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UPDATING THE DOMESTIC AND INTERNATIONAL IMPACT OF THE U.S. VICTIMS OF TRAFFICKING PROTECTION ACT OF 2000: DOES LAW DETER CRIME? *

Susan W. Tiefenbrun †

I. INTRODUCTION

A. The TVPA

Sex trafficking is a contemporary form of slavery that violates women's fundamental human rights. Every year between one and four million persons, predominantly women and girls but also men and boys, are

^{*} This article is an updated version of a paper delivered at the Loyola University Chicago International Law Review Symposium on International Migration held on February 25, 2005. A much longer study on sex slavery in the United States was published in the William & Mary Journal of Women and the Law. See Susan W. Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad, 11 WM. & MARY J. WOMEN & L. 317 (Spring 2005).

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Recognizing that men, women, and children are trafficked each year, this article focuses on trafficking in women only. In particular, the article examines the Victims of Trafficking and Violence Protection Act of 2000 and its domestic and international impact on the reduction of sex slavery, otherwise referred to as sex trafficking. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (codified as amended in scattered sections of U.S.C.); See Anne Gallagher, Contemporary Forms of Female Slavery, in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 487, 496 (Kelly D. Askin & Dorean M. Koenig eds., 2000) (explaining that the "concept of 'trafficking' . . . is often used to describe a situation of sexual exploitation in its entirety").

² Statistics on the number of persons trafficked globally vary widely because of the secretive nature of the crime and the shame felt by many victims who are understandably reluctant to report the crime. The U.S. government estimate in 2002, based on 1997 data, found that 700,000 persons were trafficked across national borders worldwide each year. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2 (2002) [hereinafter 2002 TIP REPORT], available at http://www.state.gov/documents/organization/10815.pdf. "Other global estimates of the number of victims trafficked annually range from approximately one to four million According to a 1997 estimate, some 50,000 women and children are trafficked annually for sexual exploitation into the United States." *Id.* In 2001, the U.S. Government reported that "at least 700,000 persons, especially women and children, are trafficked each year across international borders." DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 1 (2001) [hereinafter 2001 TIP REPORT], available at http://www.state.gov/documents/organization/

trafficked for the purpose of commercial sexual exploitation. Trafficking has become one of the fastest growing and most lucrative industries earning as much as seven to ten billion dollars annually for traffickers and international crime syndicates.³ A sex trafficker or brothel owner can earn from three to ten thousand dollars for each woman lured into forced prostitution or sex slavery.⁴ The trafficking of women is the third most profitable crime next to the traffic of weapons and the traffic of drugs.⁵ However, since women can be reused and resold more easily than needles, the traffic in women may soon rise to the level of the second most lucrative international crime.

For many years, the United States has recognized the insufficiency of its criminal and immigration laws in preventing sex trafficking, protecting victims of trafficking, and effectively prosecuting traffickers. President William Clinton signed the Victims of Trafficking and Violence Protection Act on October 28, 2000 (TVPA)⁶ to provide an international solution to an international problem. The TVPA established a coordinated, transnational effort to protect trafficked persons, criminalize the conduct of traffickers, and penalize sex trafficking as if it were a crime as serious as rape, punishable with a sentence of twenty years to life imprisonment.⁷ The TVPA has been hailed as the "most significant human rights legislation of [the U.S.] Congress."

^{4107.}pdf. However, in 2003, the U.S. Government reported that "approximately 800,000–900,000 people annually are trafficked worldwide and between 18,000 and 20,000 of those victims are trafficked into the United States." Department of State, Trafficking in Persons Report 7 (2003) [hereinafter 2003 TIP Report], available at http://www.state.gov/documents/organization/21555.pdf; See also Department of State, Trafficking in Persons Report (2004) [hereinafter 2004 TIP Report], available at http://www.state.gov/documents/organization/34158.pdf; Department of State, Trafficking in Persons Report (2005) [hereinafter 2005 TIP Report], Department of State, Trafficking in Persons Report (2006) [hereinafter 2006 TIP Report], available at http://www.state.gov/g/tip.

³ 2003 TIP REPORT, supra note 2, at 9.

⁴ Id

VICTOR MALAREK, THE NATASHAS: INSIDE THE NEW GLOBAL SEX TRADE 47 (2003).

⁶ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (codified as amended in scattered sections of U.S.C.).

⁷ 18 U.S.C. § 1590 (2000).

⁸ Press Release, Eric Hotmire, Senate Passes Brownback, Wellstone Trafficking Victims Protection Act (July 27, 2000), available at http://brownback.senate.gov/pressapp/record.cfm?id=175961&&year=2000&; President Clinton stated that the TVPA was "the most significant step we've ever taken to secure the health and safety of women at home and around the world." Deb Riechmann, Clinton Signs Law to Combat Violence, DAYTON DAILY NEWS, Oct. 29, 2000, at 3A.

To achieve its goals, the TVPA uses both the carrot and the stick methods. On the one hand, the TVPA provides desirable financial assistance, protection, benefits, services, and education to victims in the United States and abroad, as well as the right to permanent residency in the United States and a work permit, if the victim of severe forms of trafficking cooperates in the prosecution of her traffickers. On the other hand, the TVPA also establishes a real threat of prosecution and severe punishment for perpetrators of this horrific crime.

The intent of this far-reaching law is to treat trafficked women as victims and not as criminals, eradicate trafficking in the United States and abroad, "influence other nations to enact or amend sex trafficking legislation, correct weak enforcement policies, and harmonize trafficking legislation internationally." The TVPA allocates funds for these purposes, establishes international and domestic programs, offers real economic and social incentives to victims who are willing to assist in the prosecution of traffickers, and creates economic disincentives to the perpetrators in the form of increased penalties for those convicted of sex trafficking. While these goals and measures are laudable, if they are not enforced or prove to be unenforceable, the TVPA will have little, if any, impact domestically and internationally in deterring sex trafficking.

B. The Purpose of This Study

As the Honorable Henry J. Hyde, Chairman of the Committee on International Relations of the U.S. House of Representatives said at the TVPA Implementation Hearing held one year after its enactment, "A law without vigorous and effective implementation is worse than no law at all, because it lulls us into the false sense that we have done something to solve the problem." This study will examine the impact of the TVPA on the crime of sex trafficking, enforcement of the law, and progress resulting from the law since October 2000, on both a domestic and international level. It is both legally and politically important to determine whether the TVPA has accomplished productive international cooperation between the United States and the countries abroad where individuals are engaged in

⁹ Implementation of the Trafficking Victims Protection Act: Hearing Before the H. Comm. on International Relations, 107th Cong. 43 (2001) [hereinafter Implementation Hearing].

Victims of Trafficking and Violence Protection Act of 2000 § 107.

¹¹ Susan Tiefenbrun, The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000, 2002 UTAH L. REV. 107, 115 [hereinafter Saga of Susannah].

¹² See Susan Tiefenbrun, Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution, 24 T. JEFFERSON L. REV. 161, 180–85 (2002) [hereinafter Sex Sells].

¹³ Implementation Hearing, supra note 9, at 1.

trafficking. A more difficult goal is to determine whether this cooperation has lead to the identification and capture of the leaders of interlocking rings of businessmen, modern mafias, and corrupt government officials who support this lucrative crime. Positive domestic and international impact of the TVPA could mean that a U.S. law and its multilateral efforts have influenced other nations by legislative example.¹⁴

C. The Method of Measuring Impact

To determine the extent of the domestic and international impact of the TVPA on the reduction of sex trafficking, this study will consider various factors and trends stated in official government sources emanating from the Department of State, Department of Justice, Department of Labor, Immigration and Naturalization Service (INS), and United States Agency for International Development (USAID). These sources include the Annual Trafficking in Persons Reports of 2001, 2002, 2003, 2004, 2005, and 2006 (TIP Reports);¹⁵ Congressional Hearings on Implementation of the TVPA (Implementation Hearing); 16 an Overview of the Congressional Hearings on Implementation of the TVPA (Implementation Overview): 17 interviews with U.S. Attorneys and other government officials in the Department of Justice working in the area of sex trafficking; available statistics ¹⁸ on the number of women trafficked into the United States and worldwide; available statistics on the number of domestic and international arrests, prosecutions, and convictions of traffickers; the number and status of effective outreach programs, projects, financial assistance, and the benefits and services provided by the United States to victims here and abroad. This study will also analyze newly enacted sex trafficking laws of foreign countries that have been influenced by the TVPA.

¹⁴ See The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the Comm'n on Security and Cooperation in Europe, 106th Cong. 24 (1999) (statement of Laura J. Lederer, Director, The Protection Project, Kennedy School of Government, Harvard University).

¹⁵ 2001 TIP REPORT, supra note 2; 2002 TIP REPORT, supra note 2; 2003 TIP REPORT, supra note 2; 2004 TIP REPORT, supra note 2; 2005 TIP REPORT, supra note 2; 2006 TIP REPORT, supra note 2.

¹⁶ Implementation Hearing, supra note 9.

U.S. DEP'T OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, OVERVIEW OF THE ADMINISTRATION'S IMPLEMENTATION OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2002), http://www.state.gov/g/tip/rls/rpt/10531.htm [hereinafter Implementation Overview].

To measure the domestic and international impact of the TVPA, this study will take into consideration the unreliable nature of available statistics on the number of trafficked persons both in the United States and abroad.

D. Organization of this Article

This Article is organized in three parts. Part I provides a brief introduction into the purpose and provisions of the TVPA 19 and a description of the investigative method used to measure its domestic and international impact on the deterrence of sex trafficking. Part II looks more closely into the domestic impact of the TVPA, which has resulted in the enactment of new criminal trafficking regulations and statutes in the United States, the amendment of existing U.S. criminal laws covering trafficking, the slow. but steady increase in the number of investigations, prosecutions and convictions of traffickers in the United States, and the extent to which benefits and services to victims authorized by the TVPA have been implemented in the United States. Part III investigates the international impact of the TVPA. including the degree to which the TVPA has enabled effective cooperation between the United States and other countries. This section also considers the impact of the TPVA on the enactment and enforcement of new foreign anti-trafficking laws, explores whether the result is an increase in investigations, prosecutions, and convictions abroad, and examines the overall reduction or increase in the international crime of sex trafficking.

II. THE DOMESTIC IMPACT OF THE TVPA

There is no doubt that the TVPA has resulted in some changes made by the U.S. government in its effort to eliminate sex trafficking. Statistics in trafficking are unreliable, but it is relatively simple to measure the impact of the TVPA on the victims receiving benefits in the United States, since the TVPA mandates the publication of an annual impact report:

A detailed analysis of the TVPA was undertaken by this author in Saga of Susannah, supra note 11.

Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 107(b)(1)(D), 114 Stat. 1464, 1475 (codified as amended at 22 U.S.C. § 7105(b)(1)(D) (2000)). The reauthorization of the TVPA in 2003 amended 22 U.S.C., striking the procedural provisions outlined in § 107(b)(1)(D) and inserting revised procedures. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108–193 § 6(e), 117 Stat. 2875, 2880 (2003) (codified as amended at 22 U.S.C. § 7103(d)(7)(A) (2006)). See also the Trafficking Victims Protection Reauthorization Act of 2005 that addresses such new issues as sex trafficking committed as part of peacekeeping missions abroad.

A. U.S. Slow Start to Implement the TVPA

Generally, the domestic measures implemented by the U.S. government in response to the TVPA have been slow and steady, but they are more than merely symbolic. Moreover, these domestic measures indicate a positive trend toward the reduction of trafficking in the United States. After the passage of the TVPA in 2000, a new administration and a new office of the Secretary of State under Colin Powell were charged with implementing the TVPA; the process was indeed very slow.²¹ Many feared that the good work started under the Clinton administration with the passage of the TVPA in October 2000 would not be continued or completed under the Bush administration unless "the new office . . . [had] its own funds to develop antitrafficking programs."²² In 2001, more federal funds were needed to provide trafficking victims with the enhanced benefits and services promised to them by the TVPA.²³ Given the abysmal lack of enforcement of slavery and trafficking legislation in the past,²⁴ many skeptics rationally feared that the TVPA would not effectively stem the rising tide of sex trafficking in the United States and would end up being just another anti-slavery law lacking enforcement capability.

The change in administration and typical bureaucratic delays in passing enabling regulations led to a slow start for the implementation of the TVPA. In 2001, the U.S. Department of Justice still had not issued final regulations concerning the T-visas that grant permanent residency to victims of severe forms of trafficking. Regulations to implement the prosecution of the newly-defined crime of trafficking and to increase the punishment for trafficking and related crimes such as involuntary servitude, forced labor and peonage in existing criminal statutes were not enacted until late in 2001.²⁵ This delay in the passage of implementing regulations may explain

See Implementation Hearing, supra note 9, at 8.

²² Id. at 5.

²³ *Id.* at 4–5.

See generally Sex Sells, supra note 12, at 187–89 app. (providing a list of slavery and trafficking legislation). There are fourteen international conventions prohibiting trafficking and related crimes. Id. at 187–88 app. These conventions date back to 1904 and include the most recent U.N. Convention Against Transnational Organized Crime: Protocol to Prevent Smuggling of Migrants by Land, Sea and Air, passed one month after the TVPA on November 15, 2000. Id. There are six Declarations, Treaties and U.N. Resolutions and Reports condemning slavery, and these were passed as early as 1948. Id. at 189 app. While there have been many laws prohibiting slavery and trafficking, there has been very little effective enforcement of these laws.

²⁵ Implementation Hearing, supra note 9, at 7-8. "A year after enactment of this legislation, the State Department office... has only recently begun to get up and running." Id.

the reason why only one case was successfully prosecuted under the TVPA by November of 2001.²⁶

The TVPA mandated that the U.S. State Department establish an Office to Monitor and Combat Trafficking in Persons, but this office did not open until October 2001, one year after the passage of the TVPA.²⁷ The President's Interagency Task Force to Monitor and Combat Trafficking in Persons (Interagency Task Force) held its first meeting on February 13, 2002, to coordinate the federal government's implementation of the TVPA.²⁸ The Interagency Task Force established the Senior Policy Advisory Group, which met for the first time on March 5, 2002, to coordinate the policy and implementation of the TVPA.²⁹

B. U.S. Policy Changes Since the TVPA

Despite objections raised about the lackluster implementation of the TVPA by the current administration, one must recognize that some progress has been made by the United States in stemming the tide of this modern-day form of slavery. The administration considers trafficking a serious crime, and has reauthorized the TVPA twice, once in 2003 and again in 2005. The administration's approach to trafficked women has undergone a complete policy change, viewing them now as victims and not criminals. Policy changes of this magnitude naturally take time to implement. This new attitude towards trafficking constitutes more humane treatment of sex trafficked victims and is reflected in the creation of several anti-trafficking implementation offices within U.S. federal government agencies. For example, in October of 2001, the U.S. government established the Office to Monitor and Combat Trafficking, which compiles the annual TIP Report. The TIP Report provides assessment and implementation of anti-trafficking pro-

²⁶ See id. at 27, 53.

²⁷ IMPLEMENTATION OVERVIEW, *supra* note 17.

²⁸ Id.

²⁹ Id

³⁰ See Enhancing The Global Fight To End Human Trafficking: Briefing and Hearing Before the H. Comm. on International Relations, 109th Cong. 65 (2006) (Prepared Statement of Wade F. Horn, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services), available at http://commdocs.house.gov/committees/intlrel/hfa30141. 000/hfa30141 0.HTM.

³¹ See 2001 TIP REPORT, supra note 2, at 4. This new trafficking office rightfully appointed as its Deputy Director Dr. Laura Lederer, who has made a long-time commitment to combating trafficking. Implementation Hearing, supra note 9, at 53.

³² See 2002 TIP REPORT, supra note 2, at 4; 2003 TIP REPORT, supra note 2, at 13.

grams, as well as outreach to partner agencies, Congress, and the non-governmental community to protect victims of sex trafficking.³³

The Bush administration has expressed a serious commitment to the reduction of sex trafficking. In his televised speech to the United Nations on September 25, 2003, President Bush asked each nation to join the United States in its multilateral effort to eliminate this modern-day form of slavery.³⁴ Moreover, President Bush referenced a law he had recently signed, the Protect Act,³⁵ making it a crime for a U.S. citizen (or an alien admitted for permanent residence in the United States) to travel abroad for the purpose of engaging in illicit sexual conduct with another person.³⁶ Thus, the Protect Act has extraterritorial reach and makes it possible to investigate, prosecute, and convict in the United States any person "who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person" or who engages in sex trafficking abroad (even if sex trafficking is legal in that country) or in the United States. If convicted under the Protect Act, that person may be fined or imprisoned for up to thirty years, or both.³⁷

The new, more humanitarian policy of the U.S. government toward trafficked victims is also reflected in the recent amendment recommended by the Department of Justice to the peonage and slavery statutes under the United States Code.³⁸ New criminal offenses were added to include trafficking (Section 1590), forced labor (Section 1589), and unlawful possession of documents (Section 1592).³⁹ The TVPA makes trafficking with respect to peonage, slavery, involuntary servitude, or forced labor a crime.⁴⁰ The amended criminal statutes define the specific crime of sex trafficking and increase penalties for trafficking and the related crimes of involuntary servitude, forced labor, and peonage.⁴¹

³³ Implementation Hearing, supra note 9, at 11 (statement of Paula J. Dobriansky, Under Secretary for Global Affairs, U.S. Dept. of State).

³⁴ President George W. Bush, President Bush Addresses United Nations General Assembly (Sept. 23, 2003), *available at* http://www.whitehouse.gov/news/releases/2003/09/2003 0923-4.html.

³⁵ Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003, Pub. L. 108–21, 117 Stat. 650 (codified as amended in scattered sections of U.S.C.).

³⁶ *Id.* § 105(b).

³⁷ Id

³⁸ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 112, 114 Stat. 1464, 1486 (codified as amended in scattered sections of U.S.C.).

³⁹ See 18 U.S.C. §§ 1589, 1590, 1592 (2006).

⁴⁰ See Victims of Trafficking and Violence Protection Act of 2000 § 112.

⁴¹ See 18 U.S.C. §§ 1589, 1590, 1592 (2006).

In addition to amending existing criminal statutes, the Department of Justice has made significant efforts at prosecution, outreach, coordination among agencies, and protection and assistance to victims of trafficking.⁴² Attorney General John Ashcroft announced in March 2001 that combating trafficking is one of the highest priorities of the Department of Justice, and President Bush issued a Presidential Directive to the same effect. 43 Ashcroft announced that additional funds would be allocated to prosecute cases criminally, to do meaningful outreach targeting vulnerable victims of trafficking, and to coordinate various government agencies to eradicate trafficking and ameliorate the suffering it causes.⁴⁴ The Attorney General then issued guidance to all ninety-four U.S. Attorney Offices to improve prosecution efforts in the Department of Justice.⁴⁵ This guidance increased the sentence for trafficking to twenty years imprisonment, and for some, life imprisonment, whereas previously sentences ranged from a small immigration violation to a maximum of ten years imprisonment. 46 The INS sent similar guidance to its district offices. In addition, the Department of Justice created new attorney positions in the Criminal Section of the Civil Rights Division, specializing in investigations and prosecutions of human trafficking cases.

C. Increase in U.S. Investigations, Prosecutions and Convictions

Before 2000, very few traffickers were prosecuted because of the expense and time of trial, the piecemeal nature of the U.S. criminal laws on trafficking, the difficulty in obtaining proof, and the reportedly overwhelming amount of paperwork required for the prosecution of traffickers who invariably received a very light sentence. As a result of the enactment of new and amended criminal trafficking provisions in 2001, the number of trafficking prosecutions in the United States has increased. According to an Assistant U.S. Attorney interviewed in San Diego, the passage of the

See Implementation Hearing, supra note 9, at 26.

⁴³ *Id.* Press Release, Office of the Press Secretary, Trafficking in Persons National Security Presidential Directive (Feb. 24, 2003), *available at* http://www.whitehouse.gov/news/releases/2003/02/20030225.html.

⁴⁴ Implementation Hearing, supra note 9, at 26...

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⁴⁶ *Id.* at 30.

⁴⁷ *Id*. at 26.

⁴⁸ Saga of Susannah, supra note 11, at 160.

⁴⁹ See infra text accompanying notes 51–56. See also Paula J. Dobriansky, Under Sec'y of State for Global Affairs, U.S. Dep't of State, Remarks to Conference to Stop Child Trafficking: Modern-Day Slavery (June 3, 2003), http://www.usis.it/file2003_06/alia/A3060506.htm [hereinafter Dobriansky Conference Remarks].

TVPA and the newly amended criminal statutes implementing the TVPA make it significantly easier for prosecutors to try a sex trafficking case.⁵⁰

After the passage of the TVPA, and from January 2001 through February 2003, the Department of Justice charged, convicted, or secured sentences against ninety-two traffickers in twenty-one cases.⁵¹ Sixty-five of those charged, convicted, or sentenced were for sex trafficking offenses in fourteen separate cases.⁵²

In 2001, despite the time consuming and labor-intensive nature of trafficking cases requiring the full-time dedication of many attorneys and investigators, the Department of Justice prosecuted thirty-four defendants, four times as many as in the year before.⁵³ The Department of Justice also opened investigations into sixty-four allegations of trafficking in 2001.⁵⁴ By October 2001, eighty-nine investigations were pending, representing a nineteen percent increase from the previous year,⁵⁵ and three times as many since February 2000, when a Trafficking in Persons and Worker Exploitation Task Force hotline was established by the Department of Justice.⁵⁶ Of the eighty-nine trafficking prosecutions pending in October 2001, many resulted in indictments under the TVPA.

By the end of 2002, the Department of Justice reported 125 open trafficking investigations, a number twice that of the previous year.⁵⁷ From 2001 to 2002, the Department of Justice more than doubled the number of its prosecutions and convictions for trafficking.⁵⁸

Some of the cases prosecuted in 2001 were: *United States v. Lee*⁵⁹ (Two hundred-fifty Vietnamese and Chinese workers, mostly women, were held for two years in the U.S. Territory of American Samoa. Defendants were charged with involuntary servitude);⁶⁰ *United States v. Gasanova*⁶¹

⁵⁰ Interview with Christopher P. Tenorio, Assistant U.S. Attorney, Office of the U.S. Attorney Southern District of California, in San Diego, Cal. (June 19, 2003) (on file with author).

Press Release, U.S. Dep't of Justice (Feb. 21, 2003), available at http://www.usdoj.gov/opa/pr/2003/February/03_crt_108.htm.

⁵² Press Release, U.S. Dep't of Justice (Feb. 25, 2003), available at http://www.usdoj.gov/opa/pr/2003/February/03_crt_110.htm.

⁵³ IMPLEMENTATION OVERVIEW, supra note 17.

⁵⁴ Id

⁵⁵ Implementation Hearing, supra note 9, at 27.

⁵⁶ Id

⁵⁷ Congressman Christopher Smith, Remarks at Pathbreaking Strategies in the Global Fight Against Sex Trafficking Conference (Feb. 25, 2003), *in* PATHBREAKING STRATEGIES IN THE GLOBAL FIGHT AGAINST SEX TRAFFICKING: CONFERENCE RECOMMENDATIONS 59.

Dobriansky Conference Remarks, *supra* note 49.

⁵⁹ United States v. [Kil Soo] Lee, 159 F. Supp. 2d 1241 (D. Haw. 2001).

⁶⁰ United States v. [Kil Soo] Lee, 472 F.3d 638, 639 (9th Cir. 2006).

(Women from Uzbekistan were recruited into El Paso, Texas to work in strip clubs and bars in order to pay back a three hundred thousand dollar debt and smuggling fee); *United States v. Kennard*⁶² (Russian girls were trafficked to Anchorage, Alaska to dance nude);⁶³ *United States v. Lee*⁶⁴ (Defendants rounded up homeless and drug-addicted African-American men in Fort Pierce, Florida, using threats and violence to force them to pick oranges);⁶⁵ and *Jane Doe I v. Reddy* (A Berkeley, California multimillionaire beat and held captive two girls from India, offering them sham marriages as a lure).⁶⁶

Several of the recently tried criminal cases involving trafficking did not apply the TVPA because the TVPA was passed in 2000 and its criminal law provisions do not apply retroactively.⁶⁷ Thus, only three of the Department of State's recent indictments, *United States v. Kil Soo Lee*,⁶⁸ *United States v. Kennard*,⁶⁹ and *United States v. Gasanova*,⁷⁰ include charges under

United States v. Gasanova, 332 F.3d 297 (5th Cir. 2003); See Implementation Hearing, supra note 9, at 31.

⁶² United States v. Kennard, 46 F. App'x 426 (9th Cir. 2002).

Brief of Appellee, United States v. Kennard, 46 F. App'x 426 (9th Cir. 2002) (No. 01-30346). Kennard, his wife, and two co-defendants were charged in this case. *Id.* at 2. Kennard and his co-defendants pled guilty and were sentenced while the charges against Kennard's wife were dismissed. *Id.* Kennard appealed, but his appeal was denied. *Id.* at 427. Kennard was convicted on six counts of visa fraud and two counts of transportation of minors for illegal purposes in violation of the Mann Act. *Id.* Kennards's co-defendants, Agafonov and Virchenko, pled guilty to all six counts of visa fraud and one count of violating the Mann Act. Brief of Appellee at 7, United States v. Kennard, 46 F. App'x 426 (9th Cir. 2002) (No. 01-30346). Both were originally indicted on twenty-three counts, including kidnapping, forced labor, conspiracy, and witness intimidation, but these charges were dropped. *See id.* at 8. Virchenko was sentenced to a term of thirty months in prison. *See Implementation Hearing, supra* note 9, at 31.

⁶⁴ United States v. [Michael Allen] Lee, 46 F. App'x 960 (11th Cir. 2002).

Thomas C. Tobin, For Slavery, Man to Serve Four Years, St. Petersburg Times (Fla.), Aug. 16, 2001, at 1A, 4A (reporting that Defendant was sentenced to four years in prison and three years of supervised release for one count of involuntary servitude). Press Release, Labor Contractor Admits He Enslaved African-American Worker in Florida, Pleads Guilty to Federal Charges (Feb. 15, 2001), http://www.usdoj.gov/opa/pr/2001/February/069crt.htm.

Doe v. Reddy, No. C 02-05570 WHA, 2003 WL 23893010 (N.D. Cal. 2003). One Defendant, Reddy, pled guilty to charges of trafficking girls from India for sex and cheap labor. *Man Sentenced for Smuggling Girls*, S.F. CHRONICLE, Nov. 19, 2002, at A21. He is now serving eight years in federal prison and was ordered to pay two million dollars in restitution to three sexual-abuse victims and to the parents of the girl who died. *Id*.

⁶⁷ See IMPLEMENTATION OVERVIEW, supra note 17.

⁶⁸ United States v. [Kil Soo] Lee, 159 F. Supp. 2d 1241 (D. Haw. 2001).

⁶⁹ United States v. Kennard, 46 F. App'x 426 (9th Cir. 2002).

See United States v. Gasanova, 332 F.3d 297 (5th Cir. 2003).

the new criminal statutes.⁷¹ But many of the 125 open trafficking investigations in 2002 included allegations that could lead to indictments under the TVPA in the future.⁷²

In fiscal years 2001 through 2004, the Department of Justice initiated more than three times the number of trafficking investigations (340 versus 106), filed almost three times as many cases (60 versus 16), charged more than twice as many defendants (162 versus 69), and doubled the number of defendants convicted (118 versus 59), than in the prior four year period.⁷³

Thus, as a result of establishing the new and amended criminal statutes and regulations pursuant to the mandates of the TVPA, there has been an increase in the number of sex trafficking prosecutions in the United States since 2000.

D. U.S. Increases Benefits and Services to Victims

In compliance with the requirements of the TVPA, the Department of State and the Department of Justice have also initiated the training of law enforcement personnel, foreign service officers, consular officers, ambassadors, INS adjudicators of T-visas, U.S. attorney victim witness coordinators, officials from the INS, the Department of Labor, and the Federal Bureau of Investigation, prosecutors, as well as NGOs, in the United States to help them identify a sex-trafficked victim and to recognize her particular needs.⁷⁴

Since the passage of the TVPA, the U.S. government has attempted to provide more effective witness protection to trafficking victims in the United States. The U.S. government has also issued T-visas and certification letters providing enhanced immigration and other benefits to victims who agree to assist in the prosecution of alleged sex traffickers. These measures have resulted in a slow but steady increase in domestic arrests, prosecutions, and convictions of traffickers in the United States since

⁷¹ IMPLEMENTATION OVERVIEW, *supra* note 17 (referencing the three indictments including charges under the new criminal statutes). Readers should note that this document mistakenly refers to *U.S. v. Gasanova* as *U.S. v. Sardar. See id. See also supra* text accompanying notes 38 to 41 (discussing the amended criminal statutes pursuant to the TVPA).

⁷² Smith, supra note 58, at 59; IMPLEMENTATION OVERVIEW, supra note 17.

⁷³ See 2005 TIP REPORT, supra note 2, at 243.

⁷⁴ See id. at 242–43 (explaining some of the services available to individuals and organizations offering assistance to trafficking victims); See generally Implementation Hearing, supra note 9, at 15 (stating that new regulations will ensure that relevant law enforcement personnel, immigration officials, and State Department officials receive the appropriate training to recognize and assist victims of trafficking).

See Implementation Hearing, supra note 9, at 32–33.

¹⁶ See Enhancing The Global Fight To End Human Trafficking: Briefing and Hearing Before the H. Comm. on International Relations, 109th Cong. 1, 58 (2006).

2000.⁷⁷ Estimating conservatively, in the seven years since its enactment the TVPA has resulted in better enforcement of existing criminal statutes and new anti-trafficking laws in the United States, as well as more enhanced benefits and services to victims than previously available.

In a multi-agency effort, the Office of Refugee Re-Settlement (ORR) and the Department of Health and Human Services (HHS) have worked diligently to provide benefits and services to victims of trafficking. This and ORR have actively conducted outreach programs to increase public awareness about the dangers of trafficking in persons. HHS has developed policies and procedures for certifying individuals who are victims of severe trafficking. This is the first step toward eligibility for permanent residence in the United States. ORR worked with HHS to produce certification and eligibility letters and coordinate victims' access to employment authorization documents, allowing them to work legally in the United States and move toward self-sufficiency.

Roughly one year after implementation, certification and eligibility letters had been sent to benefit-issuing offices in nineteen states plus the District of Columbia. By February 2003, HHS had certified over 370 victims. In Fiscal Year 2004, HHS issued 163 letters on behalf of victims, including 144 certification letters to adults and nineteen eligibility letters to minors. By Fiscal Year 2005, the total number of letters grew to 230. Altogether HHS has issued more than 841 letters since 2001.

HHS correctly emphasizes the importance of aiding victims of severe trafficking in a manner that fosters self-sufficiency rather than depend-

⁷⁷ See, e.g., ATT'Y GEN. ANN. REP. TO CONGRESS ON U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2005 at 16 (June 2006) [hereinafter ATT'Y GEN. REP. 2005], available at http://www.usdoj.gov/ag/annualreports/tr2005/agreporthumantrafficing20 05.pdf.

⁷⁸ Cf. Implementation Hearing, supra note 9, at 37.

⁷⁹ See id. at 38.

⁸⁰ IMPLEMENTATION OVERVIEW, *supra* note 17.

⁸¹ See ATT'Y GEN. REP. 2005, supra note 78, at 11-12.

⁸² Implementation Hearing, supra note 9, at 38.

⁸³ Id

Press Release, Office of the Press Secretary, *supra* note 43. President Bush signed this directive to advance the United States Government's fight against trafficking in persons, which he referred to as a "modern-day form of slavery." *Id.* This policy directive follows from the President's actions taken on February 13, 2002, when he signed Executive Order 13257 to establish a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons. *Id.*

⁸⁵ 2005 TIP REPORT, *supra* note 2, at 241.

⁸⁶ ATT'Y GEN. REP. 2005, *supra* note 78, at 5–6.

⁸⁷ Id. (stating that in the first five fiscal years of operation, the Office of Refugee Resettlement issued a total of 841 certification and eligibility letters).

ency. 88 In 2001, ORR assisted more than eight hundred people, and awarded more than \$1.25 million in discretionary grant money to eight organizations in the United States 90 to assist certified victims of trafficking, and to enhance their transition from victimization to independence and self-sufficiency. Many of these victims successfully participated in a refugee program called the Voluntary Agency Matching Grant Program, which helps refugees and trafficking victims attain self-sufficiency through employment, English language training, and cultural orientation. 90

Victims of trafficking have applied for other benefits and services beyond the T-visas provided under the TVPA. For example, in 2001, thirty-four percent of the trafficked victims applied for food stamps; twenty-one percent for Refugee Cash Assistance; and thirty-five percent for Refugee Medical Assistance. Less than one percent applied for Temporary Assistance for Needy Families (TANF) and Supplementary Security Income (SSI). In January 2003, the Office for Victims of Crime (OVC) in the U.S. Department of Justice awarded twelve grants totaling more than \$9.5 million to NGOs for the purpose of providing trafficking victims with specialized services. In 2004, OVC awarded ten additional grants totaling more than \$5.5 million for services to victims of trafficking.

E. Domestic Impact of TVPA

Despite a delay in its implementation, the TVPA has had some impact in the United States on achieving the three main goals of prevention of trafficking, protection of victims, and prosecution of perpetrators. The TVPA is the direct cause of the enactment of amended criminal statutes and regulations as well as new criminal statutes to streamline the investigation, prosecution, and sentencing of sex traffickers. As a result, the TVPA has resulted in a small but steady increase in the number of investigations, prosecutions and convictions of traffickers.

In 2001, the Department of Justice prosecuted thirty-three trafficking defendants, 95 four times as many as in the prior year. In December of

⁸⁸ See Implementation Hearing, supra note 9, at 38.

⁸⁹ *Id*.

⁹⁰ *Id*.

⁹¹ *Id*.

⁹² Id

^{93 2005} TIP REPORT, *supra* note 2, at 242.

⁹⁴ Id.

Dobriansky Conference Remarks, *supra* note 49. Note the discrepancy in statistics about the number of investigations, prosecutions and convictions in the United States. For example, Dobriansky reports that thirty-six prosecutions and convictions of traffickers occurred between 2001 and 2002. *Id.* Elsewhere in a government report thirty-four prosecutions of traffickers were reported in fiscal year 2001. IMPLEMENTATION OVERVIEW, *supra* note 17.

2002, the Department of Justice had 125 open trafficking investigations, nearly twice as many as those open in 2001. By February 2003, ninety-two traffickers in twenty-one cases were charged, sentenced or convicted. However, only one of the cases tried in 2001 and three of the cases tried in 2002 were under the TVPA, and those convicted received only up to ten to twelve years in prison. Moreover, given the number of trafficked persons in the United States each year (anywhere between 20,000 and 50,000), the prosecution of ninety-two defendants by 2003 seems woefully low to achieve the goal of deterrence of the crime of sex trafficking. By 2004, the number of defendants convicted for trafficking rose to 118. In 2004, the Department of Justice initiated prosecutions against fifty-nine traffickers, the highest number ever charged in single year, with thirty-two of these defendants charged under the TVPA for sexual exploitation.

In its aim of victim protection, the TVPA has encouraged the training of government personnel, federal prosecutors, law enforcement personnel, and immigration officials to identify sex-trafficked women and to increase their awareness of issues specifically affecting these victims. The U.S. government has provided victims of severe forms of trafficking enhanced benefits and services, including work permits and the possibility of permanent residence in the U.S. The TVPA has also resulted in the implementation of many significant outreach programs, in cooperation with NGOs and law enforcement groups, to assist victims of sex trafficking in their transition to self-sufficiency.

Since 2000, the INS has granted more than 642 "continued presence" requests, required for the receipt of a T-visa that permits permanent residence in the United States. ¹⁰² Further, the TVPA has resulted in the issu-

Press Release, Dep't of Justice, Fact Sheet: Accomplishments in the Fight to Prevent Trafficking in Persons (Feb. 25, 2003), http://www.usdoj.gov/opa/pr/2003/February/03_crt_110.htm.

⁹⁷ Id.

⁹⁸ See Implementation Hearing, supra note 9, at 31 (explaining that only one of the "current" prosecutions involves violations of the new criminal statutes, as of Nov. 29, 2001); Dobriansky Conference Remarks, supra note 49 (stating that those sentenced under these laws received sentences between ten and twelve years).

⁹⁹ Dobriansky Conference Remarks, *supra* note 49.

¹⁰⁰ See 2005 TIP REPORT, supra note 2, at 243.

¹⁰¹ Id.

U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 10 (2006), available at http://www.usdoj.gov/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf (stating that in FY 2005, the U.S. government granted 158 continued presence requests); U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 13 (2005), available at http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf (stating that prior to September 30, 2004, the end of FY 2004, the U.S. government granted 484 continued presence requests); see Implementation Hearing, supra note 9, at 33 (discussing the "continued

ance of more than 841 certification letters since 2000.¹⁰³ The INS has also provided other immigration benefits and reportedly processed 150 T-visas in 2003, a marked increase from 2002 when it issued only 20 T-visas.¹⁰⁴ In 2004 the Department of Homeland Security received 520 applications for a T-visa, approved 136, denied 292, and continued to consider 92.¹⁰⁵ Although the number of T-visas processed has increased each year since 2000, five thousand of these visas are available and offer the possibility of permanent residency.¹⁰⁶ The surprisingly low number of visas issued indicates the fear of reprisals that sex trafficking victims face if they agree to assist in the prosecution of traffickers. The low number of T-visas also may indicate that the trafficking victims do not trust the U.S. witness protection programs.¹⁰⁷ Offering permanent residence status as an incentive to assist in the prosecution of the perpetrators of trafficking may not be the most effective method. More emphasis needs to be placed on prevention of trafficking.

III. INTERNATIONAL IMPACT OF TVPA

Rising unemployment, increased poverty, and a weakened social structure in war-torn countries have caused women and children in developing and transitioning nations to become vulnerable to trafficking. Young, impoverished women, who are often refugees on the move, are sometimes sold to traffickers by their own parents or husbands for money. The United States realizes that it cannot combat a crime as serious and transnational in nature as trafficking simply by unilateral action. Therefore, the

presence" requirement for immigration benefits); see also Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 107(b)(1)(E), 114 Stat. 1464, 1474 (codified as amended at 22 U.S.C. § 7105(E) (2006)).

¹⁰³ ATT'Y GEN. REP. 2005, *supra* note 78, at 5–6.

John Ashcroft, Attorney General, Remarks at Pathbreaking Strategies in the Global Fight Against Sex Trafficking Conference (Feb. 25, 2003), in PATHBREAKING STRATEGIES IN THE GLOBAL FIGHT AGAINST SEX TRAFFICKING: CONFERENCE RECOMMENDATIONS.

¹⁰⁵ 2005 TIP REPORT, *supra* note 2, at 243.

¹⁰⁶ Victims of Trafficking and Violence Protection Act § 107(e)(2) (codified as amended at 8 U.S.C. § 1184(o)(2) (2006)).

However, the TVPA and T-visas ensure that involved officials provide victims and the victims' family safety, including protection "from intimidation, threats of reprisals, and reprisals from traffickers and their associates." Victims of Trafficking and Violence Protection Act § 107(c)(3) (codified as amended at 22 U.S.C. § 7105(c)(3) (2006)).

See Saga of Susannah, supra note 11, at 116–17.

See CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 168 (1991); see also Sarah Shannon, Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade, in Illegal Immigration and Commercial Sex: The New Slave Trade 119, 122 (Phil Williams ed., 1999).

See Victims of Trafficking and Violence Protection Act § 102(24) (codified as amended at 22 U.S.C. § 7101(b)(24) (2006)).

traffic of women for sexual exploitation has become a significant U.S. foreign policy issue.¹¹¹

In 2002, the U.S. government spent nearly fifty-five million dollars on anti-trafficking programs in more than fifty countries¹¹² and urged many more countries to join us in this effort to stop the sale of human beings. ¹¹³ In 2004 the United States spent ninety-six million dollars in anti-trafficking assistance to foreign governments and NGOs. ¹¹⁴ The TIP office supported more than fifty anti-trafficking programs abroad in fiscal year 2004. ¹¹⁵ President Bush has taken a leadership role against trafficking in persons by issuing the first National Security Presidential Directive on Trafficking. ¹¹⁶ President Bush has stated that the fight against trafficking is a high priority for the U.S. government and has called for more countries to join the United States in this effort to eradicate trafficking. ¹¹⁷

President Bush also signed the Protect Act into law in April 2003.¹¹⁸ This law furthers the United States government's efforts to strengthen law enforcement's ability to investigate, prosecute, and punish violent crimes including child sex tourism.¹¹⁹ In 2003 President Bush also reinforced the TVPA by passing The Trafficking Victims Protection Reauthorization Act (TVPRA),¹²⁰ which was reauthorized again in 2005.Together the Protect Act and the TVPRA increase penalties to a maximum of thirty years in prison for engaging in child sex tourism.¹²¹ From the passage of the TVPRA in 2003 to June 2005, there were twenty indictments and over a dozen convictions of child sex tourists.¹²²

¹¹¹ See id.

Dobriansky Conference Remarks, supra note 49.

¹¹³ Id

¹¹⁴ See 2005 TIP REPORT, supra note 2, at 2 (statement to the reader by Secretary of State Condoleezza Rice).

¹¹⁵ See id. at 240.

Dobriansky Conference Remarks, supra note 49. See also Press Release, Office of the Press Secretary, supra note 43.

¹¹⁷ See President George W. Bush, President Bush Addresses United Nations General Assembly (Sept. 23, 2003), available at http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html.

Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003, Pub. L. 108-21, 117 Stat. 650 (codified as amended in scattered sections of U.S.C.).

¹¹⁹ 2005 TIP REPORT, supra note 2, at 239.

Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108–193, 117 Stat. 2875 (2003) (codified as amended in scattered sections of U.S.C.).

¹²¹ 2005 TIP REPORT, *supra* note 2, at 23.

¹²² Id

A. Early TIP Reports and Their Influences on Foreign Nations

The Department of State's annual TIP Reports have become an invaluable tool in bilateral dialogues on trafficking. The TIP Reports are not designed to be a condemnation of countries, but rather a catalyst for foreign governments to combat trafficking in persons around the world to eliminate the degrading practice of sex slavery. The TIP Reports and official statements by the Department of State provide statistically significant data that evidences the international impact of the TVPA on many countries engaging in trafficking.

In July 2001, the Department of State published the first annual TIP Report. Designed to apprise Congress of the international state of severe trafficking, the Report includes information about countries of origin, transit, or destination for a significant number of victims of trafficking. Only eight months after the passage of the TVPA, the first 2001 TIP Report concluded that most foreign governments were taking steps to curb trafficking and to help the hundreds of thousands of men, women and children victimized by trafficking. The 2001 Report divided the eighty-two counties deemed to have significant numbers of victims of trafficking into three tiers, based upon governmental efforts to remedy the problems of trafficking.

The 2001 TIP Report placed countries in Tier 1 if they fully complied with the law's minimum standards and provided a wide range of protective services to victims, or sponsored or coordinated governmental prevention campaigns to eliminate trafficking. ¹²⁹ Compliance with minimum standards requires meeting a four-pronged test set forth in Section 108(a) of

¹²³ See Monitoring and Combating Trafficking in Persons: How Are We Doing? Hearing Before the Subcomm. on Near Eastern and South Asian Affairs of the S. Comm. on Foreign Relations, 107th Cong. 59–60 (2002) [hereinafter Foreign Relations Hearing].

²⁰⁰² TIP REPORT, supra note 2, at 7.

¹²⁵ 2001 TIP REPORT, *supra* note 2, at 1.

¹²⁶ Id. at 2.

¹²⁷ Id. at 8-9.

¹²⁸ Id. at 4.

¹²⁹ Id. at 7. Countries listed in Tier 1 in the 2001 TIP Report include: Austria, Belgium, Canada, Colombia, Germany, Hong Kong, Italy, The Netherlands, Spain, Switzerland, Taiwan, and the United Kingdom. Id. at 12. Countries listed in Tier 1 in the 2003 TIP Report include: Austria, Belgium, Benin, Colombia, Czech Republic, Denmark, France, Germany, Ghana, Hong Kong, Italy, Lithuania, Macedonia, Mauritius, Morocco, The Netherlands, Norway, Poland, Portugal, Rep. Of Korea, Spain, Sweden, Switzerland, Taiwan, United Arab Emirates, and the United Kingdom. 2003 TIP REPORT, supra note 2. In 2006, twenty-six countries were listed in Tier 1 and they include Australia, Austria, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Hong Kong, Ireland, Italy Lithuania, Luxembourg, Malawi, Morocco, The Netherlands, New Zealand, Norway, Poland, Singapore, South Korea, Spain, Sweden, Switzerland, United Kingdom. 2006 TIP REPORT, supra note 2.

the TVPA.¹³⁰ The government must prohibit and punish severe forms of trafficking in persons. The punishment must be commensurate with that for grave crimes such as forcible sexual assault or rape. The punishment must be sufficiently stringent to deter the crime and to reflect its heinous nature. Furthermore, the government must make "serious and sustained efforts" to eliminate severe forms of trafficking in persons.¹³¹

Signs that a government is engaging in "serious and sustained efforts" include investigating and prosecuting traffickers, protecting victims and encouraging them to assist in the prosecution of traffickers, engaging in outreach programs to educate potential victims of the dangers of trafficking, cooperating with other governments by extraditing traffickers, and monitoring immigration and investigating public officials. ¹³²

The governments of countries placed on Tier 2 did not fully comply with the Act's minimum standards, but were making significant efforts to bring themselves into compliance with those standards. Tier 2 countries often do not have a specific penal code provision criminalizing the act of trafficking itself, but are making serious and sustained efforts to be in compliance with minimum standards. In many of the Tier 2 countries, no antitrafficking legislation exists at all. In these countries constitutional provisions against human bondage may exist, but without legislation to enforce them. If other criminal statutes prohibiting slavery or child labor exist to help prosecute traffickers, enforcement is found to be too weak to be effective.

Those placed on Tier 3 did not fully comply with the minimum standards and were not making significant efforts to bring themselves into compliance. ¹³⁸ Tier 3 countries are the worst offenders because they lack

¹³⁰ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 108(a), 114 Stat. 1464, 1480 (codified as amended 22 U.S.C. § 7106 (2006)).

See 2003 TIP REPORT, supra note 2, at 15.

¹³² Id.

¹³³ Id. The TIP Report is supposed to measure "significant efforts" made by Tier 2 countries by (A) the extent of victimization, (B) the extent of official complicity, and (C) whether reasonable steps are taken to comply with the minimum standards in light of the country's resources and capabilities. Victims of Trafficking and Violence Protection Act §§ 108 & 110 (codified as amended 22 U.S.C. §§ 7106, 7107 (2006)).

¹³⁴ 2001 TIP REPORT, *supra* note 2, at 5.

¹³⁵ 2001 TIP REPORT, *supra* note 2, at 31. Benin, Burkina Faso, Bulgaria, Cote d'Ivoire, and France are examples of such countries. *Id.*

²⁰⁰¹ TIP REPORT, supra note 2, at 29. Angola is one such country. Id.

¹³⁷ Id at 46

¹³⁸ 2001 TIP Report, *supra* note 2, at 7. In 2006, the following countries were listed on Tier 3: Belize, Burma, Cuba, Iran, Laos, North Korea, Saudi Arabia, Sudan, Syria, Uzbekistan, Venezuela, and Zimbabwe.

trafficking laws and have not made serious or sustained efforts to comply with minimum standards for the elimination of trafficking. 139

After the release of the first annual TIP Report in 2001, a number of governments immediately took steps to prevent trafficking, prosecute traffickers, and protect victims. 140 Tier 2 and Tier 3 countries were prompted to engage with the U.S. government in programs to reduce trafficking for the first time. 141 Countries on Tier 2 naturally sought to strengthen their antitrafficking efforts to avoid falling into Tier 3, 142 fearing that sanctions might be imposed on them after 2003 and fearing that the stigma of that classification would directly impact their international trade, tourism, and international aid. Later in 2003 the United States implemented a new Tier 2 Watchlist to help countries from falling into Tier 3.143 Many of the worst offenders on Tier 3 have asked for U.S. government assistance to move from the ignominy of Tier 3 status.¹⁴⁴ However, in 2001 some countries on Tier 3 absolutely refused to cooperate with the U.S. Department of State. 145 These countries include Russia, Indonesia, Congo, Bosnia-Herzegovnia, and Belarus. 146 Obviously, the soft approach adopted in 2001 and again in 2002 did not result in the degree of international impact intended by the U.S. trafficking legislation, and in October 2003, the United States instituted punitive economic sanctions as authorized by the TVPA to increase its international impact.147

B. Weakness of Early TIP Reports and Subsequent Remedies

Members of the International Justice Mission have raised serious objections to the TIP Reports. 148 They claim that the early 2001 and 2002 TIP Reports failed to measure in a concrete manner precisely how many people were actually investigated, prosecuted, and convicted for sex traf-

¹³⁹ Id. at 5.

See generally 2002 TIP REPORT, supra note 2, at 7-13.

¹⁴¹ Foreign Relations Hearing, supra note 125.

¹⁴² Cf. Implementation Hearing, supra note 9, at 59.

¹⁴³ In 2006, the following countries were on Tier 2 Watchlist: Algeria, Argentina, Armenia, Bahrain, Bolivia, Brazil, Cambodia, Central African Rep. China (PRC), Cyprus, Djibouti, Egypt, Equatorial Guinea, India, Indonesia, Israel, Jamaica, Kenya, Kuwait, Libya, Macau, Malaysia, Mauritania, Mexico, Oman, Peru, Qatar, Russia, South Africa, Taiwan, Togo, and United Arab Emirates. 2006 TIP REPORT, *supra* note 2.

See 2001 TIP REPORT, supra note 2, at 16.

¹⁴⁵ Id. at 17.

¹⁴⁶ Id.

¹⁴⁷ Victims of Trafficking and Violence Protection Act of 2000 § 104. (codifed as amended at 22 U.S.C. § 2151n).

¹⁴⁸ See 2003 TIP REPORT, supra note 2, at 14. See also Implementation Hearing, supra note 9, at 61–62 for prepared statement of Gary Haugen, CEO of International Justice Mission.

ficking and forced prostitution in specific foreign countries.¹⁴⁹ Subsequent TIP Reports have remedied this objection by providing these statistics, when available.

Additionally, some claimed that the early TIP Reports of 2001 and 2002 failed to state the degree to which government employees and police in foreign countries were complicit in the sex trafficking industry.¹⁵⁰ For example, in some Tier 2 countries a significant percentage of brothel owners and agents are actually government employees, usually policemen.¹⁵¹ This may explain why the large number of victims in Tier 2 countries in 2001, 2002, and 2003 is disproportionate to the low number of prosecutions of traffickers and brothel owners in these countries.¹⁵² In some of the Tier 2 countries the police are involved in buying and selling women in addition to running the brothels.¹⁵³ The 2001 and 2002 TIP Reports did not show the extent of official government involvement and, instead, gave a Tier 2 rating to some of the worst offending countries.¹⁵⁴ This objection was remedied in the 2003 TIP Report, which frequently refers to police complicity and corruption in specific countries.¹⁵⁵

Many complain that the TIP Reports place countries on Tier 2 even if they do not meet minimum requirements, simply because they are making significant efforts to do so. ¹⁵⁶ Giving a Tier 2 rank to a country failing to meet minimum standards can falsely suggest that the country is engaging in something less than egregious human trafficking. In this way, the ranking system in the TIP Reports may do a disservice to local people fighting against sex trafficking, especially if sanctions will not be applied to Tier 2 countries. ¹⁵⁷ To respond to this objection, the 2003 reauthorization of the TVPA created the Tier 2 Watch List. ¹⁵⁸

This Watch List consists of countries on the TIP Report that should receive special scrutiny. These include (1) countries listed as Tier 1 in the 2005 Report that were listed as Tier 2 in the 2004 Report; (2) countries listed as Tier 2 in the 2005 Report that were listed as Tier 3 in the 2004 Re-

See Implementation Hearing, supra note 9, at 58, 70.

See 2003 TIP REPORT, supra note 2, at 14.

¹⁵¹ Implementation Hearing, supra note 9, at 18, 62–63.

¹⁵² Cf. id.

¹⁵³ Id. at 58.

¹⁵⁴ Id.

See 2003 TIP REPORT, supra note 2, at 12.

¹⁵⁶ Implementation Hearing, supra note 9, at 18.

¹⁵⁷ Id

See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108–193 §
6(e), 117 Stat. 2875, 2882 (2003) (codified as amended at 22 U.S.C. 7107(b) (2006)).

¹⁵⁹ 2005 TIP REPORT, *supra* note 2, at 26.

port; and (3) countries listed as Tier 2 in the 2005 Report where (a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking; (c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments made by the country to take additional future steps over the next year. ¹⁶⁰

Some object that the tiered ranking system is merely a means to blame and punish other countries with which the United States should be seeking to dialogue. A negative approach, they argue, will not result in productive communication or effective deterrence of the crime of trafficking. Moreover, the imposition of rankings by the United States does not constitute a true "multilateral" approach, but is rather a unilateral approach in disguise. These objections are valid, but are not supported by the results of this study, which show that many, if not the majority, of countries failing to comply with minimum standards listed on Tiers 2 or 3 have made serious attempts to implement effective anti-trafficking measures, enact anti-trafficking laws imitating the TVPA, and enforce their existing or newly amended laws prohibiting trafficking.

Another objection to the TIP Reports is that the TIP Reports lack any recognized perception of cultural differences. The TIP Reports do not condemn a dangerous "cultural nonchalant attitude" toward trafficking that exists in certain countries on the Tier 2 list. People in these countries consider trafficking a way of life, similar to bribery and graft, which is practiced with impunity in some countries. Many argue that more efforts must be made to shut down pimps, traffickers, and madams in these countries where trafficking is tolerated. More work must be done internationally to de-legitimize the commercial sex industry that promotes trafficking and creates the demand. Even in countries where the trafficking of women is tolerated, people's attitudes can be changed. This truism is evidenced by the reaction of many people in Russia, a country characterized by nonchalance toward trafficking, when they witnessed with shock and disbelief busloads of orphan children carted away to a life of sexual slavery, in exchange for a trafficker's handsome fee. Cultural attitudes vary, but cultural relativism

¹⁶⁰ Id.

¹⁶¹ Implementation Hearing, supra note 9, at 61.

¹⁶² *Id*.

¹⁶³ See id. at 21.

See 2001 TIP REPORT, supra note 2, at 30.

See Implementation Hearing, supra note 9, at 54-55.

¹⁶⁶ Id. at 21.

cannot and should not excuse criminal activity that rises to the level of a universal crime like slavery.

Some object to the fact that the TIP Reports omit certain countries. Some object to the fact that the TIP Reports omit certain countries. The U.S. Government explains these omissions persuasively as a lack of available, verifiable documentation in certain countries. The TIP Reports also do not distinguish between smuggling of migrants and trafficking per se, which is a consistently difficult problem that skews statistics generally on trafficking. Until the publication of the 2005 TIP Report, the TIP Reports did not sufficiently discuss the "demand" problem and did not address the fact that certain governments actually encourage trafficking by keeping the brothels open, ignoring illegal prostitution, and encouraging sex tourism.

Despite the weaknesses of the early TIP Reports, which have been corrected for the most part, there is no doubt that the TVPA, in general, and the Department of State TIP Reports, in particular, have had small but positive effect on many foreign governments by providing them with financial support and advice to meet the minimum standards set forth in the TVPA. Tountries naturally seek to prevent their classification from falling to Tier 3 because they fear that the stigma of that classification will directly impact their international trade, tourism industry, and international aid.

But the TIP Reports are more than simply a Department of State assessment of crime statistics. The TIP Reports have gained credibility because the State Department has omitted countries from the Report where available information was incomplete or unable to be verified.¹⁷¹ Thus, other nations should see the TIP Reports as a tool to aid them in combating trafficking, rather than a condemnation of individual countries.¹⁷²

The United States has attempted to respond to the valid objections raised about the early TIP Reports, and many of the suggestions made in 2001 for further government initiatives to implement the TVPA have largely been put into action in 2002, 2003, and 2004. For example, it was suggested that the United States train police in foreign countries on sex trafficking, forced prostitution, management methods and practices to infiltrate the secrecy and deception of sex trafficking and to maintain a level of pro-

¹⁶⁷ 2003 TIP REPORT, supra note 2, at 4.

¹⁶⁸ See generally 2001 TIP REPORT, supra note 2; 2002 TIP REPORT, supra note 2; 2003 TIP REPORT, supra note 2.

¹⁶⁹ See 2005 TIP REPORT, supra note 2, at 8. The 2005 TIP Report focuses attention on demand, "we cannot ignore the demand side." *Id.*

¹⁷⁰ See Implementation Hearing, supra note 9, at 54. See also, 2005 TIP REPORT, supra note 2, at 27 (discussing President Bush's address to the U.N. GAOR announcing a fifty million dollar special initiative to stop trafficking abroad).

See 2003 TIP REPORT, supra note 2, at 4.

¹⁷² Implementation Hearing, supra note 9, at 61.

fessionalism necessary to control and ultimately eradicate corruption by police and government officials.¹⁷³ U.S. Attorneys and federal law enforcement officials have also followed advice about obtaining intelligence from trafficking victims in the United States to interdict trafficking within the source countries.¹⁷⁴ Thus, when a victim in the United States identifies a perpetrator of the crime of human trafficking and assists in the prosecution in the United States, this trial can serve as a link in a global chain of international human rights violators, leading to the capture of leaders in the international crime rings.

To disrupt the profitable market in human cargo, U.S. intelligence must follow the chain from the dealer in the United States, to his or her transitional transportation network, and back to the overseas suppliers and operators who are connected to the international organized crime syndicates ¹⁷⁵

C. U.S. Trafficking Programs and Funding Abroad

The U.S. Department of State has made important implementation efforts, resulting in some international impact on trafficking. In 2002, the United States spent fifty-five million dollars in more than fifty countries in an effort to reduce trafficking of persons. ¹⁷⁶ In 2004, the United States spent ninety-six million dollars, almost doubling its efforts. 177 In more than eighty-six countries, the United States has invested \$295 million in antitrafficking efforts over the last four years. 178 The Department of State has assisted in convincing eighty-five countries to sign the U.N. Palermo Protocol on trafficking, 179 which encourages the harmonization of trafficking laws globally. In 2001, the Department of State made considerable progress in setting up the Interagency Task Force authorized by the TVPA and had discussions with the Central Intelligence Agency, the National Security Agency, and the Bureau of Intelligence and Research to enhance intelligence collection in trafficking. 180 In 2001, the Department of State also funded and implemented 110 global anti-trafficking projects in more than fifty countries 181 to focus on protection, prevention, and prosecution. In

¹⁷³ See, e.g., id. at 70.

¹⁷⁴ See id.

¹⁷⁵ Id. at 70-71 n.3.

Dobriansky Conference Remarks, supra note 49.

¹⁷⁷ 2005 TIP REPORT, *supra* note 2, at 245.

¹⁷⁸ *Id*.

¹⁷⁹ Implementation Hearing, supra note 9, at 11.

¹⁸⁰ Id. at 12.

²⁰⁰² TIP REPORT, supra note 2, at 5.

2004, the TIP office supported more than fifty anti-trafficking programs abroad. 182

The United States Agency for International Development (USAID) has worked diligently to incorporate the key elements of the TVPA into its overseas programs. USAID has implemented trafficking programs in eighty of its overseas missions in which twenty-four countries now have anti-trafficking activities in place. ¹⁸³ In 2001, USAID spent \$6.2 million on direct anti-trafficking activities in many regions of the world. ¹⁸⁴ USAID is committed to playing a critical role in the implementation of the TVPA in developing and transitioning countries, ¹⁸⁵ focusing its efforts on countries in Tiers 2 and 3 of the TIP Reports. ¹⁸⁶ More needs to be done in these preventional efforts.

D. Increased Investigations, Arrests, and Prosecutions Abroad

The United States has supported programs in foreign countries that have resulted in increased arrests and convictions overseas. For example, in Albania, the United States supported Delta Force, an organized crime unit that arrested child traffickers and public officials. The Office of Internal Control arrested police officers for complicity in trafficking in Albania. In 2002, Albania prosecuted 144 cases, resulting in seventeen convictions. Thirty-one of those prosecuted cases involved police complicity. Likewise, in Romania, the United States supported the establishment of the Southeast European Cooperative Initiative, involving fourteen nations and resulting in four successful operations to arrest and convict traffickers and enabling the safe return of hundreds of Romanian women and children. In 2002, 150 people were convicted under various provisions of the new antitrafficking law in Romania.

Pursuant to the mandates of the TVPA, the United States has supported the establishment of concurrent multilateral and in-country law enforcement operations to break up trafficking crime rings and to rescue victims. ¹⁹² In 2002, Belarus tried ninety cases of trafficking, resulting in the

¹⁸² 2005 TIP REPORT, *supra* note 2, at 245.

¹⁸³ Implementation Hearing, supra note 9, at 39.

¹⁸⁴ Id

¹⁸⁵ See id. at 41.

¹⁸⁶ Id. at 42.

Dobriansky Conference Remarks, *supra* note 49.

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¹⁸⁹ 2003 TIP REPORT, *supra* note 2, at 22.

¹⁹⁰ *Id.* at 125–26.

¹⁹¹ Id

Dobrianksy Conference Remarks, supra note 49.

prosecution of thirty-five defendants and the termination of ten organized crime groups. 193

Globally, there were 7,992 prosecutions in 2003 compared to a decrease in 2004 when there were only 6,885. ¹⁹⁴ But in 2003, there were 2,815 convictions compared to 3,025 convictions in 2004. ¹⁹⁵ Moreover, in 2003, twenty-four states added new trafficking legislation or amended existing legislation. In 2004, thirty-nine states added new trafficking legislation or amended existing legislation. ¹⁹⁶ Note that the reported number of prosecutions decreased in 2004 compared to the prior year, but the number of trafficking convictions actually increased, which is a significant factor in measuring impact.

E. Measures Taken by Foreign Countries to Combat Trafficking

Countries in Tier 1 must have effective anti-trafficking laws and must be in compliance with minimum standards. Some Tier 1 countries, such as Belgium, have trafficking laws that are similar to the TVPA. ¹⁹⁷ For example, the Belgian government consistently assists victims who agree to testify by providing them with temporary work authorization and even permanent residence in Belgium upon completion of the trial. ¹⁹⁸

Tier 2 countries often do not have a specific penal code provision criminalizing the act of trafficking itself, but are making serious and sustained efforts to be in compliance with minimum standards. ¹⁹⁹ In many of the Tier 2 countries, no anti-trafficking legislation exists at all. ²⁰⁰ In these countries constitutional provisions against human bondage may exist, but without legislation to enforce them. ²⁰¹ If other criminal statutes prohibiting slavery or child labor exist to help prosecute traffickers, enforcement is found to be too weak to be effective. ²⁰² In some Tier 2 countries, such as Bangladesh, ²⁰³ anti-trafficking legislation exists with penalties as severe as

¹⁹³ 2003 TIP REPORT, *supra* note 2, at 30.

¹⁹⁴ 2005 TIP REPORT, *supra* note 2, at 34.

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Id. at 32.

¹⁹⁸ *Id.* at 16.

¹⁹⁹ 2001 TIP REPORT, *supra* note 2, at 5.

²⁰⁰ 2001 TIP REPORT, *supra* note 2, at 31. Benin, Burkina Faso, Bulgaria, Cote d'Ivoire, and France are examples of such countries. *Id*.

²⁰¹ 2001 TIP REPORT, supra note 2, at 29. Angola is one such country. Id.

²⁰² Id. at 46.

²⁰³ See 2001 TIP REPORT, *supra* note 2, at 35. Cambodia passed a trafficking in persons statute with a penalty stiffer than those for rape and sexual assault; China also has a trafficking law with sentences as severe as for rape. *Id.* at 37.

those for rape, but rampant corruption among police, border, and immigration officials severely undermines law enforcement efforts.²⁰⁴

The 2003 reauthorization of the TVPA created a Tier 2 Watch List of countries on the TIP Report that should receive special scrutiny. There were forty-two countries placed on the Tier 2 Watch List in the 2004 TIP Report. An interim assessment was released on January 3, 2005 and forty-six countries appeared on the Special Tier 2 Watch List. In 2005, thirty-one of the countries on the Tier 2 Watch List moved up to Tier 2. Five countries on the Tier 2 Watch List fell to Tier 3 and ten remained on the Tier 2 Watch List for a second consecutive year.

Tier 3 countries are the worst offenders because they lack trafficking laws, and they are not making serious or sustained efforts to achieve compliance with minimum standards for the elimination of trafficking.²¹⁰ However, several Tier 3 countries have "significantly increased their efforts to combat trafficking since the issuance of the Department of State's 2001 TIP Report."²¹¹ For example, South Korea moved from Tier 3 to Tier 1 after making extraordinary attempts to eliminate trafficking immediately after the publication of the 2001 TIP Report.²¹² Similarly, Romania and Israel demonstrated a stronger and clearer commitment to implement a wide range of activities to combat trafficking in 2001, and they both moved from Tier 3 to Tier 2 in 2002.²¹³ But Israel fell back down to Tier 2 watchlist in 2006. Albania, Gabon, Kazakhstan, Malaysia, Pakistan, and Yugoslavia also moved from Tier 3 to Tier 2 in 2002 because of responses to the 2001 TIP Report in particular, and the TVPA in general.²¹⁴

Countries that were placed in Tier 2 in 2001 and in Tier 1 in 2002 because of their significant efforts to fully comply with minimum standards include the Czech Republic, France, Lithuania, Macedonia, and Poland. Only a small number of countries dropped from Tier 2 in 2001 to Tier 3 in

²⁰⁴ 2001 TIP REPORT, *supra* note 2, at 30.

²⁰⁵ 2005 TIP REPORT, *supra* note 2, at 26.

²⁰⁶ *Id*.

²⁰⁷ *Id*.

²⁰⁸ *Id.* at 26-28.

²⁰⁹ Id. at 28.

²¹⁰ *Id.* at 5.

²¹¹ 2002 TIP REPORT, *supra* note 2, at 12.

²¹² *Id*.

²¹³ *Id*.

²¹⁴ *Id.* at 12.

²¹⁵ Id. at 12-13.

2002 due to their disappointing efforts to comply with minimum standards.²¹⁶

The high degree of movement of countries from one tier to another is an indication that the TVPA has had an international impact on countries that have actively taken measures to comply with the minimum standards. For example, in 2001 there were twelve countries at Tier 1, forty-seven countries at Tier 2 and twenty-three countries at Tier 3.217 In 2002. there were eighteen countries at Tier 1, fifty-three countries at Tier 2, and nineteen countries at Tier 3.218 In 2003, there were twenty-six countries at Tier 1, seventy-five countries at Tier 2, and fifteen countries at Tier 3.219 In 2004, there were twenty-four countries in Tier 1, seventeen countries in Tier 2, twenty-seven countries on the Tier 2 Watch List, and fourteen countries on Tier 3.220 The number of countries at Tier 1 (full compliance) has literally more than doubled since the enactment of the TVPA and the publication of the TIP Reports. Thus, there has been a steady increase in the number of countries that are in full compliance with the minimum standards. This trend indicates a positive effect of the TVPA. There was also a steady increase in the number of countries at Tier 2. This reflects movement of certain countries from Tier 3 to Tier 2, as well as the receipt by the State Department of more documentation on certain countries which were not listed on the 2001 Report, but were listed for the first time on the 2002 report.²²¹ There was a steady, though small, decrease in the number of Tier 3 countries—from twenty-three in 2001 to nineteen in 2002, fifteen in 2003, ten in 2004, fourteen in 2005, and twelve in 2006—due to the measures taken by foreign countries to comply with the minimum standards set forth in the TIP Reports.²²² This trend is also an indication of the positive international impact the TVPA has had on reducing trafficking in foreign source and transit countries.

²¹⁶ Compare 2001 TIP REPORT, supra note 2, at 12 (listing number of countries in Tier 2) with 2002 TIP REPORT, supra note 2, at 17 (showing countries in Tier 3).

²⁰⁰¹ TIP REPORT, *supra* note 2, at 12.

²¹⁸ 2002 TIP REPORT, *supra* note 2, at 17.

²¹⁹ 2003 TIP REPORT, *supra* note 2, at 21.

²²⁰ See 2005 TIP REPORT, *supra* note 2, at 42. In 2005, the following fourteen countries were on Tier 3: Bolivia, Burma, Cambodia, Cuba, Ecuador, Jamaica, Kuwait, North Korea, Qatar, Saudi Arabia, Sudan, Togo, United Arab Emirates, and Venezuela.

²²¹ Compare 2002 TIP REPORT, supra note 2, at 17, with 2001 TIP REPORT, supra note 2, at 12.

Compare 2001 TIP REPORT, supra note 2, at 12; and 2002 TIP REPORT, supra note 2, at 17,

and 2003 TIP REPORT, supra note 2, at 21, with 2004 TIP REPORT, supra note 2, at 39.

Many developing and transitioning countries cannot afford to implement sophisticated measures to deter trafficking. However, many of these nations are taking low cost measures to reduce trafficking and to achieve compliance with the minimum standards set forth in the TVPA. For example, many African nations now issue "red cards" at major sporting events, such as soccer games, to discourage child labor. Benin educates the transporters of sex trafficking victims about the dangers of this activity. Women in Bangladesh have gone on mass marches protesting against sex slavery. Sierra Leone has instituted radio broadcasts, called "Voice of the Children," to stop child labor and sex slavery. Nepal puts former victims of sex trafficking to work as border monitors in order to identify potential victims of trafficking. South Korea humiliates brothel owners by closing the brothels and exposing the name of the rich owner. These anti-trafficking efforts made by foreign countries in 2001–2002 to comply with the TVPA minimum standards are a clear indication of the small but positive international impact of the TVPA towards accomplishing the goal of elimination of trafficking.

F. New Trafficking Legislation in Foreign Countries Post TVPA

Examining the recent trafficking legislation of specific countries also provides evidence of the legislative international impact of the TVPA. The U.S. Department of State released a Model Law to Combat Trafficking in Persons in March of 2003.²³¹ This law was modeled after certain recently-enacted foreign anti-trafficking laws, (e.g. the Kosovo trafficking law, the Romanian trafficking law), the U.N. Palermo Protocol, and the TVPA. The Model Law states that:

[the authority] . . . shall provide victims of trafficking and accompanying dependent children with appropriate visas or other required authorization to permit them to remain in [the country] for the duration of the criminal prosecution against the traffickers, provided that the victim is willing to comply with reasonable requests, if any, to assist in the investigation or prosecution of the traffickers . . . [v]ictims of trafficking shall be eligible

See 2003 TIP REPORT, supra note 2, at 18.

²²⁴ See id. at 18–20.

²²⁵ Id. at 18.

²²⁶ Id.

²²⁷ *Id.* at 19.

²²⁸ Id

²²⁹ 2003 TIP REPORT, *supra* note 2, at 20.

²³⁰ Id

²³¹ See generally Model Law to Combat Trafficking in Pers. § 306 (2003), http://www.humantrafficking.com/humantrafficking/toolkits ht3/DOS Model Law.htm.

for permanent residence . . . provided they have complied with reasonable requests . . . [a] victim's spouse and children . . . shall be eligible to join the victim 232

Anti-trafficking laws in most parts of the world, including countries of the Middle East, Latin America, Africa, and Asia, still consider deportation of trafficked victims to be traditional immigration law practice; however, some countries have recently followed the United States model by granting T-visa type benefits and a stay of deportation to trafficking victims. For example, Belgium, Italy, and the Netherlands allow victims a three-month temporary stay with costs paid, to provide victims with enough time to decide whether they wish to testify against their traffickers.²³³ Greece now permits victims willing to testify against traffickers to remain in the country, but it is within the prosecutor's discretion to provide this protection.²³⁴ Likewise, Israel now provides housing with room, board, and pocket money to victims willing to testify against their traffickers.²³⁵ These are some of the examples that indicate the positive impact of the TVPA on the enactment of anti-trafficking legislation in foreign countries.

IV. CONCLUSION

In just six short years, the TVPA has had a slow but steady domestic and international impact on sex trafficking activities. Domestically, there is no doubt that the TVPA has helped reform the bad United States policy of punishing the sex-trafficked victim rather than the perpetrator. The passage of the TVPA has succeeded in making a broad change in policy by establishing harsher penalties for traffickers, training law enforcement and immigration personnel to recognize victims, providing benefits, services, and resources to victims, and in some cases, issuing T-visas that allow victims to remain permanently and work in the United States. Only 150 T-visas were processed in 2003, though 5,000 are available. This low number may indicate that victims of trafficking are fearful of reprisals in the United States and for their families abroad, or that they distrust the effectiveness of witness protection programs. The TVPA has also resulted in a small, but important, increase in arrest and convictions of traffickers both in the United States and in some countries abroad, where financial assistance and

²³² Id.

Bonded Labour in Netherlands, co-project of Novib and Humanitas, *Provisions for Victims of Trafficking in Bonded Sexual Labour, i.e. Prostitution*, at 20, 32 (2002), available at http://www.humanitas.nl/project/Blinn Final Report.pdf.

²³⁴ 2003 TIP REPORT, *supra* note 2, at 72.

²³⁵ Id. at 84

Saga of Susannah, supra note 11, at 166–67.

advice of the United States have been used effectively to amend existing trafficking laws or create new laws imitating the TVPA. From 2000 to 2003, only ninety-two defendants were prosecuted for trafficking, and only four cases have applied the TVPA, whereas there are fifty thousand victims reportedly trafficked into the United States every year. More recently, the number of victims reportedly trafficked into the United States every year is given as 17,500. This smaller number of trafficked victims in the United States could be due to the positive impact of the TVPA to deter the crime or simply due to the unreliability of statistics in this very secretive and shameful international business of buying and selling human cargo. The ratio of convictions to victims is woefully low, but the small increase in investigations and convictions shows movement in the right direction. In order to reduce the amount of human trafficking into the United States we need to step up efforts at prevention and increase support for NGOs on the ground to raise public awareness of the crime and its direct link to slavery. We should make better use of the media to create a moral outcry, condemn this inhumane practice that negatively impacts women and children, and educate our young girls and their parents about the signs of trafficking and the dangers of abduction into sexual slavery. We must unbalance the economic advantage of trafficking young girls into sexual slavery by increasing the risk and the severity of the sentence imposed on the perpetrators.

Internationally, the TVPA has resulted in the increase of U.S. economic and social assistance to other countries to support the creation, enactment and enforcement of anti-trafficking legislation abroad, to strengthen existing foreign anti-trafficking legislation, to educate potential victims in foreign countries in recognizing the dangers of trafficking, and to establish victim assistance programs abroad. The TVPA mandates annual reporting by an Interagency Task Force chaired by the United States Secretary of State. The annual report indicates the status of other nations' efforts to curb human trafficking, and includes an investigation of the incidence of trafficking in foreign countries, as well as a published ranking of foreign countries into four different tiers, depending upon the degree of trafficking in the country and the progress of the country in combating trafficking. Tier 1 countries must be in full compliance with four minimum standards enumerated in the TVPA for the elimination of severe forms of trafficking. Tier 1 countries must also have a trafficking law.

²³⁷ Id. at 169-70. See also Deb Riechmann Human Trade Nets 3 Nations U.S. Penalty, ORLANDO SENTINEL, Sept. 11, 2003, at A9 (reporting that "[t]he United States will impose sanctions on Cuba, Myanmar and North Korea for failing to take steps to stop human trafficking....").

Victims of Trafficking and Violence Protection Act of 2000 § 104, (codifed as amended at 22 U.S.C. § 2151n (2006)).

Id. See also Saga of Susannah, supra note 11, at 171.

Tier 2 countries are those that do not fully comply with minimum standards but are making significant and sustained efforts towards compliance. Tier 2 Watch List countries show no evidence of increasing efforts to combat severe forms of trafficking and have significant numbers of severe trafficking victims, although they promise to make substantial efforts to comply in the future. Tier 3 countries do not comply with minimum standards and are not making significant efforts to eradicate the crime of trafficking. Tier 3 countries are subject to sanctions as of October 2003. In 2005, the United States imposed sanctions on Cuba, Myanmar, and North Korea, three of the fourteen states on Tier 3.

Through the small increase of arrests and convictions of traffickers in the United States and the establishment and implementation of regulations, criminal statutes, published annual reports, and international assistance, the TVPA has not only made progress in the domestic fight against trafficking, but it has also positively impacted attempts made by other nations to deter this transnational crime. Trafficking is nothing less than a living legacy of slavery that exists in the United States and countries abroad, and it will take nothing less than an international effort to eliminate the traces of this heinous crime. The fight has just begun, and the United States is playing an important role in eradicating sex trafficking by legislative example, interagency cooperation, and multilateral efforts. The fight to end sex trafficking must continue; more traffickers must be brought to justice; and more work must be undertaken to target the demand and the international crime organizations that support this modern-day form of slavery.

Victims of Trafficking and Violence Protection Act of 2000 § 104.

Riechmann, supra note 239, at A9; 2005 TIP REPORT, supra note 2, at 42.