

# HUMAN TRAFFICKING AND INTERNATIONAL HUMAN RIGHTS LAW: A BRAZILIAN PERSPECTIVE

## *Tráfico de Seres Humanos e o Direito Internacional dos Direitos Humanos: uma perspectiva Brasileira*

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**Summary:** 1 Introduction. 2 The Prospects of Human Trafficking. 3 The trafficking of women: international and Brazilian anti-trafficking legislation. 4 Human trafficking as a human right violation: concept and scope. 5 Real necessities to effectively fight human trafficking. 6 Concluding Remarks. References.

**Abstract:** Human trafficking is one of the most problematic issues the international community has to fight against in the XXI century. It is related to the most heinous crimes against human beings, such as slavery and minors' prostitution just to name but a few, directly inflicting in violations of men's intrinsic rights. Therefore, at first, this paper aims in presenting the issue tracking the prospects both internationally and domestically, focusing in the Brazilian society reality. Subsequently, it reviews the existing laws that fight human trafficking, mainly exposing what obligations they set to nations, and also how Brazil is implementing such global prescriptions. Above and beyond, this article exposes how human trafficking and human rights relate, as a fundamental approach to understand why the fight against it is currently deemed so important. And, finally it set forth the real necessities to effectively stop it. For that matter, an expositive approach was performed, reviewing the existing literature and exploring Brazilian and international legislation on the matter.

**Key-words:** Human Trafficking, Human Rights, Brazil.

**Resumo:** O tráfico de seres humanos é um dos temas mais problemáticos que a comunidade internacional enfrenta no século XXI. O tema está relacionado à crimes de natureza hedionda, como escravidão e prostituição de menores, o que diretamente gera violações dos direitos mais intrínsecos do homem. Portanto, primeiramente, o presente artigo apresenta o problema desde uma perspectiva internacional, como também elucida o tema desde a ordem doméstica dos Estados, principalmente sob a perspectiva da sociedade brasileira. Na sequência, revisa os documentos relacionados ao tráfico humano, explicitando as obrigações que tais normas emanam aos países, bem como o modo em que o Brasil as está implementando. Não obstante, o texto também apresenta a forma em que o tráfico de pessoas e direitos humanos se relacionam, sendo este um aspecto fundamental para entender porque a luta contra este crime é considerada tão importante na atualidade. Por fim, delinea as reais necessidades para combater o tráfico. Para tanto, a forma expositiva foi adotada, revisando a literatura existente e explorando a legislação internacional e brasileira sobre o tema.

**Palavras-Chave:** Tráfico de Pessoas, Direitos Humanos, Brasil.

## 1 INTRODUCTION

Trafficking of human beings is one of the most globalized criminal businesses in the world today – one that almost no country is immune from. The people who fall victim of traffickers are treated as commodities by a transnational

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criminal industry, whose profits have been found to be so high that are making criminals worldwide to move away from drug trafficking and turning themselves into this modern form of slavery trade. After all, human trafficking is one of the most lucrative criminal enterprises in the globe, making around 32 billion dollars a year.<sup>3</sup>

Its victims are subjected to different varieties of physical and mental abuse, being directly and indirectly exploited, what affects their fundamental rights and place them into one of the most vulnerable groups of human beings. Thus, taking this scenario into account, this work will work on the perception of human trafficking as a human right violation.

Not only that, in order to fight these situations, a few documents have been launched throughout the years in the international and domestic level. Hence, this paper will also try to determine the status of current anti-trafficking legislation, focusing chiefly in Brazil as it is one of the countries that is most affected by traffickers/trafficking, what leading to an investigation of the prospective and real necessities of fighting this crime in order to prevent its perpetuation in modern society.

## **2 THE PROSPECTS OF HUMAN TRAFFICKING**

Historically, trafficking is connected to the enslavement of a human being, mainly due to human vulnerability. Traffickers normally take advantage and exploit the lack of “social access” of certain people. Its victims are subjected to some sort of physical or psychological abuse or coercion, either when they are recruited, during transport or even on while working.<sup>4</sup>

Human trafficking encompasses a wide variety of activities, from the usage of people as “manpower” for criminal purposes, such as smuggling or selling drugs and weapons, to the actual act of slavery, when people are used for forced labor in a home environment, construction sites or in rural areas, without ruling out one of its worst variations: prostitution.<sup>5</sup>

International concern for prevention of human trafficking for the purposes

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<sup>3</sup> KONRAD, H. The OSCE and the Struggle against Human Trafficking: the Argument for a Comprehensive, Multi-Pronged Approach, 1 **Intercultural Hum. Rts. L. Rev.** 79, 2006, at 79.

<sup>4</sup> *Ibid.*, at 81.

<sup>5</sup> PISCITELLI, A; VASCONCELOS, M. Gênero e trabalho no tráfico de pessoas - Dossiê: Gênero no Tráfico de Pessoas, 31 **Cadernos Pagu** 2, 2008, at 15-16.

of sexual exploitation has existed since the beginning of the twentieth century.<sup>6</sup> Despite the consensus that human trafficking is illegal and the existence of numerous international agreements and domestic laws prohibiting trafficking, a vibrant international market do exist for trafficking women and children into forced prostitution.<sup>7</sup> After all, these gender (women) and generation (children and adolescents) *locus* are the most emblematic and recurrent forms of sexual exploitation and violence of the modern society.<sup>8</sup>

According to the International Labor Organization (ILO), out of 2.4 million people that have been trafficked worldwide, approximately one million are subject of forcible sexual labor and 98% are women.<sup>9</sup> Thus, women emerge as one of the most exploited “class”, evoking the gender aspect as one of the most relevant issues of modern society problems that need to be faced in order to protect and enforce human rights worldwide.

In Brazil, specifically, according to a national research dated of 2002, human trafficking is mainly related to prostitution, and 79% of lawsuits concern the trafficking of women, who are usually “sent” to countries like Netherlands, Spain, Italy, Switzerland, Germany and United States.<sup>10</sup>

Within Brazilian society, such problem is definitely related to their low social-economic development, what makes a bogus opportunity of a better life abroad made by human traffickers an attraction to women aged between 15-17 years old to be pulled into this type of transnational crime that violate the most intrinsic rights of any human being.<sup>11</sup>

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<sup>6</sup> CHUANG, J. **Redirecting the Debate over Trafficking in Women**: Definitions, Paradigms, and Contexts, 11 HARV. HUM. RTS. J. 1998, at 65, 74-75.

<sup>7</sup> DANAILOVA-TRAINOR, G.; BELSER, P. Globalization and the Illicit Market for Human Trafficking: An Empirical Analysis of Supply and Demand 2 **Int'l Labor Office Working Papers** 53, 2006), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_08193\\_1.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_08193_1.pdf), at 3.

<sup>8</sup> NOGUEIRA NETO, W. **Tráfico de mulheres, crianças e adolescentes para fins de exploração sexual no Brasil**: Dimensão Jurídico-Social – Reflexões epistemológicas e questionamentos estratégicos, preliminares, CECRIA, Brasília, 2001, at 1.

<sup>9</sup> ILO, **Estatísticas de Trabalho Forçado**, available at [www.oit.org.br/sites/all/forced\\_labour/oit/relatorio/indicadores.pdf](http://www.oit.org.br/sites/all/forced_labour/oit/relatorio/indicadores.pdf), at 1.

<sup>10</sup> LEAL, M L; LEAL, M. F. **Pesquisa sobre Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual Comercial**: Relatório Nacional, CECRIA, Brasília, 2002, at 50-51; see also Annex I.

<sup>11</sup> LEAL, M L; LEAL, M. F. **Pesquisa sobre Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual Comercial**: Relatório Nacional, CECRIA, Brasília, 2002, at 56.

### **3 THE TRAFFICKING OF WOMEN: INTERNATIONAL AND BRAZILIAN ANTI-TRAFFICKING LEGISLATION**

The international laws that govern human trafficking emerged from the existing enslavement conventions dated from as early as 1926, where people were treated as a commodity that could be exchanged or sold for a certain amount of money or equivalent compensation.

The Convention to Suppress the Slave Trade and Slavery for instance, connects the enslavement of a human being to the idea of property/possession, that is, to the notion of a person holding the rights of another that was considered nothing more than an object.<sup>12</sup> On the same token, to the ILO slavery is linked to the idea of forced labor, to which one did not present oneself voluntarily, being threatened or coerced to perform a specific activity that is profitable to another.<sup>13</sup>

Although women were not the focus of the definitions enlisted, it is imperative to note that human trafficking and enslavement are inherently related. It was only in the 1950s that slavery incorporated female human being to its core.<sup>14</sup> The Geneva Convention of 1956, while reaffirming such early and broad definitions, included as analogous forms of enslaving the servitude of women, forced marriage in exchange of an economic advantage to the family or third parties and even the selling of spouses by their husbands.<sup>15</sup>

It was only 50 years later that the international community decided to act, negotiating a treaty that would outline human trafficking as a specific category. According to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also known as the 'Palermo Convention', trafficking of persons is defined as

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<sup>12</sup> INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, **Prosecutor v. Kunrac (case no. IT-96-23-T)**, merits of February 2001, available at: [www.un.org/icty/foca/trialc2/judgment](http://www.un.org/icty/foca/trialc2/judgment).

<sup>13</sup> ILO, **Convention on Forced or Obligatory Labor (no. 29)**, 1930 – and internationally binding since 1932.

<sup>14</sup> It is important to mention that the 1956 Convention treated women as one category, that is, it did not set out a framework for a specific race, as the Accord for the Repression of White Women Trafficking of 1904, or the International Convention for the Repression of White Women Trafficking of 1910, or the Convention for the Repression of Adult Women of 1933, which failed to prevent the crime (and the HR violation) as a whole. Besides, none of the above were signed by Brazil. See BIJOS, C. A Insuficiência das Ações Brasileiras no enfrentamento ao Tráfico Internacional de Pessoas, **Revista do Mestrado de Direito**, Universidade Católica de Brasília, 2011, at 56.

<sup>15</sup> CASTILHO, E. **Tráfico de pessoas**: da Convenção de Genebra ao Protocolo de Palermo. Política Nacional de Enfrentamento ao Tráfico de Pessoas, Ministério da Justiça, 2008, available at: <http://www.mj.gov.br/main.asp?Team=%7B41BB570D%2D356E%2D4534%2DA090%2D12F4E6FoA592%7D>, at 7.

[t]he recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>16</sup>

This convention is said to be the basis of human trafficking now-a-days, since it perfectly outlines the modern world as it includes sexual exploitation, a crime the victims are mostly women. In other words, it is the Palermo Convention that sets the present basis for crime prevention in the international arena. It is formed by a main treaty and two additional protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also referred to as the 'Trafficking Protocol', and the other one being the Protocol against the Smuggling of Migrants by Land, Sea and Air, the 'Smuggling Protocol'.

It is important to note that trafficking of human beings differs from smuggling. While in smuggling a person is knowingly consenting to cross national borders illegally, and the smuggler is only responsible for facilitating their transport, in trafficking in human beings it does not necessarily involves crossing internationally recognized borders. Moreover, trafficking includes an element of force, deception or coercion, and is carried out for the purpose of placing a person into involuntary servitude or an otherwise abusive situation.<sup>17</sup>

Thus, for the purposes of combating the trafficking of women in the international level, the Trafficking Protocol is the one to be underlined. It entered into force in 2003 and it had been signed by 117 countries (out of 147 parties).<sup>18</sup> The Protocol commits ratifying states to prevent and combat trafficking of persons, enacting laws and public policies in order to stop the practice of such crime, including

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<sup>16</sup> UNITED NATIONS, **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime**, 2000, art. 3 [hereinafter Protocol], available at [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traffng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traffng.pdf); see also OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT JUNE 2005, at 10, 12 (2005) (hereinafter TRAFFICKING IN PERSONS REPORT JUNE 2005], available at <http://www.state.gov/documents/organization/47255.pdf>

<sup>17</sup> KANICS, J.; REITER, G. **2000: A Year of Significant Achievements in the Fight against Trafficking in Human Beings**, Helsinki Monitor 2001, no. 2, at 114.

<sup>18</sup> UNITED NATIONS, **Status of The Protocol I of the Palermo Convention**, available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en)

the promotion of cooperation among states with the aim of meeting its objectives.

It also stimulates the binding parties to protect and assist victims of trafficking by ensuring them denial of deportation whether there is a chance of risk to the trafficked person or its family; by considering temporary or permanent residency in exchange for testimony against alleged traffickers; and even by guaranteeing the rejection of charges of crimes such as prostitution and illegal immigration to the person.

Concerning the domestic level, Brazil has signed and ratified both the Palermo Convention (Decree no. 5.015<sup>19</sup>) and its Trafficking Protocol (Decree no 5.017<sup>20</sup>) on March 12<sup>th</sup>, 2004. However, it was only in 2009 that the domestic legislation was positively changed in order to materialize the international guidelines proposed in 2000, proscribing a specific and up-to-date criminal conduct.<sup>21</sup>

Law number 12.015<sup>22</sup> (dated of August 7<sup>th</sup> of 2009), refreshed the criminal code, giving an updated reading to articles 231 and 231-A. For instance, it was added 'sexual exploitation' to the core elements of the crime of *international* trafficking of persons. Not only that, it also broadened the crime to anyone who promotes, contributes or purchases a trafficked person, expanding the scope of application of the Brazilian criminal law.

The above-mentioned law made an important alteration on the *domestic* trafficking of individuals' area as well, since it turned a general criminal prescription of promoting and facilitating the handling of human beings to sexual exploitation into a very detailed offense, with several accumulative factors that worsen the penalties to the crime. For example, it adds that the abuse of youngsters, disabled or ill people increases the penalty in half, amounting up to 16 years of detention. Besides, it also increases the penalty to the same extent if the crime is committed by an ancestor, guardian, employer or anyone that is assumed by law to the duty of care, protection

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<sup>19</sup> Brazil, **Decree no. 5.015/04**, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2004/decreto/d5015.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5015.htm).

<sup>20</sup> Brazil, **Decree no. 5.017/04**, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2004/decreto/d5017.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5017.htm).

<sup>21</sup> It should be noted that in 2005 there was great change in the 1940 Brazilian Criminal Code that could be attributed to the International Conventions just ratified, outlining the human trafficking conduct and stipulating the minimum and maximum sentence kept by the 2009 reformulation. Conversely, the newest reform has brought more specific and detailed framework on sexual exploitation, being the reason why it is said that it has effectively applied domestically the international settings.

<sup>22</sup> Brazil, **Law No. 12.015/09**, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Lei/L12015.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L12015.htm)

or surveillance of the person (what is rather common to this crime).

By means of the elucidated above, it seems clear that the national legislation is very restricting since it limits human trafficking to the sexual exploitation, markedly differing from what the international conventions have previously set out, as to broaden the scope of trafficking domestically in order to avoid the non-consensual *voyage* of individuals (mainly women and children).<sup>23</sup>

Nonetheless, since the trafficking of human being for those ends is the most committed crime within national boundaries, having a more restrictive codification does not seem very unwise. It actually works not only for punishing, but also for preventing the facilitation of sending women out of the country, when they are clearly being sent to work as prostitutes or to be forcibly abused.

Besides the legislation, it is important to mention the National Policy for Combating Human Trafficking (*Política Nacional de Enfrentamento ao Tráfico de Pessoas*) and the National Plan of Combating Human Trafficking (*Plano Nacional de Enfrentamento ao Tráfico de Pessoas*). Although still to be fully implemented, both of these documents are public policies created by the Brazilian Executive Branch through Decrees number 5.948/2006<sup>24</sup> and 6.347/2008<sup>25</sup>, respectively, in order to confront human trafficking in the long run, in the various plans of actions, including municipal, state and national, of the private and public sectors, bringing together governmental and civil society segments.

Despite of these public policies, a noticeable campaign that has been launched by the government's Human Rights Department, intending to prevent human trafficking and other sexual crimes, is a hotline to denounce abuses. Besides, it shall count with all sorts of campaigns intending to prevent such crime, punishing the perpetrators and creating a human trafficking victim support, following exactly what the International Treaty demanded its parties to do.

#### **4 HUMAN TRAFFICKING AS A HUMAN RIGHT VIOLATION: CONCEPT AND SCOPE**

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<sup>23</sup> PISCITELLI, A; VASCONCELOS, M. Sobre armadilhas e cascas de banana: uma análise crítica da administração de justiça em temas associados aos Direitos Humanos - Dossiê: Gênero no Tráfico de Pessoas, 31 **Cadernos Pagu** 2, 2008, at 135.

<sup>24</sup> Brazil, **Decreto nº. 5948/06**, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2004-2006/2006/Decreto/D5948.htm](http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5948.htm)

<sup>25</sup> Brazil, **Decree no. 6347/08**, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2008/Decreto/D6347.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Decreto/D6347.htm)

It is important to regard that fighting human trafficking must not be seen only as a fight against organized crime. It is first and foremost a violation of human rights. It follows that trafficking in human beings is both a law enforcement issue and a human rights concern.<sup>26</sup> Both issues must be tackled together in order to have them rightly addressed.

Human trafficking violates the most essential rights of the human being, which are to be defined as the “minimum core of indispensable rights for proper life of any human being”.<sup>27</sup> Such basic rights, as autonomy, liberty, independence, domain of ones’ very own body, personality, among so many others, are intrinsic to human beings, being of an immeasurable importance as they form the basis for living in community, chiefly after World War II – where the value of human life had almost no meaning.<sup>28</sup>

This is why it could be argued that human trafficking is a derogation of a basic human right, going through the main core of the first generation of rights that are to be inseparable of mankind: *freedom*.

Human traffickers use another human a mere mean, without permitting him/her to be the end in itself at the same time, inflicting directly in another’s autonomy and choice.<sup>29</sup> Definitely, traffickers deprives (wo)man of using freedom, being clearly immoral and even irrational, as the respect to physical and moral integrity of a human being in his/her own life is corrupted by another, as it does not allow the person to be considered as one.<sup>30</sup>

On the same token, freedom also means the lack of opposition, in the sense of lacking external impediments of motion.<sup>31</sup> Freedom and dignity together work on the formation of fundamental rights, and should never be used as a limit to the point of opposition to another. Thus, through freedom (wo)men may achieve his/her dignity, being this the reason why it is the center of basic first generation of human rights. While violated by traffickers, the preservation of the right to freedom is

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<sup>26</sup> KONRAD, H. The OSCE and the Struggle against Human Trafficking: the Argument for a Comprehensive, Multi-Pronged Approach, 1 *Intercultural Hum. Rts. L. Rev.* 79 2006, at 88.

<sup>27</sup> RAMOS, A. Direitos Humanos in *Dicionário brasileiro de Direito Constitucional*, São Paulo, Saraiva, 2007, at 128-129.

<sup>28</sup> JANIS, M. *An Introduction to International Law*, New York, Aspen Publishers, 2003, at 65-66.

<sup>29</sup> KANT, I. *Fundamentação da Metafísica dos Costumes e Outros Escritos*, São Paulo, Martin Claret, 2008, at 42.

<sup>30</sup> *Ibid*, at 124.

<sup>31</sup> HOBBS, T. *Leviatã ou Matéria, Forma e Poder de um Estado Eclesiástico e Civil*, Editora Martin Claret, 2002, at. 158

ignored as they simply obstruct the fulfillment of the person as a whole.<sup>32</sup>

Therefore, the contempt to a specific social group, such as women, is totally incompatible to the respect of human rights and the dignity of those human beings as they completely disregard the right to freedom. Many treaties recognize the connection existing among human trafficking and human rights violations in the sense explored above.

The Universal Declaration of Human Rights states that “everyone has the right to life, liberty and security of person (Article 3); no one shall be held in slavery of servitude; slavery and the slave trade shall be prohibited in all their forms (Article 4); no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5)”. The fundamental individual right to life, liberty and security of person is also reflected in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).<sup>33</sup>

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was drafted specifically in relation to the concern that without a universal instrument trafficking victims, or those vulnerable to trafficking, will not be thoroughly protected, as their freedom would be targeted.<sup>34</sup> The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly prohibited “exploitation of prostitution of women” and “all forms of traffic of women” (Article 6), so that they could be free human beings.

Regionally (involving Brazil), the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará),<sup>35</sup> Chapter II, Article 3 provides for the right of women to be free from violence within both the public and private spheres, specifically listing “trafficking in persons” as a form of violence against women regardless of whether it involves the knowledge or acquiescence of state agents.

Domestically, the Brazilian National Policy Against Human Trafficking

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<sup>32</sup> CACHAPUZ, M. **Intimidade e Vida Privada no Novo Código Civil Brasileiro**: Uma leitura orientada no Discurso Jurídico, Porto Alegre, Sergio Antonio Fabris Editor, 2006, at 107-108

<sup>33</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force on Mar. 23, 1976.

<sup>34</sup> ESQUIBEL, M. **Human Trafficking**: A Violation of Human Rights, A Universal Issue, The Florida State University, 2005, at 40.

<sup>35</sup> OAS, **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women** (“Belem do Para”), Twenty-fourth regular session of the General Assembly to the Organization of American States, adopted at Belem do Para, Brazil, 06/09/94, entered into force on 03/05/95.

and the Brazilian Ministry of Justice define trafficking as cause and consequence of a violation of human rights because it exploits a human being by degrading his/her dignity and by limiting the freedom to come and go.<sup>36</sup>

## **5 REAL NECESSITIES TO EFFECTIVELY FIGHT HUMAN TRAFFICKING**

Recognition of trafficking in persons as a transnational crime is essential in combating human trafficking. Since trafficking is transnational in nature, combating the problem requires transnational legal responses.<sup>37</sup>

The status and protection of the victims in the fight against human trafficking deserve particular attention. For victims to be able to free themselves from relationships of violence and life contexts in which they are permanently threatened by violence, they need comprehensive social and economic support, but also legal assistance. Legalizing the status of a trafficked person is a crucial measure in order to effectively grant victims and witnesses' protection, and it is a prerequisite for support programs to reach them.<sup>38</sup>

The eradication of sex trafficking will require states, international organizations, and non-state actors to work collaboratively to address both the supply and demand factors that sustain the existence of a market for victims trafficked into forced prostitution.<sup>39</sup> In this sense, states could address such factors through domestic legislation, by encouraging and increasing the actions of non-state actors in the fight against sex trafficking – an action that might need the help of international organizations to succeed and to be copied to other countries.<sup>40</sup>

With regards to trafficking in persons as a severe violation of human rights, states should definitely implement programs that fund “comprehensive and compassionate” services for the victims of trafficking. These programs are necessary to treating victims with a minimum of dignity they deserve, but they are also helpful

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<sup>36</sup> Brazil, **Plano Nacional de Enfrentamento do Tráfico de Pessoas**, 8 jan 2008, at. 5. Available at: <http://www.mj.gov.br/main.asp>.

<sup>37</sup> ESQUIBEL, M. **Human Trafficking: A Violation of Human Rights, A Universal Issue**, The Florida State University, 2005, at 70.

<sup>38</sup> KONRAD, H. The OSCE and the Struggle against Human Trafficking: the Argument for a Comprehensive, Multi-Pronged Approach, 1 **Intercultural Hum. Rts. L. Rev.** 79 2006, at 82.

<sup>39</sup> DANAILOVA-TRAINOR, G.; BELSER, P. **Globalization and the Illicit Market for Human Trafficking: An Empirical Analysis of Supply and Demand 2** (Int'l Labour Office, Working Paper No. 53, 2006), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081931.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081931.pdf), at 3.

<sup>40</sup> FLOWE, M. 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. & Comp. Reg.** 669 2009-2010, at 682.

in establishing victim cooperation to the justice system, which is also essential for combating trafficking.

Deportation is still the norm in most parts of the world, which does nothing to diminish the traffic and instead makes the victims of trafficking less likely to report their situation and more dependent upon traffickers and pimps. This is an indispensable issue that needs to be addressed. Victims of trafficking are entitled to basic human rights, and due to that, efforts need to be made insure that these rights are no longer violated (also) by legal systems.<sup>41</sup> After all, there is a growing concern on the prejudice these victims suffer not only by society, but also from the judicial arena.

Another factor is the question of “invisibility of victims” who after testifying the existence of trafficking before the police or judges, are not granted any action for damages, compensation or social assistance. Only in case of a threat, protection is demanded, thus, the victims are seen as some utilitarian instruments for criminal proceedings.<sup>42</sup>

Prevention within the society seems to be vaguely addressed. As it is exemplified on the Appeal number 2004.81.00.001979-4, where the Federal Court stated the following:

[w]e believe that the only possible prevention is the social one, that is, the expansion of the access to education and health, the increase of the access of women to the labor markets, greater control and surveillance on the border's regions, appliance of an immediate training of the authorities charged with the expedition of passports in order to provide clarification in personal interviews with women suspected of future prostitution. Other measures include the dissemination, through medias, of information that will help to prevent trafficking and will allow people to denounce the action; as well as the distribution of informative booklets regarding such matter, in order to advise the population.<sup>43</sup>

Therefore, it is important to take into account the security of the person who is involved, directly or indirectly, to the trafficking of human beings. Actions of prevention by states, international governmental organizations, and non-state actors in a conjugated work will best address the current situation of victims trafficked into

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<sup>41</sup> ESQUIBEL, M. **Human Trafficking: A Violation of Human Rights, A Universal Issue**, The Florida State University, 2005, at 75.

<sup>42</sup> PISCITELLI, A; VASCONCELOS, M. A criminalização do tráfico de mulheres: proteção das mulheres ou reforço da violência de gênero - Dossiê: Gênero no Tráfico de Pessoas, 31 **Cadernos Pagu** 2, 2008, at 119.

<sup>43</sup> BRAZIL 5TH FEDERAL REAGIONAL TRIBUNAL (TRF5), **Apelação Criminal nº. 2004.81.00.001979-4 CE**, judgment of October 10th, 2006, 4th Chamber, Des. Ricardo Cesar M. Barreto presiding.

forced prostitution. Nonetheless, the enforcement of laws combating such practice is also included as a real necessity towards the acknowledgment of the crime, and there is a lot to do in both domestic and international arenas.

## **6 CONCLUDING REMARKS**

It is imperative to acknowledge human trafficking as a critical human right violation worldwide. It derogated one of the core basic rights every human being has in itself and could not be separated from. Although, such crime has evolved in a way that is has become much harder to combat. According to the Ministry of Justice, there are almost 60 thousand people taken forcibly abroad every year in Brazil, and the United Nations estimates that number to reach 100 thousand. In addition, there are 241 routes acting currently within the country, making the struggle against such crime even more challenging.

There is no doubt that the problem must be addressed internationally in order for it to be effective domestically. However, even with the international treaties signed in 2000, it seems very difficult to address the problem equivalently in every country, and even in Brazil or for Brazilians that have suffered such human right violation.

Because of that we find imperative for the fight against human trafficking the stimulation of channels for victims to denounce either in their home countries or abroad the offence, and maybe even allowing to bring the traffickers to justice either in the country where they have acted or within the country where the victims are from, connecting the universal jurisdiction principle of international law to this types of violations, due to its hideous characteristics.

Universal jurisdiction is based on the view that a crime over which such jurisdiction may be exercised is of such gravity and magnitude that it warrants universal prosecution and repression<sup>44</sup>; or, the exercise of this jurisdiction does not amount to a breach of the principle of sovereign equality of States, nor does it lead to excessive interference in the internal affairs of the State where the crime has been perpetrated.<sup>45</sup> In this sense, every country where a victim of human trafficking denounce would be able to prosecute the perpetrator.

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<sup>44</sup> Spain, Spanish National Court - **Audiencia Nacional**: Order, 4 Nov. 1988, (Legal Ground 2).

<sup>45</sup> Spain, Spanish National Court - **Audiencia nacional**: Order, 5 Nov. 1988, (Legal Ground 9), at 19-20.

In this sense, the transnationality of the crime of human trafficking, and more specifically, women trafficking, would get the attention it needs, in order to effectively fight this immense human right ‘violator’, and prevent more women to suffer from this loss of freedom.

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