and services. Flowe, *supra* note 7, at 679–80.

39. See SHELLEY, *supra* note 7, at 5. On the other hand, in 2004, the United States government suggested that 600,000 to 800,000 people were victims. *Id.*

40. United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* 17 (Apr. 2006), available at <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>.

41. TIP REPORT 2008, *supra* note 15, at 34.

42. See HEATHER J. CLAWSON ET AL., PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES app. A, at 1 (2008). Some examples of declarations and treaties addressing slavery, indentured servitude, sexual exploitation, and exploitation of children for labor and sex include: the 1815 Declaration Relative to the Universal Abolition of the Slave Trades, the 1904 International Agreement for the Suppression of the White Slave Traffic, the 1921 International Convention for the Suppression of the Traffic in Women and Children, the 1926 Slavery Convention, the 1930 Forced Labor Convention, the 1948 Universal Declaration of Human Rights, the Worst Forms of Child Labor Convention, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, and the Optional Protocol to the Convention on the Rights of the Child in Armed Conflict. *Id.*

43. Palermo Protocol, *supra* note 10.

44. 22 U.S.C. § 7101 (2000). While the TVPA is not a treaty, certain provisions of the act address the global community by requiring reporting and adjusting monetary aid based on the countries’ measures to combat human trafficking.

45. CECATHB, *supra* note 6.

46. Palermo Protocol, *supra* note 10, art. 2, 3; CECATHB, *supra* note 6, art. 1, 5; TVPA, 22 U.S.C. § 7101(a).

Palermo Protocol and the CECATHB.⁴⁷ The three legislative actions define trafficking in terms of “acts, means, and purposes.”⁴⁸ The elements that constitute the “act” of human trafficking include recruitment, transfer, harboring, or receipt of persons.⁴⁹ The “purposes” include exploitation for labor, sexual services, slavery, or other forms of servitude.⁵⁰ The “means” include force, fraud, or coercion.

Similar to prosecution, provisions regarding prevention parallel each other under the Palermo Protocol, the CECATHB, and the TVPA. All three require that nations research human trafficking in their countries, and lead media and education campaigns to stop it.⁵¹ The European Union and the United States have created special reporting mechanisms to inform the international community of the effectiveness of the measures countries have taken and how they can ameliorate them.⁵² Furthermore, the TVPA allows the United States to disqualify countries from “nonhumanitarian, nontrade-related foreign assistance” when they do not meet the TVPA’s minimum standards for the prevention, prosecution, and protection of victims.⁵³ Other provisions which facilitate prevention include

47. 22 U.S.C. § 7102(8) (“The term ‘severe forms of trafficking in persons’ means: (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”).

48. TIP REPORT 2012, *supra* note 8, at 16. See CECATHB, *supra* note 6, art. 4. Moreover, the CECATHB uses the same definition of “trafficking in persons” as the Palermo Protocol. Palermo Protocol, *supra* note 10.

49. Palermo Protocol, *supra* note 10, art. 3; CECATHB, *supra* note 6, art. 4; 22 U.S.C. § 7102(8).

50. Palermo Protocol, *supra* note 10, art. 3; CECATHB, *supra* note 6, art. 4; 22 U.S.C. § 7102(8).

51. Palermo Protocol, *supra* note 10, art. 9; CECATHB, *supra* note 6, art. 5; *see also* 22 U.S.C. § 7103 (establishing the Interagency Task Force to Monitor and Combat Trafficking, which measures the effectiveness of the United States and other countries in their prevention, prosecution, and protection of victims of human trafficking).

52. See TIP REPORT 2012, *supra* note 8. Similar to the TVPA creating the Interagency Task Force to Monitor and Combat Trafficking, the CECATHB established the Group of Experts on Action against Trafficking in Human Beings (GRETA), which evaluates and suggests how parties to the convention have implemented it. CECATHB, *supra* note 6, art. 36. However, GRETA has only evaluated ten countries out of the thirty-four who are party to the convention. Council of Europe, *Anti-Human Trafficking Unit Publishes First Report*, HUMAN RIGHTS EUROPE (Sept. 1, 2011), <http://www.humanrightseurope.org/2011/09/anti-human-trafficking-unit-publishes-first-report/>.

53. 22 U.S.C. § 7107(d)(1)(A). Minimum standards include: (1) prohibiting severe forms of trafficking, (2) establishing punishments that deter traffickers, (3) protecting victims by ensuring that they are not penalized creating alternative forms to their removal when they must testify, and (4) preventing human trafficking by educating those at risk. 22 U.S.C. §§ 7106(a), (b). The Trafficking in Persons Reports rank countries according to three tiers. TIP REPORT 2012, *supra* note 8, at 37–44. Countries who comply with the minimum standards compose Tier 1. *Id.* at 40. Countries who do not

strengthening border control through training on human traffickers and victims.⁵⁴

Even though the Palermo Protocol, the CECATHB, and the TVPA stress the three Ps, protection of victims contains the most conditioned provisions.⁵⁵ For example, all three provide that repatriation should be *preferably* voluntary and safe for the victim, meaning that victims may be repatriated against their will.⁵⁶

While the TVPA provides aid to severe victims of trafficking who comply with prosecutorial agencies,⁵⁷ the Palermo Protocol and the CECATHB weaken such provisions. Both treaties employ language such as “in appropriate cases,” “shall consider,” and “as may be necessary” in specifying needed aid or protection for victims.⁵⁸ However, the Palermo Protocol and the CECATHB contain provisions that explicitly protect

fully comply with Tier 1 but whose governments are making efforts to comply make up Tier 2. *Id.* Tier 2 is an intermediary tier where countries’ governments try to comply with the minimum standards, the number of victims of severe trafficking is increasing from year to year, and the country has not taken any new steps to combat the increase. *Id.* Lastly, Tier 3 comprises countries that do not meet the minimum standards and are not making any efforts to combat the practice. *Id.* at 43. Tier 3 countries may face economic sanctions. *Id.* at 44.

54. Palermo Protocol, *supra* note 10, art. 11; CECATHB, *supra* note 6, art. 7.

55. For example, the T visa, which allows victims to stay in the United States for a period up to three years, is conditioned upon victims being willing to cooperate with law enforcement for the effective investigation and prosecution of their traffickers. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS), VICTIMS OF HUMAN TRAFFICKING: T NONIMMIGRANT STATUS (2011), available at <http://www.uscis.gov/portal/site/uscis> (“Humanitarian—Victims of Human Trafficking and Other Crimes” and “T Nonimmigrant Status (T Visa)”). However, victims under the age of eighteen are eligible regardless of cooperation with authorities. *Id.* Under the T visa, these victims are eligible for the same benefits as an immigrant who has been admitted to the United States as a refugee. 22 U.S.C. § 7105(b)(1)(a).

56. 22 U.S.C. § 7105(a)(1); Palermo Protocol, *supra* note 10, art. 8; CECATHB, *supra* note 6, art. 16.

57. See USCIS, *supra* note 55.

58. Article 6, paragraph 1 of the Palermo Protocol provides that “[i]n appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.” Palermo Protocol, *supra* note 10. Article 7, paragraph 1 similarly states that, “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.” *Id.* The CECATHB does not employ the word “consider” in article 12, but adds “as may be necessary,” which provides party states with greater flexibility when interpreting “[e]ach Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.” CECATHB, *supra* note 6, art. 12 (emphasis added). While the CECATHB defines types of assistance, it does not define the extent of what is “necessary.” See *id.* These watered-down provisions have been highly criticized for focusing on human trafficking as a crime instead of as a human rights violation, which should focus on aiding victims. See Ryszard Piotrowicz, *Human Security and Trafficking of Human Beings: The Myth and the Reality*, in HUMAN SECURITY AND NON-CITIZENS: LAW, POLICY AND INTERNATIONAL AFFAIRS 411, 411–18 (Alice Edwards and Carla Ferstman eds., 2010).

victims who initially consent to their exploitation, whereas the TVPA does not state such protections.⁵⁹ Additionally, the CECATHB provides an extra layer of protection for victims by requiring that state parties give victims a “reflection period” before deporting them.⁶⁰ Unlike the TVPA provisions, this provision ensures that victims do not feel pressured to testify against their traffickers, who may retaliate against them or their families if they testify.⁶¹

II. CASE STUDY: HUMAN TRAFFICKING IN POLAND

The international community has recognized the need for all countries to develop legislation combating human trafficking whether they are countries of origin, transit, or destination for victims. This Part will address the positive effects that the Palermo Protocol, CECTHBA, and, to a much lesser extent, the TVPA have had on Poland, a country that developed its entire legislation on trafficking in reaction to these legal instruments.⁶²

59. Palermo Protocol, *supra* note 10, art. 3(b) (“The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means [force, coercion, or fraud] have been used.”); CECATHB, *supra* note 6, art. 4(b) (“The consent of a victim of ‘trafficking in human beings’ to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means [force, coercion, or fraud] have been used.”); April Reiger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 232, 248–50 (2007) (demonstrating that women who initially consent to providing sexual services will not qualify as victims of severe trafficking under the TVPA).

60. CECATHB, *supra* note 6, art. 13 (“Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorize the persons concerned to stay in their territory.”).

61. *Id.*

62. The United States, on the other hand, passed the TVPA in October of 2000, two months before 81 (including the United States and Poland) of the then-189 member states of the United Nations signed the Palermo Protocol. Beatrix Siman Zakhari, *Legal Cases Prosecuted Under the Victims of Trafficking and Violence Protection Act of 2000*, in HUMAN TRAFFIC AND TRANSNATIONAL CRIME: EURASIAN AND AMERICAN PERSPECTIVES 125, 135 (Sally Stoecker & Louise Shelley eds., 2005).

A. *Victims, Perpetrators, and Scope of the Human Trafficking in Poland*

Traditionally, Poland has served as a country of origin for victims who are typically women exploited for sex work in Western Europe.⁶³ However, Poland's accession to the European Union and the Schengen Zone⁶⁴ has also made it an important transit and destination country.⁶⁵ In 2003, the United Nations estimated that fifteen thousand victims were trafficked in Poland.⁶⁶ Providing an accurate landscape of trafficking and the sectors involved is difficult because statistics do not necessarily reflect the nature of trafficking in Poland.⁶⁷ Statistics from the Polish National Police and the National Prosecutor reveal that the most exploited sector by traffickers is the sex market, constituting a majority of the cases prosecuted.⁶⁸ Both Polish and non-Polish female victims fill the needs of the sex industry.⁶⁹ Statistics further show that in the great majority of cases

63. *Together Against Trafficking in Human Beings: Poland*, EUROPEAN COMMISSION, <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Poland> (last visited Feb. 13, 2013).

64. The Schengen Agreement includes twenty-six European countries and eliminates internal border controls within those countries. U.S. DEPT. OF STATE, SCHENGEN FACT SHEET, TRAVEL .STATE.GOV, http://travel.state.gov/travel/cis_pa_tw/cis/cis_4361.html (last visited Feb. 13, 2013). See *supra* text accompanying note 12 for a discussion on facilitating border crossings leading to increased human trafficking.

65. U.N. News Center, *Poland Becoming Transit, Destination Country for Human Trafficking—UN Expert*, U.N. NEWS CENTER (May 29, 2009), <http://www.un.org/apps/news/story.asp?NewsID=30961&Cr=human+trafficking&Cr1=>. Like many post-communist European countries, Poland's immigration patterns and policy have radically changed in the past twenty years. Lasocik & Wieczorek, *supra* note 1, at 171–73. Before 1989, Poland had very few migrants. *Id.* Then, in 2004, approximately one and a half million Poles left to work in other mostly English-speaking European countries, which created a gap for a large part of the Polish work force. *Id.* at 172.

66. Martti Lehti, *The Case of Poland, Trafficking in Women and Children in Europe* 10, 21 (European Institute for Crime Prevention and Control, Heuni Paper No. 18, 2003), available at <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf>.

67. Researchers and the Polish government have just begun to study trafficking of forced labor victims in Poland. See Lasocik & Wieczorek, *supra* note 1.

68. See Kozłowska, *supra* note 1, at 33. Article 204, section 4 now has been repealed and replaced by article 189(a) of the penal code, which combines both sex and labor trafficking. Małgorzata Pomarańska-Bielecka & Marcin Wiśniewski, *Handel Ludzmi Nowelizacja KK. Część II [Human Trafficking Amendment to the Penal Code Part II]*, EDUKACJA PRAWNICZA (Jan. 1, 2011), <http://www.edukacjaprawnicza.pl/artykuly/artykul/a/pokaz/c/artykul/art/handel-ludzmi-nowelizacja-kk-czesc-ii.html>.

69. Lasocik & Wieczorek, *supra* note 1, at 172. According to the National Police, minors only constituted a total of sixty victims of the crimes reported from 2002–2008. Kozłowska, *supra* note 1, at 43.

the victims are Polish.⁷⁰ However, the prevalence of Polish victims may reflect the country's poor victim identification among immigrants.⁷¹

Poland has trouble identifying foreign victims because immigration policy is novel to Poland. The country began developing its policy in the 1990s after the collapse of the Soviet Union.⁷² Therefore, the sensitization of Poles, especially the state authorities, to the needs of immigrants is novel.⁷³ The greatest number of identified foreign victims come from Ukraine, Belarus, and Bulgaria, and traffickers exploit them for sex work.⁷⁴

Looking beyond police reports and the National Prosecutor's office, one sees how human trafficking violations take on a greater dimension. As of 2011, only seven forced labor cases had been reported to Polish law enforcement and treated by Polish judiciary bodies.⁷⁵ The paucity of forced labor cases masks the great supply and demand of the Polish forced labor market. The Polish National Labor Inspectorate⁷⁶ and the International Organization for Migration report that an equal or near-equal amount of victims are exploited in the sex and labor markets.⁷⁷ From Polish cases that resulted in court proceedings, victims of forced labor worked in agriculture, construction, commerce, and domestic services.⁷⁸ In

70. Data gathered from criminal proceedings between 2001 and 2008 revealed that an average of only 19.1% of proceedings concerned noncitizens. Kozłowska, *supra* note 1, at 38. However, in 2008, criminal proceedings revealed that 29% of victims were not Polish. *Id.* This was the largest number of foreign victims ever recorded. *Id.* at 39.

71. See Lasocik & Wieczorek, *supra* note 1, at 220–24.

72. *Id.*

73. See *id.*

74. Kozłowska, *supra* note 1, at 40. 80.6% of victims in criminal proceedings came from Belarus and Ukraine. *Id.*

75. Lasocik & Wieczorek, *supra* note 1, at 193. This figure includes not only immigrants who become victims in Poland, but also Poles who become victims in other countries. *Id.*

76. The National Labor Inspectorate is an executive authority responsible for overseeing the execution, inspection, and observance of Polish labor law. *Our Statutory Responsibilities*, NAT'L LAB. INSPECTORATE, <http://www.pip.gov.pl/html/en/html/00000003.htm> (last visited Feb. 13, 2013). For the first time in 2008, the Polish government vested in one executive authority the oversight of the legal employment of immigrants and their working conditions. Lasocik & Wieczorek, *supra* note 1, at 193.

77. During the first three years of the National Inspectorate overseeing the employment conditions of immigrants, there were one thousand cases reported of immigrants working without a legal permit. Lasocik & Wieczorek, *supra* note 1, at 182–83. While illegally hiring an immigrant does not constitute trafficking, the fact that in 2009 the National Inspectorate accused 215 people of not respecting labor laws by not paying Indonesians, Ukrainians, and Filipinos for their work suggests that there may be trafficking violations taking place. Kozłowska, *supra* note 1, at 42. The International Organization for Migration reports that according to their offices in Minsk, Belarus, and Kiev, Ukraine, it provided equal support to Belarusian and Ukrainian victims facing sex-trafficking and labor trafficking in Poland. Kozłowska, *supra* note 1, at 42.

78. The vulnerability of immigrants falling prey to these sectors remains to be seen. The sectors were chosen because the five cases to proceed to court involved domestic work, shipyard building,

order to understand why law enforcement does not appear to adequately identify foreign victims and victims of forced labor, the Polish codification of human trafficking as a crime must be analyzed.

B. The Tremendous Impact of International Law on Polish Anti-Human Trafficking Legislation.

Legislative history regarding Polish anti-human trafficking laws reveals that international agreements continually pushed Poland's legislature to address human trafficking as a crime.⁷⁹ For example, the Polish Penal Code of 1969 adopted Article IX, Sections (1)–(2),⁸⁰ as a result of Poland signing the 1951 Convention for the Suppression of the Traffic in Persons and of Exploitation of Prostitution.⁸¹ These provisions mainly concerned prostitution.⁸²

After the Communist regime fell in 1989, Poland adopted a new penal code. In 1997, both Article 8 and Article 204, Section 4, addressed offenses related to human trafficking.⁸³ In addition to Article 204, the new

forced panhandling, and the Terra Promessa case that involved the exploitation of nearly a thousand Poles in Italy. Lasocik & Wieczorek, *supra* note 1, at 208.

79. An example of a country that passed a law to combat human trafficking because of domestic initiative is the United States. One month before the Palermo Protocol, the United States passed the Victims of Trafficking and Violence Protection Act (TVPA). Zakhari, *supra* note 62. The bill came to Congress because of the efforts of twenty-five bipartisan sponsors who became concerned over the exploitation of immigrants in America and the inability of the current law to protect them. *Id.* at 129. After Poland ratified the Palermo Protocol, courts began to directly interpret the definition of human trafficking provided by article 3 of the Palermo Protocol. *See supra* note 10 and accompanying text for the definition of human trafficking.

80. Ustawa z dnia 19 kwietnia 1969, Przepisy Wprowadzające Kodeks Karny art. VI [Introductory Provisions of the Penal Code of April 19, 1969], Dziennik Ustaw [Dz. U.] [Official Journal] z 1969 r., Nr. 13, Poz. 95, p. 148 (Pol. 1969).

81. July 25, 1951, 96 U.N.T.S. 1342 [hereinafter 1951 Convention].

82. *Id.*

83. Ustawa z dnia 6 czerwca 1997, Rozdział XXV; Przestępstwa Przeciwko Wolności Seksualnej i Obyczajności art. 204, §§ 3, 4 [Chapter XXV; Crimes Against Sexual Freedom and Morality of June 6, 1997], Dz. U z 1997 r., Nr. 88, Poz. 553, p. 2677 (Pol. 1997) [hereinafter 1997 Act]. Article 8 provided that “whoever causes a person to be reduced to a state of slavery as well as whoever maintains a person in a state of slavery, or who engages in the trading of slaves, shall be subject to the penalty of being deprived of his liberty for three years.” *Id.* The provisions in Article 204 state:

§ 1. Whoever, in order to derive a material benefit, induces another person to practice prostitution or facilitates it, shall be subject to the penalty of deprivation of liberty for up to three years.

§ 2. Whoever derives material benefits from prostitution practiced by another person shall be subject to the penalty specified in § 1.

§ 3. If the person referred to in § 1 or § 2 is a minor, the perpetrator is subject to a sentence of imprisonment for a period of time from one to ten years.

penal code contained Article 253, which specifically addressed human trafficking as a crime.⁸⁴ Its inclusion resulted from existing international obligations that Poland had to fulfill under the 1951 Convention.⁸⁵ However, the new Polish Penal Code did not provide a definition of human trafficking, and only defined the punishment for committing the act under Article 253.⁸⁶ Therefore, courts had to interpret the definition of human trafficking on a case-by-case basis. After Poland signed and ratified the Palermo Protocol,⁸⁷ the courts relied on the Protocol's definition of human trafficking.⁸⁸

The interpretation of the Palermo Protocol by case law proved to be slow, inconsistent, and at times arbitrary.⁸⁹ Courts differed in how they resolved elemental statutory interpretation questions. For example, courts struggled with uncertainty over whether the act of trafficking necessarily had to include more than one person. The inconsistent finding regarding the number of victims needed to satisfy the offense stemmed from the translation of the word "human" in Polish. Human in the Polish language is always plural.⁹⁰ It was not until 2006 that a commentary to the Penal

The sentence specified in § 3 is applicable to the perpetrator who entices or abducts a person into prostitution abroad. *Id.*

84. Krzysztof Karsznicki, *Trafficking in Human Beings in the Light of the Research into the Criminal Proceedings Instituted in the 1995–2006 Period*, in POLISH MINISTRY OF INTERIOR, *TRAFFICKING IN HUMAN BEINGS IN POLAND* 17 (2008).

85. See Barbara Namysłowska-Gabrysiak, *Ratyfikacja Konwencji Rady Europy z 3.05. 2005r. w Sprawie Działan Przeciwko Handlowi Ludźmi Znaczenie i Skutki* [Ratifying the CECATHB], in *HANDEL LUDŹMI W POLSCE: MATERIAŁY DO RAPORTU 2009*, *supra* note 1, at 8.

86. Article 253 states:

§ 1. Who traffics persons, even with their consent, is subject to a sentence of imprisonment for a period of time not shorter than three years.

§ 2. Who, with the purpose of obtaining a material benefit, organizes adoption contrary to the law is subject to a sentence of imprisonment for a period of time not shorter than three years.

1997 Act, art. 253. No definition of human trafficking was provided in the Polish Penal Code until 2010.

87. For more information concerning the Palermo Protocol, see *supra* note 10.

88. *Id.*

89. See Jacek Potulski, *Komentarz do art. 253 Kodeksu Karnego*, ¶ 7 [Commentary to Art. 253 of the Penal Code], z dnia 1 stycznia 2003 r. (Pol.); Wyrok, Sadu Apelacyjnego we Wrocławiu z dnia 21 lutego 2003 r., II AKa 586/02 (Pol.); Wyrok, Sadu Apelacyjnego w Lublinie z dnia 18 grudnia 2001 r., II AKa 270/01 (Pol.); Wyrok, Sadu Apelacyjnego w Lublinie z dnia 29 kwietnia 2002 r., II AKa 330/02 (Pol.).

90. Wyrok, Sadu Apelacyjnego w Lublinie z dnia 18 grudnia 2001 r., II AKa 270/01 (Pol.). In the judgment dated April 18, 2001, the Appellate Court in Lublin found that while in the Polish language the word "human" can only be understood in the plural form, the definition of human trafficking could be met if *only* one person was trafficked. The court reasoned that the word must be interpreted in light of trafficking, which refers to the objectification of humans whether they are exploited as a group or as individuals. *Id.*

Code explained that a single victim and a single transaction may be sufficient to meet the elements of the crime.⁹¹

While the courts came to uniformly find that human trafficking could affect only one individual trafficked as a result of a single transaction, they were split on whether, in order to meet the definition of “trafficking,” the transaction had to meet the elements of a commercial sale under civil law.⁹² Similar to the translation struggles with the word “human,” the translation of the word “trafficking” under Article 253 presented another set of issues for Polish courts.⁹³ Poland translated the term “trafficking” in the Palermo Protocol as “*handel*,” which also translates to “trade.”⁹⁴ The term “trade” elicited much controversy within the Polish legal community and some courts refused to apply the definition to human beings. Some legal scholars found that human beings could never be objects of trade because of their intrinsic dignity.⁹⁵ Therefore, they refused to apply the statute criminalizing human trafficking under Article 253. Others interpreted the term in the strictest sense possible and found it insufficient if the perpetrator exploited the individual for either sex or labor but did not earn any monetary profit from the transaction.⁹⁶ On either side of the divide, victims of the crimes were the losers; perpetrators either failed to meet the very narrow commercial definition or courts refused to recognize the offense because it offended the intrinsic integrity of human beings.⁹⁷

91. Agnieszka Barczak et al., Komentarz do art. 253 Kodeksu Karnego, ¶ 7 [Commentary to Art. 253 of the Penal Code], z dnia 3 marca 2006 (Pol.).

92. The conflict centered on the classification of the act in human trafficking as either a “physical act,” such as transfer of ownership, or as a “civil law act” under Polish law. For “trafficking” in persons to meet the definition of a civil law act, certain commercial and contractual conditions had to be met. Magdalena Budyn-Kulik et al., Komentarz do art. 189(a) Kodeksu Karnego, ¶ 6 [Commentary to Art. 189(a) of the Penal Code], z dnia 8 września 2010 (Pol.); Radoniewicz, *supra* note 6, at 137.

On the other hand, classifying trafficking in persons as a “factual act” omitted the necessity of contractual and commercial elements of trafficking in persons. Radoniewicz, *supra* note 6, at 137. Trafficking satisfied the elements of a “factual act” when a person was or is being exploited as an object. *Id.* The objectification can occur in a single act and does not need to be ongoing, despite the present tense form of “traffics” in the statute. *Id.*

93. Radoniewicz, *supra* note 6, at 137.

94. Konwencja Narodów Zjednoczonych przeciwko międzynarodowej przestępczości zorganizowanej, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych [United Nations Convention Against Transnational Organized Crime] z dnia 15 listopada 2000 r., Dz. U. z 2005 r., Nr. 18, Poz. 158, p. 1225, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20050180158>. The word “*handel*,” narrowly construed, does mean a commercial transaction, in which goods are sold and traded at a fixed price. Radoniewicz, *supra* note 6, at 137. However, in the broader sense, *handel* means any turnover of goods. The actual sale of such goods is not necessary. *Id.* The more general term *obrót* would literally translate to turnover. *Id.* However, the term does not necessarily translate the necessary element of exploitation because this term could also be used to describe smuggling. *Id.*

95. Radoniewicz, *supra* note 6, at 137–38.

96. *Id.* at 137.

97. For example, in a human trafficking case prosecuted under Articles 253 and 204, the appeals

These debates in the legal community reveal that while Poland did ratify the Palermo Protocol because of its obligation under international law, the concept of human trafficking remained foreign to the Polish judiciary and society at large. The eight years of case law before codification reveal that laws adopted through international agreements are not effective unless understood by the countries that are to apply them. These early debates show a misplaced focus when interpreting the Palermo Protocol. At the turn of the twenty-first century, the courts did not interpret the Palermo Protocol by looking at the policy underlying the codification of human trafficking as a crime, which was to protect victims from sexual and physical exploitation. The members of the Polish legal community that refused to apply the new law for moral reasons inadvertently harmed victims the most because they refused to acknowledge that people were continuously being traded and exchanged for sexual services and labor.

C. Law Enforcement and Prosecutors' Investigation Reveals a Lack of Due Diligence and Disregard for Victims

While Poland, through its Ministry of the Interior and enforcement agencies, has founded programs and partnerships to increase effective investigation of human trafficking offenses,⁹⁸ these investigations are all

court in Białystok found that the acts committed by the defendants were not sufficient to meet the elements of human trafficking. The court determined that had the defendant sold the female minor as a "good" to the other defendant, the defendant who had sold her would not have been able to transfer her to another escort club. The court found that had the minor been a "good" she would have not been able to be transferred back to the original defendant because he no longer "owned" her. Wyrok, Sądu Apelacyjnego w Białymstoku z dnia 24 maja 2004 r., II AKa 66/2004 (Pol.).

98. Beginning in 2004, the Ministry of Interior established the Committee for Combating and Preventing Trafficking in Human Beings, which brought together various ministry heads and worked with NGOs like La Strada to implement and evaluate a national action plan to combat human trafficking. *Basic Information on Trafficking in Human Beings in Poland*, in POLISH MINISTRY OF INTERIOR, *supra* note 84, at 5. A Unit for Trafficking in Human Beings was also established and was to handle some of the work of the Committee and implement the Program to Support and Protect the Victims/Witness of Trafficking for Human Beings. *Id.* at 8. Enforcement agencies also accommodated into their structures anti-human trafficking units and action plans. For example, in 2006, the Police Commander in Chief established the Central Team for Combatting Trafficking in Human Beings, Human Organs, Child Pornography, and Pedophilia. *Id.* at 9. Providing officers with trainings was among the Central Team's responsibilities. *Id.* at 10. In the Prosecutor's office, as early as 2003, the office created guidelines and general information about human trafficking and procedural safeguards for victims. In 2007, prosecutors acting as special consultants on human trafficking cases were appointed to appeals courts throughout the country. In January 2011, the Polish government, in an effort to coordinate and supervise trafficking cases in all seventeen regional police anti-trafficking units, moved its anti-trafficking unit of the Polish National Police to the Central Bureau of Investigation. See U.S. DEPT OF STATE, *TRAFFICKING IN PERSONS REPORT 299 (2011)* [hereinafter TIP REPORT 2011], available at <http://www.state.gov/j/tip/rls/tiprpt/2011/>. Because of the need for

too often poorly implemented.⁹⁹ A telling example is seen in the details of the investigation concerning the *Terra Promessa* case involving almost 100 Polish workers exploited abroad. Upon returning home to Poland, one of the victims went to the local prosecutor. The prosecutor took no action. It was only after the victim went to the media and numerous other victims contacted the Polish consulate in Rome that the prosecutor began to proceed with an investigation.¹⁰⁰ The prosecutor and law enforcement showed a complete disregard for the individual victims who spoke of their exploitation. While this case is a success because the perpetrators are being brought to justice, it remains the exception. Victims usually remain hidden, and do not know they can speak out.¹⁰¹

Even once criminal proceedings begin, the prevalence of dismissed investigatory proceedings between 2005 and 2007¹⁰² reveals a lack of due diligence in criminal investigations. Around 40% of criminal proceedings involving human trafficking were dismissed.¹⁰³ Foreign victims' cases are often discontinued.¹⁰⁴ Usually foreigners leave the country immediately, and investigatory authorities report that proceedings must be closed due to lack of sufficient evidence.¹⁰⁵

victim identification, the government also coordinated training efforts. Labor inspectors, social workers, border guards, consular officers, and police were trained in victim identification, care, and trafficking inspection. *Id.*

99. In one case involving domestic and sexual abuse of a Ukrainian woman forced to be a domestic servant, the police officer told the victim to come back on another day to report the crime. Lasocik & Wieczorek, *supra* note 1, at 57. The woman tried to explain in Ukrainian that she had just escaped from the home of the abuser who never allowed her to leave the house. *Id.* at 196. The officer did not understand, but decided to make a report after she begged and pleaded with him. *Id.*

100. *Id.* at 224. The other four investigated cases of human trafficking for labor in 2010 also resulted from the persistence of victims. Initially, the border guard wanted to deport a Vietnamese victim who was forced to work at a bazaar. It was revealed during deportation proceedings that he was a victim of human trafficking. Such action was in direct violation of the thirty-day reflection period stipulated by the CECATHB.

101. Lasocik & Wieczorek, *supra* note 1, at 205

102. 2009 marks the most recent publication of the Ministry of Interior and Administration Trafficking in Human Beings in Poland Report. The statistics and study are taken from that report. The most recent statistics show that, between 2009 and 2010, 36% of proceedings were dismissed. See POLISH MINISTRY OF THE INTERIOR, NATIONAL ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS FOR 2011–2012, available at <https://www.msw.gov.pl/download/1/13928/NationalactionplanEN.pdf>. The reasons were the same as for the 2005–07 study: lack of sufficient evidence. *Id.*

103. Kozłowska, *supra* note 1, at 37. This statistic is taken from 2007. In 2008, 47.2% of cases were dismissed. *Id.*

104. Krzysztof Karsznicki, *Analysis of Preparatory Proceedings in Cases Related to Human Trafficking that were Finished in the Period 2005–2007 by the Decision of Discontinuance*, in HANDEL LUDŹMI W POLSCE: MATERIAŁY DO RAPORTU 2009, *supra* note 1, at 103. Out of fifty-two victims involved in discontinued preparatory proceedings initiated between 2005–2007, 30 were foreign. See *id.* at 101. In most of the cases, the foreign victim left the country, and it was very difficult to obtain her cooperation. *Id.*

105. *Id.* at 96. Out of the forty discontinued proceedings, sixteen proceedings were stopped for the

In the majority of dismissed preparatory proceedings, criminal investigators did not act with due diligence, and, therefore, were unable to find sufficient evidence for the prosecution of the crime. Criminal investigators did not apply the standard set of procedures provided in the *Methodological Guidelines for Prosecutors Carrying Out or Supervising Procedures Concerning Trafficking*.¹⁰⁶ Investigations were either too long, which resulted in evidence being no longer useful or impossible to obtain,¹⁰⁷ or were closed after a brief time span. In these instances, despite having the means, investigators did not explore the crime scene and did not have victims identify the defendant from pictures of suspects or a lineup.¹⁰⁸

Like the case law that revealed that the courts did not understand that human trafficking criminal law was intended to protect victims, dismissing investigatory proceedings also revealed a disregard for victims. First, criminal investigators did not work with the nongovernmental organization La Strada, which administers basic needs and legal and psychological support to victims of trafficking.¹⁰⁹ Second, not a single victim used the reflection period to decide whether to proceed with the case.¹¹⁰ Even though authorities presented victims with this option, they gave victims less than twenty-four hours to decide to use it.¹¹¹

lack of sufficient evidence. Lack of evidence accounts for 40% of the proceedings dismissed. In cases involving foreigners this is due to the victim leaving the country before adequate testimony can be obtained by investigatory authorities. The victim's testimony is paramount to continuing proceedings. *Id.* at 101.

106. MINISTRY OF THE INTERIOR, *supra* note 84, at 10–11. The Office of Organized Crime first made the guidelines in 2003, and distributed them across the country. The guidelines focus on international obligations like protecting the victims by procedural safeguards, not deporting victims, and working with victims in criminal investigations. *Id.*

107. Approximately 12.5% of investigatory proceedings lasted five years until the prosecutor dismissed the proceedings. Karsznicki, *supra* note 104, at 99.

108. *Id.*

109. La Strada administers the national “Programme to Support and Protect the Victims/Witnesses of Trafficking in human beings.” The program was established in 2006. Namysłowska-Gabrysiak, *supra* note 85, at 8. The methodological guidelines for prosecutors require working with La Strada. In only five victim interrogations between 2005 and 2007 was a La Strada representative present. Karsznicki, *supra* note 104, at 109.

110. Article 33(1), (5) of the amended law on aliens requires a visa expiring after two months to be granted to a suspected victim of trafficking so that she can decide whether to cooperate with law enforcement in proceeding with criminal charges. Ustawa z dnia 22 kwietnia 2005 r. o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw [Aliens Act and the Act on the Protection of Aliens on the Territory of the Republic of Poland of Apr. 22, 2005], Dz. U. z 2005 r., Nr. 94, Poz. 788, p. 6162 (Pol. 2005).

111. Karsznicki, *supra* note 104, at 101. If investigative authorities require such snap decisions by victims, it is not surprising that in 2010 no victims used the reflection period. TIP REPORT 2011, *supra* note 98, at 299.

Investigative authorities disregarded or did not understand that victims of trafficking are traumatized and must be given more time. Moreover, without the victims present to testify, the investigations did not bear any fruit.¹¹² The dismissed investigatory proceedings reveal a failure to protect victims, one of the three pillars around which the Palermo Protocol was enacted.¹¹³

D. Poland Finally Codifies the Definition of Human Trafficking into its Penal Code, Paving the Path for Effective Investigation and Prosecution

By 2009, the Supreme Court of Poland had established a clear precedent regarding the material acts and the intent required for the crime of human trafficking. After ten years of the Polish courts directly interpreting the Palermo Protocol's definition of human trafficking, Poland finally, on September 8, 2010, codified the Supreme Court's interpretations.¹¹⁴ The delay sprung from a controversy over whether the Palermo Protocol was a self-executing treaty.¹¹⁵ The following Polish Penal Code amendments were implemented on September 8, 2010: Article 115, Section 22, which defined human trafficking,¹¹⁶ Article 115,

112. Karsznicki, *supra* note 104, at 101. When the victim is not present for the investigation, it is nearly impossible to obtain probable cause to indict the suspected trafficker. *Id.*

113. The three pillars of combatting human trafficking are prevention, prosecution, and protection.

114. See Ustawa z dnia 20 maja 2010 r. o zmianie ustawy [Act of May 20, 2010], Dz. U. z 2010 r., Nr. 98, Poz. 626, p. 8287 (Pol. 2010); see also art. 189a *infra* note 118; art. 115, § 22 *infra* note 116; art. 115, § 23 *infra* note 117.

115. See Namysłowska-Gabrysiak, *supra* note 85, at 9. Self-executing treaties are those treaties that have the force of law the moment the nation state ratifies them, whereas non self-executing treaties only become law after the nation state incorporates the treaty into its domestic law. Under Article 91 of the Polish Constitution, treaties have the force of law and, when in conflict with an opposing domestic statute, the treaty takes precedent. Konstytucja Rzeczypospolitej Polskiej [Constitution of the Republic of Poland], Dz. U. z 1997 r., Nr. 78, Poz. 483, p. 2413.

116. Art. 115 states:

[H]uman trafficking is the recruitment, transportation, supply, transfer, harboring or receipt of persons by: (1) Violence, (2) abduction, (3) deception, (4) misrepresentation or taking advantage of misrepresentation when the person does not have the capacity to understand, (5) the abuse of power or vulnerability, and (6) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploiting that person, even with his or her consent, through various forms like prostitution, pornography, other forms of sexual exploitation, work or forced labor, begging, slavery or other means of degrading human dignity, the use of tissues, cells, or organs in violation of the law. If the act is committed against the minor it constitutes human trafficking without the means listed in (1)-(6).

Ustawa z dnia 20 maja 2010 r. o zmianie ustawy [Act of May 20, 2010], Dz. U. z 2010 r., Nr. 98, Poz. 626, p. 8287 (Pol. 2010).

Section 23, which defined slavery,¹¹⁷ and Article 189a, which defined the parameters of criminal liability for human trafficking.¹¹⁸

In addition to the Palermo Protocol's influence on Poland's implementation of these amendments, the country's accession into the European Union and the subsequent ratification of several treaties that concerned human trafficking¹¹⁹ clarified that the country needed to reform its penal law.¹²⁰ For example, in order to protect the victims of human trafficking, the Council of Europe Convention on Action Against Trafficking in Human Beings urged state parties to offer reflection periods for victims to decide if they wish to cooperate with the police. Moreover, state parties were encouraged to give victims temporary residence permits if they chose to cooperate.¹²¹ As a result of the increased emphasis on protecting victims, the Polish Penal Code changed the location of human trafficking crimes. Before September 8, 2010, human trafficking was listed under "Crimes against the public order"; now, it is listed under "Crimes against liberty."¹²² While the classification of human trafficking crimes appears symbolic, it is not. The classification of crimes lists the object against which the offense is committed.¹²³ This change may influence law enforcement and prosecutorial authorities to finally recognize that the victim is the priority in investigating human trafficking violations.

Not only did the legislature supplant the code with a definition of human trafficking, it also repealed Article 204, section 4, which defined criminal liability for forced prostitution abroad as well as certain sections

117. Article 115, § 23 defines slavery as "a state of dependency, in which a person is treated as an object of property." Act of May 20, 2010, Dz. U. z 2010 r., Nr. 98, Poz. 626, at 8287.

118. Article 189a states, "§ 1 whoever participates or who aids in an act of human trafficking will be punishable by imprisonment for not less than three years. § 2 Whoever attempts to commit an offense specified in § 1 will be punishable by imprisonment of not less than three months but not more than five years." Act of May 20, 2010, Dz. U. z 2010 r., Nr. 98, Poz. 626, at 8289.

119. CECATHB, *supra* note 6; Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, 2002 O.J. (L 203) 1; Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, 2004 O.J. (L 13) 44; Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 2004 O.J. (L 261) 19.

120. See Namysłowska-Gabrysiak, *supra* note 85. The CECATHB urged countries to work together to combat human trafficking crimes in joint teams. In order to do this effectively, Poland had to establish its legal norms concerning human trafficking violations through a readily accessible code. *Id.* at 10.

121. CECATHB, *supra* note 6.

122. Radoniewicz, *supra* note 6, at 140, 151.

123. *Id.* Case commentaries discuss the object of the crime and shape how courts interpret statutory provisions. See Potulski, *supra* note 89.

of Article 253, which had previously defined criminal liability for human trafficking. The articles were repealed because they were indistinguishable from each other. Article 204, section 4 defined the punishment for a specific subset of the Palermo Protocol's defined forms of human trafficking, whereas Article 253 defined the punishment for human trafficking generally.¹²⁴ Due to the Polish Penal Code's lack of a human trafficking definition, in cases of forced prostitution abroad where the Palermo Protocol was indistinguishable from Article 204, section 4, the state could choose to prosecute either under Article 204, section 4, or Article 253. These sections defined identical crimes but imposed different minimum sentence terms.¹²⁵ Therefore, the crime of human trafficking appeared to be "void for vagueness."¹²⁶ In order to save the statutes, courts attempted to distinguish the two identical crimes by stating that in cases of consent the provisions of Article 204 no longer applied and the relevant sections of Article 253 became applicable.¹²⁷ However, this produced an absurd result: if a victim had not consented and was abducted or lured abroad for prostitution, then under Article 204, section 4, a lighter sentence would potentially apply than in cases where the victim did consent to being a prostitute under Article 253. The result is puzzling because often a lack of consent naturally entailed greater deceit, force, or misrepresentation than in cases of consent under Article 253.¹²⁸

124. See Pomarańska-Bielecka & Wiśniewski, *supra* note 68. Because Poland had directly applied the Palermo Protocol for its definition of human trafficking, criminal liability under Article 253 of the penal code could apply to any act that constituted human trafficking under Article 3 of the Palermo Protocol. Article 3 specifies that human trafficking includes the exploitation of another through, inter alia, "abduction" or "deceit" for the purposes of exploitation. Palermo Protocol, *supra* note 10, art. 3. "Exploitation shall include at a minimum the exploitation of the prostitution of others . . ." *Id.* Article 204, section 4 defines the same crime—luring and abducting someone for the purposes of prostitution abroad. 1997 Act, *supra* note 83.

125. The minimal punishment under Article 204, section 4, was one year whereas the minimum sentence under Article 253 was three years. *Id.*

126. In Poland, while the expression "void for vagueness" does not exist, criminal law is based on the principle *nullum crimen sine lege*, which affirms the legal certainty principle. Because the two provisions were identical but had different sentences, there was no crime that applied in cases of forced prostitution abroad. Namysłowska-Gabrysiak, *supra* note 85, at 9; Potulski, *supra* note 89, ¶ 7.

127. Wyrok, Sadu Najwyższego, V KKN 353/00 z dnia 19 kwietnia 2002 (Pol.).

128. Potlowski, *supra* note 89, ¶ 7; Namysłowska-Gabrysiak, *supra* note 85, at 9. Before the repeal of these two provisions, it would mean that a human trafficking offender who had abducted and forcibly made a victim prostitute herself abroad despite her continual protests maybe liable for only one year of imprisonment. On the other hand, a man who had told the victim that she would be providing sexual services abroad, but lied and said that the expenses of the trip would be included would be liable to at least three years imprisonment, even if he had never physically harmed the victim. The choice seems arbitrary, especially when the crime with a lighter minimal sentence involves aggravating circumstances such as kidnapping and physical assault.

While the amendments to the penal code have yet to be effectively implemented, the benefits to codification and repeal of certain articles are clear for the following four reasons: (1) human trafficking is no longer “void for vagueness,” (2) prosecutors can now readily identify the material elements of the crime, (3) the code has changed the placement of the crime in the criminal code from crimes against the public order to crimes against liberty, and (4) the legislature repealed certain crimes where material elements did not differ from human trafficking but infraction imposed less harsh sentences.

The new amendments have brought positive effects. While the amendments have not led to more prosecutions, there has been an increase in the number of offenses investigated since 2010.¹²⁹ Moreover, the country has reoriented its focus on preventing the trafficking of immigrants on Polish soil. There is a bill pending in the Senate that would allow the Polish border control to play a greater role in human trafficking investigations.¹³⁰ The chairman of La Strada praised the bill, because if it passes, such a law would help prevent the trafficking of many immigrants.¹³¹

CONCLUSION

Ultimately, the effect of international obligations on nation states to combat human trafficking has been positive. Nations adopt legislation to penalize the practice and governments include combating human trafficking in their political agendas and allocate resources to studying and preventing the practice. Poland provides an interesting case study on the effect international law has on criminalizing human trafficking and the manner in which prosecutorial authorities enforce those criminal laws for two reasons: Poland is equally a source, transit, and destination country for human trafficking, and but for international obligations, Poland would not have addressed the need to penalize and further combat human trafficking through prevention and protection programs for victims.

Through analyzing the case law and criminal proceedings regarding human trafficking, this Note argues that the government of Poland did not initially understand that the primary purpose for criminalizing human

129. See TIP REPORT 2012, *supra* note 8, at 288.

130. *Komisja senatu: niech Straż Graniczna zwalcza handel ludźmi* [Senate Commission: Let Border Control Combat Human Trafficking], WOLTERS KLUWER POLSKA (Jan. 30, 2013), <http://www.lex.pl/czytaj/-artykul/komisja-senatu-niech-straz-graniczna-zwalcza-handel-ludzmi>.

131. *Id.*

trafficking was to protect victims from exploitation. Therefore, it is not sufficient for state parties to incorporate international treaties combating human trafficking into their national laws through direct translation. In Poland, the translation for “human trafficking” confused the judiciary, and it was only after eight years that the case law came to understand that the purpose of the law was to protect victims from exploitation. Law enforcement showed similar disregard for victims. In many criminal proceedings, even when victims identified themselves, law enforcement was often reluctant to proceed with criminal investigations. Many proceedings were dismissed because of lack of due diligence on behalf of the prosecutors. Fortunately, in 2010, Poland finally codified nine years of case law and defined the practice of human trafficking. The Polish Penal Code no longer lists human trafficking under “Crimes Against Public Order,” but instead provides for the crime under its chapter concerning “Crimes Against Liberty.” While the long awaited codification of human trafficking into the Polish Penal Code did not bring about more prosecutions of human trafficking crimes in 2010 or 2011,¹³² codification of the case law defining human trafficking does present a step in the right direction, because it comes from the Polish judiciary struggling and finally finding that the purpose of the law was to protect victims.

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132. See TIP REPORT 2012, Country Narratives: Poland, *supra* note 8; TIP REPORT 2011, *supra* note 98.

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