

# **Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada**

**Victoria Sweet<sup>1</sup>**

## **Abstract**

Among indigenous people around the world, human trafficking is taking a tremendous toll. While trafficking is not an exclusively indigenous issue, disproportionately large numbers of indigenous people, particularly women, are modern trafficking victims. In Canada, several groups concerned about human trafficking have conducted studies primarily focused on the sex trade because many sex workers are actually trafficking victims under both domestic and international legal standards. These studies found that First Nations women and youth represent between 70 and 90% of the visible sex trade in areas where the Aboriginal population is less than 10%. Very few comparable studies have been conducted in the United States, but studies in both Minnesota and Alaska found similar statistics among U.S. indigenous women.

With the current interest in resource extraction, and other opportunities in the warming Arctic, people from outside regions are traveling north in growing numbers. This rise in outside interactions increases the risk that the indigenous women may be trafficked. Recent crime reports from areas that have had an influx of outsiders such as Williston, North Dakota, U.S. and Fort McMurray, Alberta, Canada, both part of the new oil boom, demonstrate the potential risks that any group faces when people with no community accountability enter an area. The combination of development in rural locations, the demographic shift of outsiders moving to the north, and the lack of close monitoring in this circumpolar area is a potential recipe for disaster for indigenous women in the region. This paper suggests that in order to protect indigenous women, countries and indigenous nations must acknowledge this risk and plan for ways to mitigate risk factors.

## **Keywords**

Human Trafficking, Human Security, Extractive Industries, Arctic, Circumpolar Arctic, Climate Change, Indigenous Women, Violence against Women, Corporate Responsibility

---

<sup>1</sup> Victoria Sweet is the Legal Fellow at the Indigenous Law and Policy Center at Michigan State University College of Law. She received her J.D. from Michigan State University College of Law and her MAEd and B.A. from George Wythe University. Sweet has worked as a teacher and an educational lecturer, speaking at workshops and seminars across the United States and Canada. She has volunteered in international community development organizations, run workshops and conferences for Native youth, and served on the Board of Directors for the Urban Indian Center of Salt Lake. She is involved in raising awareness about human trafficking and other gender-related crimes, particularly as they impact indigenous women and communities around the world. Thanks to the following people for all of their support for this project: Matthew Fletcher, Wenona Singel, Kate Fort, Timo Koivurova, Gudmundur Alfredsson, Rachael Lorna Johnstone, Nikolas Sellheim, and my family. Sweet can be contacted at [victoria.g.sweet@gmail.com](mailto:victoria.g.sweet@gmail.com).

## Introduction

A booming modern slave trade exists in the world today. An estimated 27 million people are trafficked – some for sex and some as laborers.<sup>2</sup> Experts say that trafficking has surpassed the illegal arms trade, making it one of the top-grossing criminal industries in the world.<sup>3</sup> For indigenous peoples, human trafficking is just the new name of a historical problem.<sup>4</sup> They have experienced exploitation by outsiders in many different areas of the world for generations.<sup>5</sup> While trafficking is not an exclusively indigenous issue, according to collected data an alarmingly large number of indigenous people, particularly indigenous women, are modern day trafficking victims.<sup>6</sup>

Recently, the attention of the world has turned to the Arctic region, an area where a significant number of indigenous peoples reside. The Arctic is melting, and with the melting have come changes: warming temperatures; rising waters; ecosystem changes; and altered animal, bird, and sea mammal migrations, to name a few.<sup>7</sup> Because of these changes, investors now find the Arctic an attractive location for new business ventures, tourism, and other economic activities. However, with an increase in outside influences comes a greater risk that human trafficking may become a problem in the Arctic region unless the risks are mitigated.

The scope of this article will be limited to the sex trafficking of indigenous women in the circumpolar region of Alaska and Canada, with the recognition that other forms of human trafficking exist, other populations are also at risk, and that other areas within the Arctic may face similar concerns. Section I reviews the legal definition of human trafficking and why

---

<sup>2</sup> U.S. Department of State. *2013 Trafficking in Persons Report*. 2013, 7, available at [www.state.gov/j/tip](http://www.state.gov/j/tip), (accessed Feb. 17, 2014).

<sup>3</sup> Riley, Laura. "Human Trafficking: Global Threat to Fundamental Human Rights." *Global Peace Convention* (Dec. 1, 2013), [www.globalpeaceconvention.org/component/content/article/47-global-peace-convention/238-human-trafficking-global-threat-to-fundamental-human-rights.html](http://www.globalpeaceconvention.org/component/content/article/47-global-peace-convention/238-human-trafficking-global-threat-to-fundamental-human-rights.html), (accessed Feb. 17, 2014).

<sup>4</sup> Since this paper discusses events occurring in the circumpolar region of both the U.S. and Canada, the term 'indigenous' will usually be used when describing the original peoples of both countries. When discussing data from individual countries, the terms: Native American, American Indian, Alaska Native, First Nation, and Aboriginal will be used depending on context and original data sources.

<sup>5</sup> Deer, Sarah, *Relocation Revisited: Sex Trafficking of Native Women in the United States* William Mitchell Law Review 36:2. 624-26 (2010)

<sup>6</sup> See Tocher, Annemarie. *Domestic Trafficking in Aboriginal Persons: The Legacy of Colonization and Sexual Exploitation*. Calgary, Alberta: The HindSight Group, 2012; Farley, Melissa, et al. *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*. St. Paul, MN: William Mitchell College of Law, 2011; Pierce, Alexandra. *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*. Minneapolis, MN: Minnesota Indian Women's Resource Center, 2009.

<sup>7</sup> Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis*, available at [www.ipcc.ch/report/ar5/wg1/#.Uu-2W6VFAWE](http://www.ipcc.ch/report/ar5/wg1/#.Uu-2W6VFAWE) (accessed Feb. 3, 2014).

misunderstanding the nature of the crime has exacerbated the problem. Section II addresses the disproportionate impact that trafficking is having on indigenous communities. Section III explores the connection between some forms of economic development and human trafficking and how current regional development plans create human security risks for local indigenous communities. Section IV proposes a multi-system approach to mitigate these risks and effectively fight the crime of human trafficking. This approach makes recommendations and discusses already existing frameworks on the local/tribal, state/provincial/national, corporate, NGO, and international levels.

## **Part I The Legal Definition of Human Trafficking**

When people think about human trafficking, they picture the scenario portrayed in popular entertainment.<sup>8</sup> A young girl is kidnapped, drugged, and held captive in a foreign country to be sold for sex. While this type of trafficking occurs and is as terrifying as portrayed, it is not the only or even the most common form. Unfortunately, community members, lawmakers, and law enforcement officers all risk underestimating the impact of trafficking on communities if their understanding remains limited to this one scenario. Human trafficking comes in many forms. It does not require kidnapping, movement, or border crossings. At its heart, it is a crime of exploitation and abuse.

Since 2000 international law has defined human trafficking as:

[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 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 or 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. [Emphasis added]<sup>9</sup>

While the elements of transportation, transfer, and abduction are included in the definition, the majority of key elements refer to different forms of exploitation and coercion.

When countries began passing domestic trafficking legislation, national laws also shifted the focus from physical methods of trafficking to the underlying emotional techniques. The United States' human trafficking legislation defines the essential elements of trafficking as the use of "fraud, force, or coercion" in order to commercially benefit off of the victim.<sup>10</sup>

---

<sup>8</sup> One recent example is the movie *Taken*, directed by Pierre Morel (20th Century Fox, 2009).

<sup>9</sup> U.N. Convention Against Transnational Organized Crime. *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, Nov. 15, 2000, art. 3(a), GA 55/25.

<sup>10</sup> Victims of Trafficking and Violence Protection Act of 2000, H.R. 3244, § 102(9), (Oct. 28, 2000).

Similarly, the Canadian national legislation emphasizes exploitation over transportation. The Department of Justice clarifies that “[t]rafficking in persons is about exploitation and does not necessarily involve movement.”<sup>11</sup> The law then emphasizes that qualifying behavior “could reasonably . . . cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide . . . the labour or service.”<sup>12</sup>

The term human trafficking itself misleads people about the nature of the crime since trafficking implies movement. However, as a term of art, human trafficking will continue to be written into legislation, treaties, and other legal documents. Therefore, awareness must be raised about the true nature of the crime and the various ways it impacts communities. Until law enforcement and service providers recognize trafficking indicators within their own communities, the crime will proliferate.

Getting this information to communities has been impeded by the fact that the crime is highly underreported. Many trafficking victims do not identify themselves as victims. Some suffer from fear, shame, and distrust of law enforcement.<sup>13</sup> It is also not unusual for trafficking victims to develop traumatic bonds with their traffickers because of the manipulative nature of this crime.<sup>14</sup>

The fact that almost no human trafficking data currently exists further amplifies these problems. Visualizing the full scope of the problem is difficult when almost no statistics or numbers demonstrate the reality of the situation. As stated in one report out of Canada

The criminal and marginalized nature of sexual exploitation makes it difficult to determine the total numbers of victims in Canada; there is no data collection/tracking method that provides a complete picture of commercial sexual exploitation or human trafficking.<sup>15</sup>

With so little formal data available, scholars must rely on less accepted sources of information such as press accounts and personal anecdotes. Unfortunately, until researchers conduct more formal studies, these sources provide the only available foundational data. Both the gravity of the

---

<sup>11</sup> Government of Canada, Department of Justice, [www.justice.gc.ca/eng/cj-jp/tp/legis-loi.html](http://www.justice.gc.ca/eng/cj-jp/tp/legis-loi.html) (accessed Nov. 10, 2013).

<sup>12</sup> An Act to Amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years) 2010, c. 268 sect. 279.04 (Can.).

<sup>13</sup> State of Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution and Sex Trafficking. *Final Report and Recommendations* (2013), 1, available at <http://www.law.state.ak.us/pdf/admin/021513-TaskForceFinalReport.pdf> (accessed Nov. 10, 2013).

<sup>14</sup> U.S. Department of Health and Human Services Administration for Children, Youth and Families. *Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States*, 2013, 6, available at [http://www.acf.hhs.gov/sites/default/files/cb/acyf\\_human\\_trafficking\\_guidance.pdf](http://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf), (accessed Nov. 10, 2013).

<sup>15</sup> Tocher, *supra* note 6 at 12.

crime as well as the need for reliable information should provide some inspiration to encourage more research on this topic.<sup>16</sup>

## **Part II Human Trafficking Impact on Indigenous Communities**

The majority of sex trafficking data comes from studies about prostitution or commercial sexual exploitation. Although not every person involved in prostitution is legally a trafficking victim, according to the limited data gathered so far, many are. In one commercial sexual exploitation study, researchers discovered that about half of the women interviewed “met a conservative legal definition of human trafficking.”<sup>17</sup>

The Canadian Standing Committee on the Status of Women has come to an even more forceful conclusion about the link between prostitution and human trafficking. According to the committee’s formal statement “prostitution is closely linked to trafficking in persons . . . [because] prostitution is a form of violence and a violation of human rights . . . [and] consent is irrelevant because you can never consent to sexual exploitation.”<sup>18</sup> This statement is not without controversy. The Human Rights Caucus stated that

Obviously, by definition, no one consents to abduction or forced labour, but an adult woman is able to consent to engage in an illicit activity (such as prostitution). If no one is forcing her to engage in such activity, then trafficking does not exist.<sup>19</sup>

Keeping both perspectives in mind, researchers need to proceed cautiously when linking prostitution and human sex trafficking data. However, until more trafficking-specific data can be collected, the data derived from prostitution and commercial sexual exploitation studies provides the information necessary to start visualizing human trafficking activity and impact.

While little general human trafficking data exists, even less has been gathered about how prostitution, and by extension human trafficking, affects indigenous communities. However, the data that has been collected is alarming. A review of the community impact data taken from four formal studies demonstrates both the disproportionate impact and the strong similarities between indigenous communities in both the United States and Canada. To provide a varied perspective,

---

<sup>16</sup> Tyldum, Guri and Anette Brunovskis. “Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking,” *International Migration*, 43(1-2), 2005: 17; Clawson, Heather J., et al. “Human Trafficking Into and Within the United States: A Review of the Literature,” *Study of HHS Programs Serving Human Trafficking Victims* 5, 33 (2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/>, (accessed Feb. 10, 2014).

<sup>17</sup> Farley et.al., *supra* note 6 at 3.

<sup>18</sup> Tocher, *supra* note 6 at 11.

<sup>19</sup> Gozdzia, Elzbieta M. and Elizabeth A. Collett. “Research on Human Trafficking in North America: A Review of Literature,” *International Migration*, 43(1-2), 2005:99, 103; for a more detailed explanation of this perspective see Doezema, Jo. “Now You See Her, Now You Don’t: Sex Workers at the UN Trafficking Protocol Negotiation,” *Social & Legal Studies*, 14, 2005:61, available at <http://sls.sagepub.com/content/14/1/61>, (accessed Feb. 4, 2014).

two of the studies chosen were conducted in different states in the United States and the other two were conducted in different Canadian provinces.

Researchers conducted the first United States study in Minnesota. According to the data, roughly 25% of the women arrested for prostitution in Hennepin County identified as American Indian while American Indians comprise only 2.2% of the total population.<sup>20</sup> Alaska was the location for the second study. In Anchorage, 33% of the women arrested for prostitution were Alaska Native, but Alaska Natives make up only 7.9% of the population.<sup>21</sup>

The Canadian studies showed similar results. In a study conducted in Winnipeg, 50% of adult sex workers were defined as Aboriginal, while Aboriginal peoples comprise only 10% of the population.<sup>22</sup> Vancouver was the location for the second study. Fifty-two percent of the women involved in the commercial sex trade were identified as First Nations, while First Nations people comprise only 7% of the general population.<sup>23</sup>

Data from only four studies does not provide a thorough picture of human trafficking's impact on indigenous communities, but it does show a disturbing trend. In all four locations, indigenous women are disproportionately represented in the commercial sex trade. The data also demonstrates that this is not a localized problem. These studies were conducted in four geographically distinct locations in two different countries, proving that the commercial sexual exploitation of indigenous women crosses national borders and threatens the security of all indigenous communities.

While the data from these studies provides a strong argument that indigenous women may be more strongly impacted by human trafficking than other women, it is not the only evidence that leads to this conclusion. Data from studies about vulnerability and risk factors provides additional support for this argument.

Anywhere from 50 to 80% of identified victims are or were involved with child welfare services at some point in their lives.<sup>24</sup> Traffickers prey on children and youth with low self-esteem and minimal social support.<sup>25</sup> Some other risk factors specifically identified in a study done by the Alaska Trafficking Task Force include: poverty; limited education; lack of work opportunities; homeless/orphan/run away/thrown away youth; history of previous sexual abuse;

---

<sup>20</sup> Pierce, *supra* note 6 at 32.

<sup>21</sup> Farley et al., *supra* note 6 at 19.

<sup>22</sup> Seshia, Maya. *The Unheard Speak Out: Street Sexual Exploitation in Winnipeg*. Ottawa: Canadian Centre for Policy Alternatives, 2005, 16, quoting Ndaawin, *Protecting Children Information Guide: Preventing the Sexual Exploitation of Children and Youth through Prostitution*. Winnipeg, date published unknown, 14.

<sup>23</sup> Farley, Melissa, et al. "Prostitution in Vancouver: Violence and Colonization of First Nations Women," *Transcultural Psychiatry*, 42 (2005): 249.

<sup>24</sup> U.S. Department of Health and Human Services, *supra* note 14 at 3.

<sup>25</sup> *Ibid.*, 4.

physical, emotional, or mental health challenges; drug or alcohol addiction; PTSD; multiple arrests; history of truancy or being expelled.<sup>26</sup> Many indigenous communities struggle with the very problems that these studies have identified as vulnerability factors.

In addition, indigenous women already face high safety risks. Violence against indigenous women rates in both the United States and Canada are extremely high. According to the United States Department of Justice “American Indians are 2.5 times more likely to experience sexual assault crimes compared to all other races.”<sup>27</sup> A 2013 report on forcible rape rates found that Alaska has the highest rates in the United States, with South Dakota coming in a close second. Sixty-one percent of rape victims in Alaska are Alaska Natives, and 40% of victims in South Dakota are American Indian.<sup>28</sup>

In Canada, Aboriginal women aged fifteen and older reported almost three times higher rates of violent victimization than non-Aboriginal women.<sup>29</sup> Statistics also demonstrate that Aboriginal women are significantly overrepresented as homicide victims.<sup>30</sup> Related to this are the high rates of missing and murdered indigenous women throughout Canada, most of which remain unsolved crimes.<sup>31</sup> According to the Sisters In Spirit initiative, “Aboriginal women are the most at risk group in Canada for issues related to violence.”<sup>32</sup> Even international organizations recognize the risks of violence that indigenous girls face. The UN Inter-Agency Task Force on Adolescent Girls identified indigenous girls as one of the groups at a particularly high risk of human rights abuses, which includes trafficking.<sup>33</sup>

Without more data, making a concrete case that human trafficking disproportionately impacts indigenous communities is difficult. However, the data from the studies of commercial

---

<sup>26</sup> State of Alaska Task Force, *supra* note 13 at 6-7.

<sup>27</sup> Tjaden, Patricia and Nancy Thoennes. *Full Report of the Prevalence, Incidence, and Consequences of Violence against Women*. Washington, D.C.: US Department of Justice, 2000, available at [www.ovw.usdoj.gov/tribal.html#1](http://www.ovw.usdoj.gov/tribal.html#1), (accessed Nov. 10, 2013).

<sup>28</sup> Fuchs, Erin. “Why Rape is Much More Common in Alaska.” *BusinessInsider.com.*, Sept. 6, 2013, <http://www.businessinsider.com/why-does-alaska-have-such-a-high-rate-rape-2013-9#comments>, (accessed Nov. 30, 2013).

<sup>29</sup> Brennan, Shannon. “Violent Victimization of Aboriginal Women in the Canadian Provinces, 2009.” *Juristat Article*, May 17, 2011: 5.

<sup>30</sup> Native Women’s Association of Canada. *Fact Sheet: Violence against Aboriginal Women*. NWAC: Ontario, 2009, 5.

<sup>31</sup> Seshia, *The Unheard Speak Out*, 7; *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*. Amnesty International, 2004, available at [ywacacanada.ca/data/research\\_docs/00000024.pdf](http://ywacacanada.ca/data/research_docs/00000024.pdf), (accessed Nov. 10, 2013).

<sup>32</sup> Native Women’s Association of Canada. *What Their Stories Tell Us: Research Findings from the Sisters In Spirit Initiative*. Ontario: NWAC, 2010, 2, available at [http://www.nwac.ca/files/reports/2010\\_NWAC\\_SIS\\_Report\\_EN.pdf](http://www.nwac.ca/files/reports/2010_NWAC_SIS_Report_EN.pdf), (accessed Dec. 2, 2013).

<sup>33</sup> Kuokkanen, Rauna. “Addressing Violence against Indigenous Women and Girls as a Human Rights Issue.” Presented at the International Expert Group Meeting, Combatting Violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples, New York, Jan. 18-20, 2012, PFII/2012/EGM, 1.

sexual exploitation and prostitution, combined with known vulnerability factors and known levels of violence against indigenous women in both the United States and Canada, provide sufficient evidence to conclude that indigenous communities currently are and will continue to be disproportionately impacted by human trafficking. Therefore, when risk factors for trafficking appear in areas heavily populated by indigenous communities, precautions must be taken to protect the people in those areas before they become statistics.

### **Part III The Threat of Trafficking in the Circumpolar Arctic**

An estimated 4 million people inhabit the Arctic and about 13.1 million people live in the circumpolar region.<sup>34</sup> While indigenous people are a minority in the region, they are a majority in certain areas. For instance, around 85% of the inhabitants of Nunavut are indigenous.<sup>35</sup> In some of the villages in northern Alaska, between 70% and 90% of the population is Alaska Native.<sup>36</sup> So, when activities occur that could impact human security issues in the Arctic, including the broader circumpolar region, the activities will impact indigenous communities.

With the human trafficking industry expanding world wide, individual traffickers and organized crime networks are looking for new, profitable markets. Areas with major economic development projects, particularly projects that will require the importation of large numbers of outside workers, are prime trafficking locations. The circumpolar region of the United States and Canada meets all of these criteria.

Criminals from outside of the region may try to expand into the area, but potential danger also comes from within communities. An increased demand for prostituted women and girls will come with large numbers of outside workers. Traffickers fill this kind of demand through the exploitation of others. Overlooking these potential external and internal risks increases the possibility that regional development will lead to a serious human trafficking problem.

#### **A. Economic Development in the Arctic**

A recently released Lloyd's/Chatham House publication predicts over \$100 billion in investments in the Arctic will be made over the next decade.<sup>37</sup> In the circumpolar region of the United States and Canada, companies have already announced numerous development projects. To demonstrate the enormity of the economic development plans, below are a few examples of some of the proposed projects:

---

<sup>34</sup> *Ibid.*, 6.

<sup>35</sup> *Ibid.*

<sup>36</sup> Robinson, Dan, et al. *Alaska Economic Trends* 33(4). Juneau: Alaska Department of Labor & Workforce Development, May 2013, 5-6.

<sup>37</sup> Emmerson, Charles, et al. *Arctic Opening: Opportunity and Risk in the High North*. London: Lloyd's, 2012, 6.



- The new port planned for Nome<sup>38</sup>
- Graphite One mine project in Nome<sup>39</sup>
- MMG Ltd.'s plans to build two mines in Nunavut by 2018
- Itzok Corridor Project that is expected to produce an annual 180,000 tonnes of zinc and 50,000 tonnes of copper
- A huge open pit iron ore mine that will be constructed above the Arctic Circle in Nunavut
- The Mary River project on the Baffin Islands, expected to produce an annual 18 million tonnes of iron ore<sup>40</sup>

These projects alone will require an enormous workforce, and they are just a sampling of proposed projects. Radical changes in the nature of life are coming to this mostly rural circumpolar region.

Some literature suggests that rural and remote communities are more vulnerable than urban communities to the negative impacts that come with large development projects.<sup>41</sup> Even without development projects, residing in rural locations negatively impacts women's safety. In one report, a 19-year-old Alaska Native woman in a small village called police after being raped in her home. The police not only did not answer the phone, they did not even respond to the message she left.<sup>42</sup> The geographical isolation of many of these communities reduces economic opportunities for women, limits victim services, and increases community member vulnerabilities.<sup>43</sup> These factors all increase the risks for women living in the region.

This new wave of development does not represent the first time that outsiders have gone to this region hoping to make a profit. Historically, large numbers of outsiders have flooded into northern Alaska and Canada looking for economic benefits, sometimes at the expense of local communities. Stories go back to the days of the Hudson Bay Company. In one story, a company officer openly kept a Chippeweyan woman as a 'slave woman' and during that same period

---

<sup>38</sup> "Arctic Drilling: Coastal Towns Eager for Ports as Ice Melts, Ocean Traffic Picks Up," *Destination: Arctic Drilling in the Last Frontier*, Nov. 19, 2012, [www.eenews.net/special\\_reports/destination\\_arctic](http://www.eenews.net/special_reports/destination_arctic), (accessed Feb. 10, 2014).

<sup>39</sup> GraphiteOne Resources, *Graphite Creek*, available at [graphiteoneresources.com/projects/graphite\\_creek/](http://graphiteoneresources.com/projects/graphite_creek/), (accessed Feb. 3, 2014).

<sup>40</sup> For a more complete list of projects already in production or in planning stages see Jamasmie, Cecilia. "Arctic Oil Extraction Frozen, but Mining to Bring a Melting \$100 Billion in Investments," *MINING.com*, Jan. 14, 2013, <http://www.mining.com/arctic-oil-extraction-frozen-but-mining-to-bring-a-melting-100-billion-in-investments-99646/>, (accessed Nov. 10, 2013).

<sup>41</sup> Ruddell, Rick. "Boomtown Policing: Responding to the Dark Side of Resource Development." *Policing* 5(4) (2011): 330.

<sup>42</sup> Fuchs, *supra* note 28

<sup>43</sup> Chamberlain, Linda. "Violence against Women, Prioritizing Domestic Violence as Women's Health Issues in the Arctic." In *Taking Wing: Conference Report*. Helsinki: Reports of the Ministry of Social Affairs and Health, 2002, 195.

brothels were filled with Aboriginal women to “service European men.”<sup>44</sup> During the gold rush in both Alaska and Canada, large numbers of outsiders entered the area looking for economic opportunities. While documents do not refer to the activities that occurred as trafficking, at a minimum, prostitution and other forms of exploitation occurred.<sup>45</sup>

Later, from 1974-1977, the Alaska pipeline again brought tens of thousands of workers to the area. Boomtowns formed in Valdez, Fairbanks, and Anchorage. Economic development again brought with it a spike in crime. As workers made large sums of money, crime and illicit activity rates rose.<sup>46</sup>

Not every story of exploitation or abuse has been documented. In some villages, community members tell anecdotal stories about outsiders who entered the area while fishing or whaling, and left behind pregnant women and young babies.<sup>47</sup> Simply impregnating women does not equate to human trafficking activity, but the stories are part of a regional history in which indigenous women and girls are strongly impacted by the entry of outsiders into the region.

Exacerbating these concerns in the United States’ circumpolar region are justice systems issues that differentiate Alaska from the rest of the country. The Indian Law and Order Commission recently released a report, which devoted an entire chapter to the justice system in Alaska, condemning it as the worst system for providing justice for Natives in the United States.<sup>48</sup> One tribal citizen testifying at a public hearing said to the commission,

Every woman you’ve met today has been raped. All of us. I know they won’t believe that in the lower 48, and the State will deny it, but it’s true. We all know each other and we live here. We know what’s happened. Please tell Congress and President Obama before it’s too late.<sup>49</sup>

In order to protect women, particularly indigenous women, from the dangers that come with economic development, communities need to remember the historical stories, officials need to understand the risk factors that come with extractive developments in rural areas, and preparations must be made for the next wave of outsiders entering the region.

## **B. Trafficking as a Human Security Risk in the Arctic**

---

<sup>44</sup> Seshia, *supra* note 31 at 7.

<sup>45</sup> Ruddell, *supra* note 41 at 329; Morgan, Lael. *Good Time Girls of the Alaska-Yukon Gold Rush*. Kenmore, Washington: Epicenter Press. 1999.

<sup>46</sup> Alaska Humanities Forum. “Modern Alaska: Oil Discovery and Development in Alaska.” [www.akhistorycourse.org/articles/article.php?artID=140](http://www.akhistorycourse.org/articles/article.php?artID=140), (accessed Nov. 10, 2013).

<sup>47</sup> Personal communications to the author.

<sup>48</sup> Tribal Law & Order Commission. “Reforming Justice for Alaska Natives: The Time is Now.” In *A Roadmap for Making Native America Safer: Report to the President & Congress of the United States*. 55-61. Nov. 2013.

<sup>49</sup> *Ibid.*, 54.

Assessing security risks in the Arctic requires leaders to analyze more than just military or economic security. It requires an understanding of human security.<sup>50</sup> The definition of human security has three parts, freedom from want, freedom from fear, and freedom to take action on one's own behalf.<sup>51</sup> To protect human security means to protect people from "critical and pervasive threats and situations."<sup>52</sup> Within the definition of human security are seven categories of threats:

- Economic Security
- Food Security
- Health Security
- Environmental Security
- Personal Security
- Community Security
- Political Security<sup>53</sup>

Human trafficking threatens at least three of these categories: personal, community, and political security. Therefore, Arctic security discussions are incomplete without a discussion of human trafficking. If the women and girls of the community are destroyed by this crime, the integrity of the whole culture is impacted, and basic human rights are not protected.

According to the Human Rights Council, "[e]scalating charges of corporate-related human rights abuses are the canary in the coal mine, signaling that all is not well."<sup>54</sup> Human rights violations have been alleged against numerous corporations, with large numbers of complaints being connected to extractive industry development in rural areas.<sup>55</sup> Mining projects cannot succeed without large numbers of workers. In rural areas, companies bring workers from outside the region to meet this need. When large numbers of outside workers with no connection to the community arrive in an area, violent crime rates rise. In discussing the link between extractive industry development and human trafficking, the US attorney for South Dakota said, "[a]nytime you have large groups of men gathering, you're going to have the potential for sex

---

<sup>50</sup> For an excellent overview of human security in the Arctic see Gjørsv, Gunhild Hoogensen, Dawn R. Bazely, Marina Goloviznina and Andrew J. Tanentzap, eds. *Environmental and Human Security in the Arctic*. London:Routledge, 2014.

<sup>51</sup> Hoogensen, Gunhild, et al., "Women's Migration from and in the Arctic." In *AHDR (Arctic Human Development Report)*, edited by Niels Einarsson, et al., 192. Akureyri: Stefansson Arctic Institute, 2004.

<sup>52</sup> Commission on Human Security. "Outline of the Report of the Commission on Human Security." In *Final Report of the Commission on Human Security*, 2003, 1.

<sup>53</sup> United Nations Development Programme. *Human Development Report 1994*, 22-33, available at [hdr.undp.org/sites/default/files/reports/255/hdr\\_1994\\_en\\_complete\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf) (accessed March 18, 2014)..

<sup>54</sup> Human Rights Council. *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, A/HRC/8/5 (2008) 3.

<sup>55</sup> Ruddell, *supra* note 41.

trafficking problems.”<sup>56</sup> Another law enforcement officer serving in a developing area noted that the outside workers appear to have no respect for local laws.<sup>57</sup> Perhaps they are law-abiding citizens in the communities where they come from, but they have no allegiance to the communities where they only temporarily reside.<sup>58</sup>

Williston, North Dakota provides a contemporary example of the fate that awaits unprepared communities in the circumpolar Arctic region. The city sits on top of the Bakken oil formation.<sup>59</sup> With the opening of the oil fields, hundreds of mostly male workers from outside of the state flocked to the town. The company houses workers in makeshift camps referred to as man camps. Within two years, the overall crime rates have increased 7.2 percent, which include large numbers of “forcible rape[s] . . . prostitution, and ‘other’ sexual offenses.”<sup>60</sup> Community members say that they know women and girls are being trafficked, but according to a law enforcement officer in the area, they do not keep trafficking statistics, so it is impossible to know the exact extent of this crime on the community.<sup>61</sup>

A town in Canada has a similar story. In Fort McMurray, Alberta crime rates, specifically crimes against women, jumped in the same manner as the rates in North Dakota.<sup>62</sup> The mining boom brought an influx of crime to this town. In 2009 Fort McMurray had a crime rate of one crime for every five residents and was ranked “in the top five Canadian cities in terms of the crime severity index.”<sup>63</sup>

Because business practices affect almost all human rights, government officials and community members must observe the impact these practices have within the community. The extractive industry is not the only industry that is prone to abuse.<sup>64</sup> For example, complaints

---

<sup>56</sup> Kolpack, Dave. “ND Senator’s Bill Aims to Corral Sex Trafficking.” *NewsDaily*, Nov. 30, 2013, [www.newsdaily.com/article/66b2b53f94cb7e9182897708f7f6341b/nd-senators-bill-aims-to-corrall-sex-trafficking](http://www.newsdaily.com/article/66b2b53f94cb7e9182897708f7f6341b/nd-senators-bill-aims-to-corrall-sex-trafficking), (accessed March 18, 2014).

<sup>57</sup> Legal Ruralism Blog. “On the Collateral Consequences of an Extraction Boom: Too Many Men, Too Much Light,” posted Jan. 17, 2013, <http://legalruralism.blogspot.com/2013/01/on-collateral-consequences-of.html>, (accessed Nov. 10, 2013).

<sup>58</sup> Ruddell, *supra* note 41 at 331.

<sup>59</sup> Legal Ruralism Blog. “Boomtown Strippers: Canaries in the Oil Fields,” posted Oct. 25, 2011, <http://legalruralism.blogspot.com/2011/10/boomtown-strippers-canaries-in-oil.html> (last visited Nov. 10, 2013).

<sup>60</sup> Nienaber, Georgianne. “Man Camp and Predator Economics Threaten Heartland Native Communities.” *The Huffington Post*, Aug. 5, 2013, Impact section, [www.huffingtonpost.com/georgianne-nienaber/man-camps-and-predator-ec\\_b\\_3700640.html](http://www.huffingtonpost.com/georgianne-nienaber/man-camps-and-predator-ec_b_3700640.html), (accessed Nov. 10, 2013).

<sup>61</sup> *Ibid.*; Recently a man on the Fort Berthold Reservation was sent to prison for coercing women into prostitution in the oil fields. Kolpack, *supra* note 56.

<sup>62</sup> Hannaford, Alex. “No Country for Young Men.” *British GQ*, March 8, 2012, [www.gq-magazine.co.uk/comment/articles/2012-03/08/canada-oil-rush/page/2](http://www.gq-magazine.co.uk/comment/articles/2012-03/08/canada-oil-rush/page/2), (accessed Nov. 10, 2013).

<sup>63</sup> Ruddell, *supra* note 41 at 335-36.

<sup>64</sup> Resource-based economic development tends to lead to more negative impacts on a community than some other types of economic development. *Ibid.*, 331.

about the tourism industry demonstrate that trafficking may occur in many settings.<sup>65</sup> However, the bulk of new development in this region is extractive in nature. Therefore, communities should focus immediate attention on extractive industry practices.

Private sector investment drives valuable economic growth for communities, but without adherence to human rights standards, development projects can lead to violence and conflict. The most vulnerable or marginalized members of communities are often excluded from the economic benefits, and instead bear the brunt of negative social impacts.<sup>66</sup>

#### **Part IV Mitigating the Risks**

The third aspect of human security listed in the previous section is freedom to take action on one's own behalf.<sup>67</sup> For local people to protect themselves in this new era of economic development, new systems and procedures must be formed. No single system can successfully combat trafficking, but a multi-system approach can assist a community in protecting itself. A police officer experienced in fighting trafficking said it this way

The fight against human trafficking will not be won by cops or caped crusaders. Human trafficking will only be destroyed when we come together as a society and agree it is a problem, agree it needs to be stopped and agree to work together to stop it.<sup>68</sup>

When local/tribal, state, federal, and international leaders implement anti-trafficking programs, communities will finally have effective protections against this threat. Complete programs include a wide variety of preventative measures, legal protections, and victim support.<sup>69</sup>

##### **A. Local/Tribal Community Actions**

Local and tribal communities need to begin by raising awareness among community members about the legal definition of human trafficking, warning signs to watch for, and common ploys of traffickers. This process begins with educational programs in schools, community awareness meetings, and public service announcements. In addition, traffickers now

---

<sup>65</sup> Evidence exists that seasonal tourism can often attract the same type of transient visitors that have little attachment to the local community and are more likely to engage in crime. *Ibid.*

<sup>66</sup> Macdonald, Ingrid. "Introduction: Women's Rights Undermined." In *Tunnel Vision: Women, Mining and Communities*, edited by Ingrid Macdonald and Claire Rowland, 5. Victoria, Australia: Oxfam Community Aid Abroad, 2002.

<sup>67</sup> Commission on Human Security, *supra* note 52 at 1.

<sup>68</sup> Steele, Dan. "Human Trafficking: Coming soon to a City Near You." *Huff Post Impact*, Dec. 12, 2013, [http://www.huffingtonpost.com/dan-steele/human-trafficking-coming-soon-to-a-city-near-you\\_b\\_4419129.html?utm\\_hp\\_ref=tw](http://www.huffingtonpost.com/dan-steele/human-trafficking-coming-soon-to-a-city-near-you_b_4419129.html?utm_hp_ref=tw), (accessed Dec. 13, 2013).

<sup>69</sup> Winberg, Margareta. "Prostitution and Trafficking are Male Violence Against Women." In *Taking Wing: Conference Report*. Helsinki: Reports of the Ministry of Social Affairs and Health, 2002, 192.

use the internet to access victims, particularly youth, necessitating special training to warn youth of these online dangers.<sup>70</sup>

After raising awareness, communities need to focus on training workers who are most likely to encounter trafficking victims. Street outreach workers, social workers, law enforcement officials, educators, and medical workers require appropriate training to recognize trafficking indicators. In a recent study done in Alaska, 70% of local and state law enforcement agents did not perceive signs of human trafficking in their communities, while at the same time, 70% said they had received no human trafficking training.<sup>71</sup> There seems to be a correlation between receiving trafficking training and recognizing its existence within communities. Related to training needs, these workers also need to create procedures to encourage greater coordination with one another. Collaboration increases the likelihood that trafficking cases will be identified.

Trafficking also cannot be effectively tackled without more data collection. This may include everything from formal studies to better intake forms at both shelters and jails. Without more reliable data, full awareness will never be raised. Legislators will not pass stronger legislation or set aside funding for trafficking problems unless evidence shows that a problem exists.<sup>72</sup>

The biggest challenge for local communities and tribes to implement these recommendations is a lack of funding.<sup>73</sup> Educational programs, training for law enforcement and social workers, new forms, new processes, along with all of the services victims will need once they have been identified are all expensive.<sup>74</sup> In the same Alaskan survey mentioned above, 82% of law enforcement officers perceive that there are not enough resources to provide the necessary training.<sup>75</sup> This is why local communities cannot shoulder the burden of fighting human trafficking alone.

## **B. National/State/Provincial Government Actions**

### **i. Allocate Funding and Improve Access to Remedies**

---

<sup>70</sup> State of Alaska Task Force, *supra* note 13 at 12.

<sup>71</sup> *Ibid.*, 19.

<sup>72</sup> Washington state recently released a helpful resource for working with child trafficking victims. Center for Children & Youth Justice. *Washington State Model Protocol for Commercially Sexually Exploited Children*. Seattle, 2012, 5, available at [www.k12.wa.us/SafetyCenter/CSEC/default.aspx](http://www.k12.wa.us/SafetyCenter/CSEC/default.aspx), (accessed Nov. 10, 2013).

<sup>73</sup> It should be noted that several resources are available to make the process easier for communities and organizations. For example, the National Human Trafficking Resource Center provides online assessment tools, service provide tools, and law enforcement tools. These resources provide the foundation to make it easier to begin the process of effectively fighting human trafficking. Polaris Project for a World without Slavery. [www.polarisproject.org/resources/tools-for-service-providers-and-law-enforcement](http://www.polarisproject.org/resources/tools-for-service-providers-and-law-enforcement), (accessed Nov. 10, 2013).

<sup>74</sup> Related to both training and funding is the idea that specialized squads can be deployed to conduct investigations on targeted crimes like human trafficking. Ruddell, *supra* note 41 at 337.

<sup>75</sup> State of Alaska Task Force, *supra* note 13 at 19.

States have a responsibility to protect citizens from both external and internal threats. United States Secretary of State John Kerry has even said “[g]overnments bear primary responsibility for responding to this crime [human trafficking].”<sup>76</sup> As referenced in Part I of this paper, national human trafficking laws define the crime and create a legal cause of action for countries to be able to prosecute traffickers. However, many experts claim that these laws do not sufficiently protect victims.<sup>77</sup> Lawmakers in both the United States and Canada need to review current legislation to determine if adjustments need to be made. Among suggestions for human trafficking legislation in the United States includes safe harbor laws for minors involved in sex trafficking.<sup>78</sup> These laws would protect minor sex trafficking victims while placing the burden on purchasers and pimps. Another legal model currently being promoted is known as the ‘Nordic Model’.<sup>79</sup> This model penalizes demand for prostitution while decriminalizing individual prostitutes. According to data from the Swedish Ministry of Justice, Sweden is no longer a desirable sex trafficking destination since it implemented this model.<sup>80</sup> Neither of these options is without controversy, however, and lawmakers will need to educate themselves on the potential positive and negative impacts of these and other potential legislative fixes before passing new human trafficking provisions.

In addition to legislative reforms, governments allocate funding for important initiatives. Because traffickers operate both inside and outside of state borders, significant resources must be allocated to stop these criminals. Since most local communities do not have the resources necessary to effectively fight trafficking, national, state, and provincial governments must find ways to assist.<sup>81</sup> Resources spent on prevention and collection ultimately save money. Disrupting

---

<sup>76</sup> U.S. Department of State, *supra* note 2 at 1.

<sup>77</sup> Polaris Project, *2013 Analysis of State Human Trafficking Laws: An Analysis of Twelve Categories of State Laws that are Critical to a Basic Legal Framework that Combats Human Trafficking*, available at [www.polarisproject.org/storage/2013\\_State\\_Ratings\\_Analysis\\_Full\\_Report.pdf](http://www.polarisproject.org/storage/2013_State_Ratings_Analysis_Full_Report.pdf), (accessed Feb. 10, 2014); for additional recommendations for potential legislative changes in both the United States and Canada see Gwynne Skinner, Robert McCorquodale, Olivier De Schutter. *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business*. (Dec. 2010).

<sup>78</sup> “Safe Trafficking of Minors and ‘Safe Harbor,’” *Polaris Project: For A World Without Trafficking*, <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/safe-harbor>, (accessed Feb. 10, 2014).

<sup>79</sup> “What is the ‘Nordic Model’?,” *Equality Now*, [www.equalitynow.org/sites/default/files/Nordic\\_Model\\_EN.pdf](http://www.equalitynow.org/sites/default/files/Nordic_Model_EN.pdf), (accessed Feb. 10, 2014); a Canadian legislator has recently started a push to implement this model in Canada, see Spalding, Derek. “Punish the Clients, not the Prostitutes, Says Tory MP Joy Smith,” *Ottawa Citizen*, (Feb. 13, 2014), <http://www.ottawacitizen.com/news/Punish+clients+prostitutes+says+Tory+Smith/9503018/story.html>, (accessed Feb. 17, 2014).

<sup>80</sup> Swedish Ministry of Justice. *English Summary of the Evaluation of the Ban on Purchase of Sexual Services (1999-2008)*, 2 July 2010.

<sup>81</sup> Canada recently announced the creation of an RCMP unit to help fight human trafficking. In addition, the federal public safety minister reported a partnership aimed at working with aboriginal populations. Rakobowchuk, Peter. “Human-Trafficking Canada: RCMP Unit to Fight ‘Modern-Day Slavery.’” *Huff Post Politics Canada*, (Dec. 12, 2013), [http://www.huffingtonpost.ca/2013/12/09/human-trafficking-canada-rcmp\\_n\\_4413678.html](http://www.huffingtonpost.ca/2013/12/09/human-trafficking-canada-rcmp_n_4413678.html), (accessed Dec. 13, 2013).

an already entrenched trafficking culture and assisting with victim recovery costs much more than prevention.

When governments allocate funding, priority areas should include: training for law enforcement officers, social workers, street outreach workers, educators, and medical workers; community awareness and education programs; taskforces; updates for procedures to make it easier to collaborate between agencies and identify trafficking;<sup>82</sup> studies to get the data on the actual impact of the problem; and victim services for those already harmed by this crime. While government funding is not limitless, prioritizing prevention saves money in the long term. Funding all of these initiatives will help mitigate trafficking damage.

**ii. No Contracting with Companies with Known or Alleged Human Rights Violations**

Corporations will only take responsibility for human rights violations if market forces are used to encourage the change.<sup>83</sup> While corporate-related human rights violations are not as likely to occur in developed countries with strong legal systems as they would in some developing countries, the United States and Canada are not immune from human rights violations within their borders. Based on the statistics of crime rates surrounding existing extractive industry projects, development-based crimes can occur anywhere. Therefore, all governments, not just the governments of developing countries, have a responsibility to reduce the potential for crime by refusing to award contracts to companies that have not made sufficient efforts to shield communities from worker actions.

When governments are evaluating which companies should be awarded development contracts, one criteria needs to be whether or not these companies have known human rights violations claims against them. Companies with a history of human rights violations, particularly if the companies shielded workers from liability for those violations, pose a safety risk for the current population. Awarding contracts to companies with these violations does not uphold a government's responsibility to its citizens.

Companies are created for the purpose of making a profit. If companies can no longer be profitable without working to prevent human rights abuses that result from workers and business practices, then they will work harder to insure that their companies do not contribute either directly or indirectly to these abuses. If it is appropriate to penalize companies for violating environmental impact standards, it is just as appropriate to penalize human rights violations. In both the United States and Canada, procedures have been put into place to require Social Impact Assessments (SIAs), which would open up ways for more companies to be penalized for human

---

<sup>82</sup> U.S. Department of State, *supra* note 2 at 12.

<sup>83</sup> For more on the trend to make corporations more responsible see Certified B Corporation. [www.bcorporation.net](http://www.bcorporation.net), (accessed Nov. 10, 2013); Business & Human Rights Resource Center. <http://www.business-humanrights.org/Documents/RuggieHRC2008>, (accessed Nov. 10, 2013).



rights violations.<sup>84</sup> SIAs are used to assess potential social consequences related to development projects.<sup>85</sup> SIA implementation in the United States has been unevenly applied because of “the absence of legal mandates specifically requiring a standalone SIA.”<sup>86</sup> SIA implementation in Canada faces similar challenges. Under the Canadian Environmental Assessment Act (CEAA), the only “legal requirement to examine impacts on health and socioeconomic conditions if these impacts are a consequence of an impact in the natural environment.”<sup>87</sup> Until both countries require more regular and thorough SIAs in addition to EISs, human security concerns will not be appropriately addressed.

### **iii. Defining Corporate Human Rights Obligations as Fiduciary Duties**

Governments also increase the pressure on corporations to take responsibility for human rights violations by defining these violations as legally enforceable fiduciary duties.<sup>88</sup> When companies are required to disclose to shareholders what they are doing to prevent human rights abuses and also what actions they have taken to repair harm, then shareholders will have an enforceable breach of fiduciary duty case if the company is not preventing and/or repairing human rights abuses. This way the government uses the formal corporate structure of responsibility to hold companies accountable.<sup>89</sup> As one scholar stated

When as a society we grant a company the license to operate, it is not simply a license to create as much wealth for its shareholders as possible. It can also involve the requirement that the company actively promote the fundamental rights and well-being of individuals.<sup>90</sup>

### **iv. Altering the Legal Definition of Complicity for Criminal Liability**

In order to hold a company legally liable for crimes committed by employees, the laws of most countries require proof that the company has been complicit. Complicity standards vary by country. In order to hold a company liable for the actions of workers, the government must prove the company knowingly “provid[ed] practical assistance or encouragement that ha[d] a

---

<sup>84</sup> Burdge, Rabel J. and C. Nicholas Taylor. “When and Where is Social Impact Assessment Required?” Paper presented at the annual International Association for Impact Assessment meeting, Porto, Portugal, May, 2012.

<sup>85</sup> The Interorganizational Committee on Principles and Guidelines for Social Impact Assessment. “Principles and Guidelines for Social Impact Assessment,” *Impact Assessment and Project Appraisal* 21(3) 231, Surrey: Beech Tree Publishing (2003).

<sup>86</sup> Burdge, *supra* note 84 at 2.

<sup>87</sup> *Ibid.*, 3.

<sup>88</sup> Human Rights Council, *supra* note 54 at 10-11.

<sup>89</sup> *Ibid.*

<sup>90</sup> Bilchitz, David. “The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?” *SUR International Journal on Human Rights*, 1, (2012):63, available at [www.surjournal.org/eng/conteudos/getArtigo12.php?artigo=12,artigo\\_10.htm](http://www.surjournal.org/eng/conteudos/getArtigo12.php?artigo=12,artigo_10.htm), (accessed Feb. 16, 2014).

substantial effect on the commission of a crime.”<sup>91</sup> However, standards vary regarding the definition of ‘knowingly’. The reasonable knowledge standard, as developed in International Tribunals, requires that a company “knew or had reason to know” that its actions contributed to the crime.<sup>92</sup> However, no consistency exists in the way courts interpret the *mens rea* requirement for this standard, leaving it up to legislators in individual countries to determine if legislation should be passed to clarify, and potentially lower, corporate complicity standards.

States must also clarify how broad a corporation’s sphere of influence expands.<sup>93</sup> If the sphere of influence is too narrow, more liberal definitions will still not allow community members to claim damages for crimes connected to development projects unless corporate leaders actually physically committed the crimes. Lowering the *mens rea* requirement and broadening the sphere of influence definition will make it easier for states to hold companies liable for actions that contribute to the spread of human trafficking.

In addition, a company’s refusal to take steps to prevent abuses could be listed in the law as another form of complicity. Discussing this omission standard, the Human Rights Commission observed

Mere presence in a country, paying taxes, or silence in the face of abuses is unlikely to amount to the practical assistance required for legal liability. However, acts of omission in narrow contexts have led to legal liability of individuals when the omission legitimized or encouraged the abuse.<sup>94</sup>

#### **v. Recognizing Tribal Governments as Legitimate Partners**

Because of the impact that trafficking has on indigenous communities, national, state, and provincial governments need to involve tribal governments as partners in the formation of anti-trafficking taskforces or other initiatives. In addition, when creating anti-trafficking legislation, the legislation will only be effective when all concerns, including tribal concerns, are adequately addressed.

Tribal communities will also not be able to effectively protect their citizens if states do not legally recognize their right to do so. While studying justice issues in Alaska, the Indian Law and Order Commission formally recognized this fact. The Commission repeatedly recommended state acknowledgment of the validity of tribal law enforcement and tribal justice systems in order

---

<sup>91</sup> Human Rights Council, *supra* note 54 at 20.

<sup>92</sup> Kaeb, Caroline. “Emerging Issues of Human Rights Responsibility in the Extractive and Manufacturing Industries: Patterns and Liability Risks.” 6 *Northwest Journal of International Human Rights* 327 (2008):334.

<sup>93</sup> *Ibid.*, FN 77; for a discussion about these standards on an international level see Bilchitz, *supra* note 90 at 39-67.

<sup>94</sup> Kaeb, *supra* note 92 at 21.

for tribal communities to have adequate access to justice.<sup>95</sup> This includes respecting the role tribal leaders should play in this fight against human trafficking. Chief Isadore Day, a First Nation leader, reminded Canadians of this same truth.<sup>96</sup> He stated publicly that prosperity would spread through the region only with the inclusion and full participation of First Nations in all matters that affect them. While Chief Day's words primarily referred to economic development projects, the principle of inclusion applies to all issues that impact the well-being of indigenous communities. In addition, other scholars and leaders are recognizing that respect for tribal self-government, particularly in areas with increased development projects, creates more security for those communities.<sup>97</sup>

### C. Private Sector Actions

While states have a duty to protect citizens against human rights abuses, corporations have a responsibility to respect human rights.<sup>98</sup> As policymakers debate corporate responsibility, and governments consider tightening requirements on companies, companies have the ability to take actions that will help them demonstrate their commitment to human rights protections.

Companies need to implement a due diligence process that includes procedures to protect human rights. Companies already create plans to meet environmental standards, building codes, and other regulations. To include in this process a plan to protect communities from possible human rights violations is a good faith attempt to mitigate harm. Implementing these procedures will also protect companies from charges of complicity in crimes committed by workers or complicity based on the omission of duties, and should be a best practice when bringing large development projects into communities.<sup>99</sup>

In addition to setting up procedures, companies can also find ways to give back to the community that ultimately protect human rights. Giving money to build schools or fund other local community initiatives is not an uncommon practice for companies, particularly those involved in bidding wars to get the most lucrative contracts. These donations could include special initiatives. For instance, if a company agrees to fund a new school, an educational awareness-raising program for local youth may be included in the funding plan. Or perhaps giving local law enforcement a donation to fund human trafficking awareness training or to

---

<sup>95</sup> State of Alaska Task Force, *supra* note 13 at 35.

<sup>96</sup> Canada NewsWire. "Treaties Must be Part of Resource Discussions': Lake Huron Chief." *Digital Journal*, Dec. 6, 2013, <http://www.digitaljournal.com/pr/1627769>, (accessed Dec. 12, 2013).

<sup>97</sup> Slowey, Gabrielle. "Aboriginal Self-Determination and Resource Development Activity: Improving Human Security in the Canadian Arctic?" In *Environmental and Human Security in the Arctic*, edited by Gunhild Hoogensen Gjørsv et al., 187-202. London: Routledge, 2014, 188.

<sup>98</sup> Human Rights Council, *supra* note 54 at 4 and 16.

<sup>99</sup> One tool that has assisted companies to determine the potential negative impact that mining may have, specifically on women, is a Gender Impact Assessment. See Hill, Christina and Kelly Newell. *Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment*. Australia: Oxfam, 2009.

strengthen their numbers in order to deal with the increased load that the influx of outside workers will inevitably bring is in order.<sup>100</sup>

Companies will not pay more than is required of them, so using a little forethought in negotiations can put both communities and companies in a more positive position. Creativity in nurturing corporate-community relationships will develop good will between the groups and leave all parties in a more positive position in relation to the contractual relationship.

#### **D. NGO Actions**

Governments and local communities need to build strong relationships with NGOs, particularly those with missions to eradicate human trafficking and protect human rights.<sup>101</sup> NGOs act as watchdogs and often have the data, resources, and enthusiasm to pursue actions that local communities and governments may not have. NGOs are able to mobilize workers as well as both national and international attention to troubling situations as they arise.

In return, NGOs need to work with community leaders to understand the nature of problems as well as local concerns. This is particularly important when dealing with indigenous communities. Over the years, many indigenous communities have found themselves surrounded by people who genuinely mean to assist, but come with no cultural understanding. Indigenous peoples do not need more paternalistic individuals. Instead, they are looking for partners who respect local standards and traditions, and acknowledge the partnership nature of their role. Successful relationships between communities and NGOs allow the NGOs to meet their overarching goals while respecting the contribution that indigenous communities can make to their own wellbeing. NGOs bring resources, publications, and new perspectives, and are invaluable partners to assist communities in protecting themselves from crimes like human trafficking.

#### **E. International Actions**

Ultimately, human trafficking is a transnational problem. Traffickers operate across national boundaries, victims are transported across borders, and transnational actors such as multinational companies and individual buyers play key roles in the spread of this crime. Because of the transnational nature of human trafficking, the crime will never be eradicated without international action. Human trafficking complaints can be filed with international human rights tribunals.<sup>102</sup> However, in order for groups or individuals to effectively use international remedies, two major actions must be taken.

---

<sup>100</sup> Ruddell, *supra* note 41 at 338-39.

<sup>101</sup> U.S. Department of State, *supra* note 2 at 15.

<sup>102</sup> For example, complaints could be filed with the International Criminal Court or the Inter-American Court of Human Rights. One author has suggested that already existing courts cannot fully meet these needs and special regional and international trafficking courts should be set up. See Green, John Cooper.

First, awareness of human trafficking as a human security issue must be raised internationally. Misinformation regarding the nature of the crime is still rampant, as is the lack of discussion regarding the risks associated with bringing large groups of outside workers into an area. Both historical and current situations demonstrate that risks do exist, and not addressing them will only lead to more problems that will need to be solved in the future. International awareness will then increase the pressure on governments and companies to mitigate these risks. In addition, if more attention is raised, more data will be collected and it will be easier to demonstrate the true impact that this crime is having on both indigenous and non-indigenous communities.

To assist with these concerns, the United Nations created The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007.<sup>103</sup> According to the official site, “UN.GIFT works with all stakeholders – governments, business, academia, civil society and the media – to support each other’s work, create new partnerships and develop effective tools to fight human trafficking.”<sup>104</sup> This Initiative promotes efforts to reduce victim vulnerability and the demand for exploitation while respecting fundamental human rights.<sup>105</sup> This Initiative creates a forum for interested parties to share best practices, contribute to the international body of knowledge, but it will only be truly effective if more parties join and contribute to the Initiative’s efforts.

Second, the international community needs to ensure that indigenous groups, particularly those that do not have a lot of resources or knowledge of international mechanisms, have access to those mechanisms. This is especially important for indigenous communities or nations that are not familiar with the procedures for filing grievances with international tribunals. If international organizations will put a stronger effort into getting information to these communities about international options, more groups will have the ability to start filing claims. Then, if they are not feeling supported by their national governments, they have another option for having complaints heard.

The International Bill of Human Rights, which consists of the United Nations Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, is the international human rights rubric.<sup>106</sup> Because human trafficking has been deemed as not just a crime but also a human rights violation by various organizations, the human rights principles espoused in these

---

*A Proposal Leading to an International Court to Combat Trafficking in Human Beings*. Third Annual Interdisciplinary Conference on Human Trafficking: University of Nebraska-Lincoln, 2011, Paper 13, available at <http://digitalcommons.unl.edu/humtraffconf3/13>, (accessed Dec. 12, 2013).

<sup>103</sup> Global Initiative to Fight Human Trafficking, [www.ungift.org/knowledgehub/en/stories/index.html](http://www.ungift.org/knowledgehub/en/stories/index.html), (accessed Feb. 10, 2014).

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> Office of the High Commissioner for Human Rights. *International Bill of Human Rights*, available at [www.ohchr.org/Documents/Publications/Compilation1.1en.pdf](http://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf), (accessed Feb. 10, 2014).

documents ought to apply to human trafficking activity.<sup>107</sup> However, while the criminal provisions created under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons are obligatory, human rights protections remain discretionary.<sup>108</sup> Perhaps it is time for the international community to focus on the human rights aspects of these crimes.

Human trafficking is a major crime. The suggestions listed above demonstrate the reality that no single group can effectively fight trafficking alone. Risk factors exist on every level from individual community member actions to choices made by international bodies. However, if a multi-front strategy can be created, bringing together the efforts of local communities, government bodies, private companies, NGOs, and international bodies, a strong shield will be formed against crimes like human trafficking.

### **Conclusion**

Economic development in a region does not need to equal the exploitation of local communities, but based on both historical and current data, it often does unless proper attention is paid to potential human rights violations. In the circumpolar Arctic region, the circumstances that exist need to be carefully monitored. Major economic projects are being planned in an area where large numbers of indigenous peoples reside, often in rural and remote villages. These communities will bear the brunt of the negative impacts associated with development projects, including the rising risk of crimes like human trafficking. The majority of projects planned are extractive ones, and they will require large groups of outside transient workers to be brought into the area. With the connection between human trafficking and these types of development projects as well as the disproportionate impact that trafficking is having on indigenous communities, these communities have reason to be concerned. In addition, the lack of accurate information and data regarding trafficking has left the communities more vulnerable because local officials are not prepared to recognize and fight trafficking activity.

While human trafficking has become a global epidemic, climate and accessibility issues have likely prevented it from taking as strong of a hold in the circumpolar region as it has in other areas. Therefore, allocating resources to trafficking prevention programs lessens the potential that trafficking as well as other crimes will take hold in this region. These actions also empower local people to fight crime more effectively.

---

<sup>107</sup> Office of the High Commissioner for Human Rights. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf), (accessed Feb. 15, 2014); Federal Ministry for Economic Cooperation and Development. *Trafficking in Persons as a Human Rights Issue*, [www.oecd.org/dac/gender-development/44896390.pdf](http://www.oecd.org/dac/gender-development/44896390.pdf), (accessed Feb. 15, 2014).

<sup>108</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*, [www.osce.org/odihr/19223](http://www.osce.org/odihr/19223), (accessed March 18, 2014).

Data demonstrating the potential vulnerability of indigenous women and communities to human trafficking should be used to inspire change not minimize community strength. An indigenous woman from Australia shared these sentiments when speaking about human rights violations connected to mining in her territory:

[W]e are a strong, proud and intellectual people. We are survivors and we will survive. Indigenous women must be the ones to make their own decisions. Nobody can help them. They don't want handouts or pity. They want what is rightfully theirs. They need JUSTICE and their RIGHTS. We can deal with our problems if there is an open, honest, respectful process of doing business.<sup>109</sup>

All three aspects of human security, freedom from want, freedom from fear, and freedom to take action on one's own behalf, need to be considered when dealing with changing Arctic conditions. The Arctic is warming, the waters are rising, and so are certain threats. With warming temperatures and melting ice comes greater accessibility to the region, leading to more outside influences and more potential human security threats. Indigenous communities in the circumpolar region of the United States and Canada are facing the next wave of economic development in the region. What is needed now is assistance to fight a human security threat that is too enormous to handle alone.

---

<sup>109</sup> Kopusar, Pat. "An Australian Indigenous Women's Perspective: Indigenous Life and Mining." In *Tunnel Vision: Women, Mining and Communities*, edited by Ingrid Macdonald and Claire Rowland, 15. Victoria, Australia: Oxfam Community Aid Abroad, 2002.