

Understanding HUMAN TRAFFICKING

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"Trafficking in persons" and "human trafficking" are umbrella terms—often used interchangeably—to refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor or engage in commercial sex. When a person younger than 18 is used to perform a commercial sex act, it is a crime regardless of whether there is any force, fraud, or coercion involved.

The United States recognizes two primary forms of trafficking in persons: forced labor and sex trafficking. The basic meaning of these forms of human trafficking and some unique characteristics of each are set forth below, followed by several key principles and concepts that relate to all forms of human trafficking.

More than 180 nations have ratified or acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (the UN TIP Protocol), which defines trafficking in persons and contains obligations to prevent and combat the crime.

The United States' TVPA and the UN TIP Protocol contain similar definitions of human trafficking. The elements of both definitions can be described using a three-element framework focused on the trafficker's **1) acts; 2) means; and 3) purpose**. All three elements are essential to form a human trafficking violation.

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FORCED LABOR

Forced Labor, sometimes also referred to as labor trafficking, encompasses the range of activities involved when a person uses force, fraud, or coercion to exploit the labor or services of another person.

The “acts” element of forced labor is met when the trafficker recruits, harbors, transports, provides, or obtains a person for labor or services.

The “means” element of forced labor includes a trafficker’s use of force, fraud, or coercion. The coercive scheme can include threats of force, debt manipulation, withholding of pay, confiscation of identity documents, psychological coercion, reputational harm, manipulation of the use of addictive substances, threats to other people, or other forms of coercion.

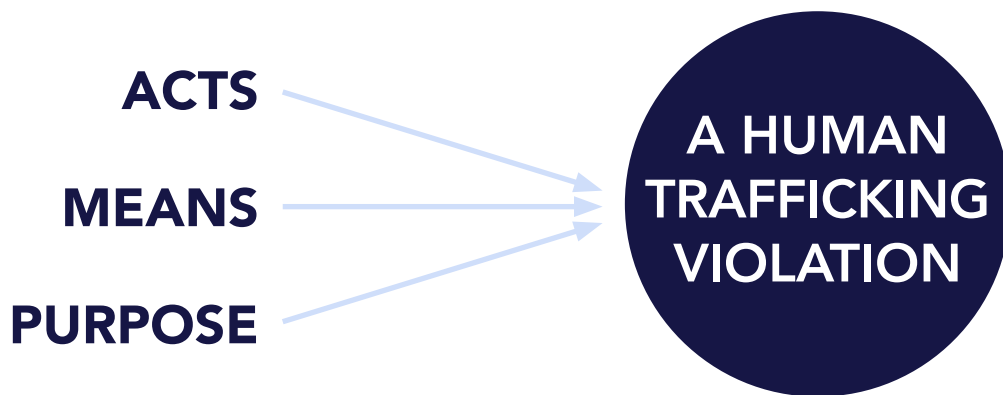
The “purpose” element focuses on the perpetrator’s goal to exploit a person’s labor or services. There is no limit on the location or type of industry. Traffickers can commit this crime in any sector or setting, whether legal or illicit, including but not limited to agricultural fields, factories, restaurants, hotels, massage parlors, retail stores, fishing vessels, mines, private homes, or drug trafficking operations.

All three elements are essential to constitute the crime of forced labor.

There are certain types of forced labor that are frequently distinguished for emphasis or because they are widespread:

DOMESTIC SERVITUDE

“Domestic servitude” is a form of forced labor in which the trafficker requires a victim to perform work in a private residence. Such circumstances create unique vulnerabilities.



Domestic workers are often isolated and may work alone in a house. Their employer often controls their access to food, transportation, and housing. What happens in a private residence is hidden from the world—including from law enforcement and labor inspectors—resulting in barriers to victim identification. Foreign domestic workers are particularly vulnerable to abuse due to language and cultural barriers, as well as a lack of community ties. Some perpetrators use these types of conditions as part of their coercive schemes to compel the labor of domestic workers with little risk of detection.

FORCED CHILD LABOR

The term “forced child labor” describes forced labor schemes in which traffickers compel children to work. Traffickers often target children because they are more vulnerable. Although some children may legally engage in certain forms of work, forcing or coercing children to work remains illegal. Forms of slavery or slavery-like practices—including the sale of children, forced or compulsory child labor, and debt bondage and serfdom of children—continue to exist, despite legal prohibitions and widespread condemnation. Some indicators of forced labor of a child include situations in which the child appears to be in the custody of a non-family member and the child’s work financially benefits someone outside the child’s family; or the denial of food, rest, or schooling to a child who is working.

SEX TRAFFICKING

Sex trafficking encompasses the range of activities involved when a trafficker uses force, fraud, or coercion to compel

another person to engage in a commercial sex act or causes a child to engage in a commercial sex act.

The crime of sex trafficking is also understood through the “acts,” “means,” and “purpose” framework. All three elements are required to establish a sex trafficking crime (except in the case of child sex trafficking where the means are irrelevant).

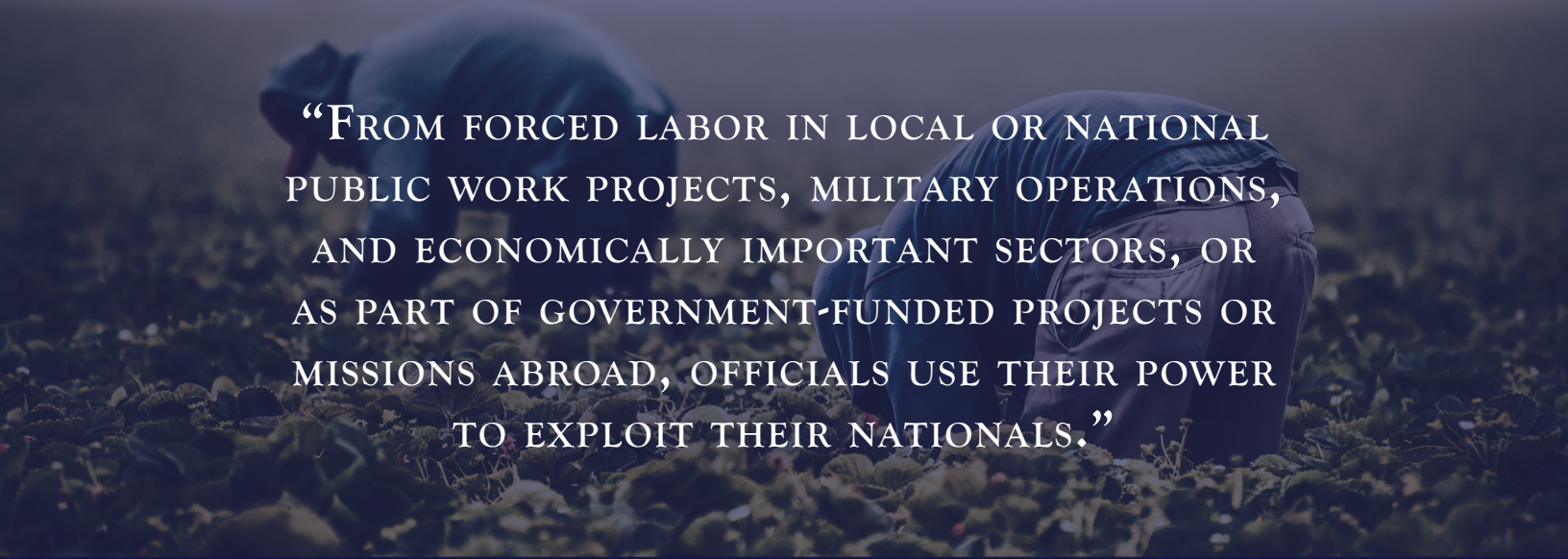
The “acts” element of sex trafficking is met when a trafficker recruits, harbors, transports, provides, obtains, patronizes, or solicits another person to engage in commercial sex.

The “means” element of sex trafficking occurs when a trafficker uses force, fraud, or coercion. Coercion in the case of sex trafficking includes the broad array of means included in the forced labor definition. These can include threats of serious harm, psychological harm, reputational harm, threats to others, and debt manipulation.

The “purpose” element is a commercial sex act. Sex trafficking can take place in private homes, massage parlors, hotels, or brothels, among other locations, as well as on the internet.

CHILD SEX TRAFFICKING

In cases where an individual engages in any of the specified “acts” with a child (under the age of 18), the means element is irrelevant regardless of whether evidence of force, fraud, or coercion exists. The use of children in commercial sex is prohibited by law in the United States and most countries around the world.



“FROM FORCED LABOR IN LOCAL OR NATIONAL PUBLIC WORK PROJECTS, MILITARY OPERATIONS, AND ECONOMICALLY IMPORTANT SECTORS, OR AS PART OF GOVERNMENT-FUNDED PROJECTS OR MISSIONS ABROAD, OFFICIALS USE THEIR POWER TO EXPLOIT THEIR NATIONALS.”

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KEY PRINCIPLES AND CONCEPT

These key principles and concepts relate to all forms of trafficking in persons, including forced labor and sex trafficking.

CONSENT

Human trafficking can take place even if the victim initially consented to providing labor, services, or commercial sex acts. The analysis is primarily focused on the trafficker's conduct and not that of the victim. A trafficker can target a victim after a victim applies for a job or migrates to earn a living. The trafficker's exploitative scheme is what matters, not a victim's prior consent or ability to meaningfully consent thereafter. Likewise, in a sex trafficking case, an adult victim's initial willingness to engage in commercial sex acts is not relevant where a perpetrator subsequently uses force, fraud, or coercion to exploit the victim and cause them to continue engaging in the same acts. In the case of child sex trafficking, the consent of the victim is never relevant as a child cannot legally consent to commercial sex.

MOVEMENT

Neither U.S. law nor international law requires that a trafficker or victim move across a border for a human trafficking offense to take place. Trafficking in persons is a crime of exploitation and coercion, and not movement. Traffickers can use schemes that take victims hundreds of miles away from their homes or exploit them in the same neighborhoods where they were born.

DEBT BONDAGE

“Debt bondage” is focused on human trafficking crimes

in which the trafficker's primary means of coercion is debt manipulation. U.S. law prohibits perpetrators from using debts as part of their scheme, plan, or pattern to compel a person to work or engage in commercial sex. Traffickers target some individuals with an initial debt assumed willingly as a condition of future employment, while in certain countries traffickers tell individuals they “inherited” the debt from relatives. Traffickers can also manipulate debts after the economic relationship begins by withholding earnings or forcing the victim to assume debts for expenses like food, housing, or transportation. They can also manipulate debts a victim owes to other people. When traffickers use debts as a means to compel labor or commercial sex, they have committed a crime.

NON-PUNISHMENT PRINCIPLE

A victim-centered and trauma-informed approach is key to successful anti-trafficking efforts. A central tenet to such an approach is that victims of trafficking should not be inappropriately penalized solely for unlawful acts they committed as a direct result of being trafficked. Effective implementation of the “non-punishment principle,” as it is increasingly referred to, not only requires recognizing and embracing the principle in regional and national laws, but also increasing proactive victim identification.

STATE-SPONSORED HUMAN TRAFFICKING

While the TVPA and UN TIP Protocol call on governments to proactively address trafficking crimes, some governments are part of the problem, directly compelling their citizens into sexual slavery or forced labor schemes. From forced labor in local or national public work projects, military operations, and economically important sectors, or as part of government-

funded projects or missions abroad, officials use their power to exploit their nationals. To extract this work, governments coerce by threatening the withdrawal of public benefits, withholding salaries, failing to adhere to limits on national service, manipulating the lack of legal status of stateless individuals and members of minority groups, threatening to punish family members, or conditioning services or freedom of movement on labor or sex. In 2019, Congress amended the TVPA to acknowledge that governments can also act as traffickers, referring specifically to a “government policy or pattern” of human trafficking, trafficking in government-funded programs, forced labor in government-affiliated medical services or other sectors, sexual slavery in government camps, or the employment or recruitment of child soldiers.

UNLAWFUL RECRUITMENT OR USE OF CHILD SOLDIERS

Another manifestation of human trafficking occurs when government forces or any non-state armed group unlawfully recruits or uses children—through force, fraud, or coercion—as soldiers or for labor or services in conflict situations. Children are also used as sex slaves. Sexual slavery, as referred to here, occurs when armed

groups force or coerce children to “marry” or be raped by commanders or combatants. Both male and female children are often sexually abused or exploited by members of armed groups and suffer the same types of devastating physical and psychological consequences associated with sex trafficking.

ACCOUNTABILITY IN SUPPLY CHAINS

Forced labor is well documented in the private economy, particularly in agriculture, fishing, manufacturing, construction, and domestic work; but no sector is immune. Sex trafficking occurs in several industries as well. Most well-known is the hospitality industry, but the crime also occurs in connection with extractive industries where activities are often remote and lack meaningful government presence. Governments should hold all entities, including businesses, accountable for human trafficking. In some countries, the law provides for corporate accountability in both the civil and criminal justice systems. U.S. law provides such liability for any legal person, including a business that benefits financially from its involvement in a human trafficking scheme, provided that the business knew or should have known of the scheme.

