



Trafficking in Persons: U.S. Policy and Issues for Congress

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Summary

Trafficking in persons (TIP) for the purposes of exploitation is believed to be one of the most prolific areas of international criminal activity and is of significant concern to the United States and the international community. The overwhelming majority of those trafficked are women and children. According to Department of State estimates, roughly 800,000 people are trafficked across borders each year. If trafficking within countries is included in the total world figures, official U.S. estimates are that some 2 to 4 million people are trafficked annually. However, there are even higher estimates, ranging from 4 to 27 million for total numbers of forced or bonded laborers. As many as 17,500 people are believed to be trafficked to the United States each year. Human trafficking is now a leading source of profits for organized crime syndicates, together with drugs and weapons, generating billions of dollars. TIP affects virtually every country in the world.

Since enactment of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), the Administration and Congress have aimed to address the human trafficking problem. The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA of 2005), which President Bush signed into law on January 10, 2006 (P.L. 109-164), authorized appropriations for FY2006 and FY2007. The 110th Congress passed The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457, signed into law on December 23, 2008). The Act, among other provisions, authorizes appropriations for FY2008 through FY2011.

On June 16, 2009, the State Department issued its ninth annual, congressionally mandated report on human trafficking. In addition to outlining major trends and ongoing challenges in combating TIP, the report provides a country-by-country analysis and ranking, based on what progress foreign countries have made, from April 2008 through March 2009, in their efforts to prosecute, protect, and prevent TIP. The report categorizes countries into four “tiers” according to the government’s efforts to combat trafficking. Those countries that do not cooperate in the fight against trafficking (Tier 3) have been made subject to U.S. foreign assistance sanctions. The Tier 3 group named in 2009 includes a total of 17 countries: Burma, Chad, Cuba, Eritrea, Fiji, Iran, Kuwait, Malaysia, Mauritania, Niger, North Korea, Papua New Guinea, Saudi Arabia, Sudan, Swaziland, Syria, and Zimbabwe. In September 2009, President Barack Obama determined that two Tier 3 countries will be sanctioned without exemption (Cuba and North Korea) and that six Tier 3 countries will be partially sanctioned (Burma, Eritrea, Fiji, Iran, Syria, and Zimbabwe).

Obligations for global and domestic anti-TIP programs, not including operations and law enforcement investigations, totaled approximately \$99.4 million in FY2008. The second session of the 111th Congress may continue to exercise its oversight of TIP programs and operations. Related policy issues include how to measure the effectiveness of the U.S. and international responses to TIP, including the State Department’s annual TIP rankings, the use of unilateral sanctions, and how to balance border control and law enforcement efforts against TIP perpetrators with victim prevention and rehabilitation efforts. Other issues are whether to include all forms of prostitution in the global definition of TIP, and whether sufficient efforts are applied to addressing all forms of TIP, including not only sexual exploitation, but also forced labor and child soldiers.

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Background

Trafficking in persons (TIP) for the purposes of exploitation is both an international and a domestic crime that involves violations of labor, public health, and human rights standards. In 2006, the Federal Bureau of Investigations (FBI) estimated that human trafficking generates approximately \$9.5 billion annually for organized crime.¹ Human trafficking is of great concern to the United States and the international community. Anti-TIP efforts have accelerated in the United States since the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA, P.L. 106-386) and internationally since the passage of the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, adopted in 2000. Congress has been active in evaluating U.S. anti-trafficking laws and programs, and since 2000, has reauthorized the TVPA several times. Most recently, the 110th Congress passed the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (P.L. 110-457), which, among other provisions, authorized appropriations for FY2008 through FY2011 and established a requirement for the President to develop a system to evaluate the effectiveness of TIP assistance. (For a discussion of these statutes, see **Appendix A.**)

This report focuses on human trafficking both internationally and within the United States. The report begins with an overview of human trafficking including a discussion of the definition of human trafficking, the scope of the problem globally, and an examination of the victims. It follows with an analysis of global anti-trafficking efforts by the United States and the international community. The report then focuses on trafficking into and within the United States, examining relief for trafficking victims in the United States and discussing U.S. law enforcement efforts to combat domestic trafficking. The report concludes with an overview of anti-trafficking legislation and an analysis of policy issues related to human trafficking.

Definitions

The United Nations and the United States generally characterize human trafficking in similar terms. The United Nations defines human trafficking as:

The 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 or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal of organs.²

Additional examples of human trafficking exploitation suggested by the United Nations include forced involvement in criminal activities; begging, including child begging; forced marriage;

¹ This figure was cited in the U.S. Department of State, *Trafficking in Persons Report*, June 2006.

² United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, “Annex 11: Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,” Article 3a (2004).

illicit adoption; and exploitation in the military, including child soldiers and forced participation in armed conflicts.³

The TVPA, as amended, does not define human trafficking per se. However, it does define “severe forms of human trafficking” as:

Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or ... the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁴

In the case of minors, there is general agreement in the United States and much of the international community that the trafficking term applies whether a child was taken forcibly or voluntarily. In both the U.N. and U.S. definitions, there is no distinction between trafficking domestically within the borders of a single country and international or cross-border trafficking. Notably, international or transnational trafficking may involve victims of trafficking and traffickers crossing political boundaries overtly and covertly, legally and illegally.

Distinctions also exist between human *trafficking* and human *smuggling*. Alien smuggling involves the provision of a service, generally procurement or transport, to people who knowingly consent to that service in order to gain illegal entry into a foreign country. It ends with the arrival of the migrant at their destination. The U.S. Department of Justice asserts that the existence of “force, fraud, or coercion” is what distinguishes trafficking from human smuggling.⁵ Under U.S. immigration law, a trafficked alien is a victim, while an alien who consents to be smuggled may be subject to criminal prosecution and deportation.

Scope of the Problem

TIP is considered to be one of today’s leading criminal enterprises and is believed to affect virtually all countries around the globe. According to the United Nations, governments reported the trafficking of people originating from 127 countries and exploited in 137 countries worldwide from 1996 to 2003.⁶ Despite limited data on the nature and severity of the problem, the U.S. government (USG) estimates that approximately 600,000 to 800,000 people are trafficked across borders each year—80% of whom are female and up to 50% of whom are minors.⁷ If trafficking within countries is included in the total world figures, official U.S. estimates are that 2 to 4 million people are trafficked annually. The International Labor Organization (ILO) estimates that there are at least 2.4 million persons in the process of being trafficked at any given moment, generating profits as high as \$32 billion (USD).⁸ The accuracy of these and other estimates,

³ United Nations Office on Drugs and Crime (UNODC), “Human Trafficking: An Overview,” 2008, p. 13.

⁴ Sec. 103(8) of Div. A of P.L. 106-386, *Victims of Trafficking and Violence Protection Act of 2000*; H.R. 3244, approved October 28, 2000; 22 U.S.C. 7102.

⁵ U.S. Department of Justice, Human Smuggling and Trafficking Center, “Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking,” January 2005.

⁶ UNODC, *Trafficking in Persons: Global Patterns*, April 2006.

⁷ U.S. Department of State, *Trafficking in Persons Report*, June 2008. Notably, the estimate of 600,000 to 800,000 people trafficked across borders each year is from 2003.

⁸ International Labor Organization (ILO), “ILO Action against Trafficking in Human Beings,” 2008.

however, have been questioned. The U.S. Government Accountability Office (GAO) released a report in 2006 casting doubt on the methodology and reliability of official USG figures. It concluded that the “U.S. government has not yet established an effective mechanism for estimating the number of victims or for conducting ongoing analysis of trafficking related data that resides within various government agencies.”⁹ Figures provided by other international organizations are unlikely to be any more accurate.

In most reported instances, TIP involves the movement of victims across national borders. Such international, or cross-border, trafficking may differ in the relative distances from a victim’s country of origin and the location where the victimization takes place. Most international TIP occurs between countries within the same geographic region or between neighboring countries. In other instances, international trafficking involves long-distance flows—across continents or across distinct geographic regions.

International patterns of victim flows also differ in terms of the frequency with which destination country authorities identify victims from a certain region of origin and the breadth of foreign countries in which victims of a certain region of origin are found. For example, East Asians have been reportedly found in more than 20 countries across at least five distinct geographic regions (Europe, the Americas, the Middle East, Central Asia, and Africa).¹⁰ By contrast, victims from West Africa are detected mainly in just a few countries in Europe, but with a greater frequency of detection than East Asians.

Throughout the world, sex trafficking victims have traditionally ended up in large cities, in vacation and tourist areas, or near military bases, where the demand for sex workers is high. In addition to the sex industry, victims are trafficked to work in seasonal agriculture, manufacturing (particularly the garment industry), construction, and domestic service. These global trends may change, however, as traffickers adapt to new or emerging vulnerabilities and opportunities. For example, press reports indicate that a combination of newfound energy wealth and lax anti-TIP law enforcement efforts has transformed Russia, Azerbaijan, and Kazakhstan into major trafficking destinations.¹¹

A potentially significant but largely undocumented amount of trafficking also occurs within countries. According to the UNODC, such domestic trafficking occurs in both geographically large and socioeconomically stratified countries, such as India and Brazil, but also among relatively small and wealthy countries, such as those in Europe.¹²

Continuing Challenges in Combating TIP

TIP is not a new phenomenon, and many factors may account for its continuing existence. In general, the trafficking business feeds on conditions of vulnerability, including youth; gender; poverty; ignorance; social and cultural exclusion; political instability, war, and conflicts;

⁹ U.S. Government Accountability Office (GAO), “Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad,” July 2006, p. 3. (GAO-06-825).

¹⁰ UNODC and the United Nations Global Initiative to Fight Human Trafficking (UNGIFT), *Global Report on Trafficking in Persons*, February 2009.

¹¹ Radu Busneag and Khadija Ismaylova, “Weak Laws, Energy Wealth Contribute to Rise in Sex Trade,” *Radio Free Europe/Radio Liberty*, July 7, 2008.

¹² UNODC and UNGIFT, *Global Report on Trafficking in Persons*, February 2009, p. 57.

discriminatory social, cultural, and legal frameworks; and ongoing demand. The globalization of the world economy has increased the movement of people across borders, legally and illegally, especially from poorer to wealthier countries. International organized crime has taken advantage of the freer flow of people, money, goods and services to extend its own international reach. Other contributing factors include the following:

- The continuing subordination of women in many societies, as reflected in economic, educational, and work opportunity disparities between men and women.¹³ Poverty and a lack of educational and job opportunities in many countries may put children, especially girls, from families with multiple children at risk.
- The hardship and economic or physical dislocation caused by conflict, humanitarian disasters, and vulnerability of people in other situations of political crisis. With the weakening of law enforcement in post-Communist societies, for example, criminal organizations have grown and established themselves in the lucrative business of trafficking. Refugees, internally displaced persons, and those who are stateless (i.e., lacking identity documents) may also be particularly vulnerable to trafficking.¹⁴
- The high demand, worldwide, for women and children to work as sex workers, sweatshop labor, and domestic servants.¹⁵
- The increasing restrictions on legal immigration to many destination countries—including the United States and Western Europe—has caused many migrants to turn to alien smugglers and even human traffickers, despite the associated risks involved.¹⁶
- The tendency to treat trafficking victims as criminals has made many victims reluctant to cooperate with law enforcement. When police raid brothels, women are sometimes detained and punished. In some countries, they are swiftly deported. Many TIP victims are reluctant to testify against the traffickers or those who hold them, fearing retribution since most governments do not offer adequate protection for witnesses.¹⁷
- The inadequacy of laws and law enforcement capacity in some origin, transit, and destination countries hampers efforts to fight trafficking. Many countries still have no specific laws aimed at TIP. Penalties for trafficking humans are often relatively minor compared with those for other criminal activities like drug and gun trafficking.

¹³ United Nations Development Fund for Women (UNIFEM), “Trafficking in Persons, A Gender & Rights Perspective Briefing Kit,” 2002.

¹⁴ A variety of studies are discussed in Sally Cameron and Edward Newman, “Trafficking in Humans: Structural Factors,” in *Trafficking in Humans: Social Cultural and Political Dimensions*, New York: U.N. University Press, 2008.

¹⁵ UNODC, April 2006, p. 38.

¹⁶ Terry Coonan and Robin Thompson, “Ancient Evil, Modern Face: The Fight Against Human Trafficking,” *Georgetown Journal of International Affairs*, Winter 2005.

¹⁷ Janie Chuang, “Beyond a Snapshot: Preventing Human Trafficking in the Global Economy,” *Indiana Journal of Global Legal Studies*, 13, 1, Winter 2006.

- The disinterest and in some cases even complicity of governments is another major problem, according to State Department officials.¹⁸ Some law-enforcement agencies and governments ignore the plight of trafficking victims and downplay the scope of the trafficking problem. In some cases, police and other governmental authorities accept bribes and collude with traffickers by selling fake documentation, etc.

Traffickers and Their Victims

Traffickers include recruiters, transporters, exploiters, and others who enable or participate in the trade and exploitation of other people.¹⁹ Actors engaged in human trafficking range from amateur family-run organizations to sophisticated transnational organized crime syndicates. Certain aspects of trafficking in Europe, for example, are largely supported by Russian and Albanian gangs and by the Italian mafia, whereas trafficking in Asia is largely controlled by Chinese criminal groups and the Japanese Yakuza.²⁰ These international groups increasingly interact with local networks to provide transportation, safe houses, local contacts, and documentation. They are often aided by corrupt police and migration officials.

Female traffickers reportedly play a more prominent role in TIP than in other international crimes with available data.²¹ Their role in TIP may vary, ranging from managing and controlling TIP operations to helping or assisting male traffickers with certain aspects of the crime, such as victim recruitment. In some cases, female traffickers were once victims themselves.

Traffickers acquire their victims in several ways, but the primary method involves recruitment via a personal or familial contact.²² Sometimes women are kidnapped outright in one country and taken forcibly to another. In other cases, traffickers entice victims to migrate voluntarily with false promises of well-paying jobs or through false opportunities to study or travel abroad. In some cases, traffickers approach individuals or their families, often through informal networks or families and friends, directly with offers of lucrative jobs elsewhere. Russian crime gangs, for example, reportedly use marriage agency databases and matchmaking parties to find victims. After providing transportation and false documents to get victims to their destination, they subsequently charge exorbitant fees for those services, often creating life-time debt bondage. In the case of trafficked children, traffickers may simply purchase them from their guardians.

Traffickers have increasingly begun to rely on a recruitment technique known as “happy trafficking.” Victims who have worked off their debts are released on the condition that they send

¹⁸ Ambassador Mark P. Lagon, Director, State Department Office to Monitor and Combat Trafficking in Persons (G-TIP), Remarks at “Human Trafficking and Freedom Event,” December 3, 2007, available at <http://www.state.gov/g/tip/rls/rm/07/96171.htm>.

¹⁹ UNGIFT, “Profiling the Traffickers,” Background Paper for the Vienna Forum to Fight Human Trafficking, February 2008, Vienna, Austria.

²⁰ Phil Williams, “Trafficking in Women: the Role of Transnational Organized Crime,” in *Trafficking in Humans*, Cameron and Newman, eds. New York: U.N. University Press, 2008.

²¹ UNGIFT, “Profiling the Traffickers,” Background Paper for the Vienna Forum to Fight Human Trafficking, February 2008, Vienna, Austria.

²² See UNODC, April 2006, pp. 57-80; UNODC and UNGIFT, *Human Trafficking: An Overview*, 2008, pp.11-12.

someone back to replace them. This technique enables traffickers to avoid detection by using former victims to do their bidding.²³

According to a UNODC study covering the time period 2003-2006, victims were found to be, on average, 65%-75% female, 15%-25% minors, and approximately 15% male.²⁴ The same study found, for 2006, that the overwhelming majority of detected cases were victims of trafficking for sexual exploitation (79%), with a significant minority of detected cases involving victims of forced labor (18%). Child soldiers have been reportedly used in more than 300 ongoing or recent armed conflicts worldwide.²⁵

Among women victims, while there is no single victim stereotype, the majority of trafficked women are under the age of 25, with many in their mid- to late teens. In Latin America, for example, research indicates that children tend to be trafficked within their own countries, while women between the ages of 18 and 30 are often trafficked internationally, sometimes with the consent of their husbands or other family members.²⁶ The fear of infection with HIV/AIDS among customers has driven traffickers to recruit younger women and girls, erroneously perceived by customers to be too young to have been infected.

Trafficking victims are often subjected to mental and physical abuse in order to control them, including debt bondage, linguistic and social isolation, removal of identification cards and travel documents, violence and fear of reprisals against them or their families, psychological imprisonment and torture, and exploitation of magical beliefs and practices. In the case of sexual exploitation, once victims are brought into destination countries, their passports are often confiscated. Victims are forced to have sex, often unprotected, with large numbers of partners, and to work unsustainably long hours. Many victims suffer mental break-downs and are exposed to sexually transmitted diseases, including HIV/AIDS. A recent study conducted in six countries in South Asia by the U.N. Development Program (UNDP) found that trafficking victims are particularly vulnerable to HIV/AIDS infection. This vulnerability is exacerbated by the fact that TIP victims are often denied medical care by their traffickers. Those who become ill are sometimes even killed.²⁷

U.S. Funding for Global Anti-Trafficking Programs

The USG supports many types of anti-trafficking (anti-TIP) initiatives overseas and domestically. U.S. anti-trafficking activities are authorized by the Trafficking Victims Protection Act (TVPA) of 2000 (P.L. 106-386), as amended. For a list of authorizations for all overseas and domestic anti-trafficking activities, see **Table B-1** in **Appendix B**. Since many USG agencies do not have a line item in their budget requests for trafficking programs and/or TIP-related operations, it is often difficult to calculate exact levels of funding that have been appropriated by Congress to each

²³ William Finnegan, "The Countertraffickers," *New Yorker*, May 5, 2008.

²⁴ UNODC and UNGIFT, *Global Report on Trafficking in Persons*, February 2009, p. 57.

²⁵ UNODC and UNGIFT, *Human Trafficking: An Overview*, 2008, p. 8 and p. 28.

²⁶ Laura Langberg, "A Review of Recent OAS Research on Human Trafficking in the Latin American and Caribbean Region," in *Data and Research on Human Trafficking: A Global Survey*, International Organization for Migration (IOM), 2005.

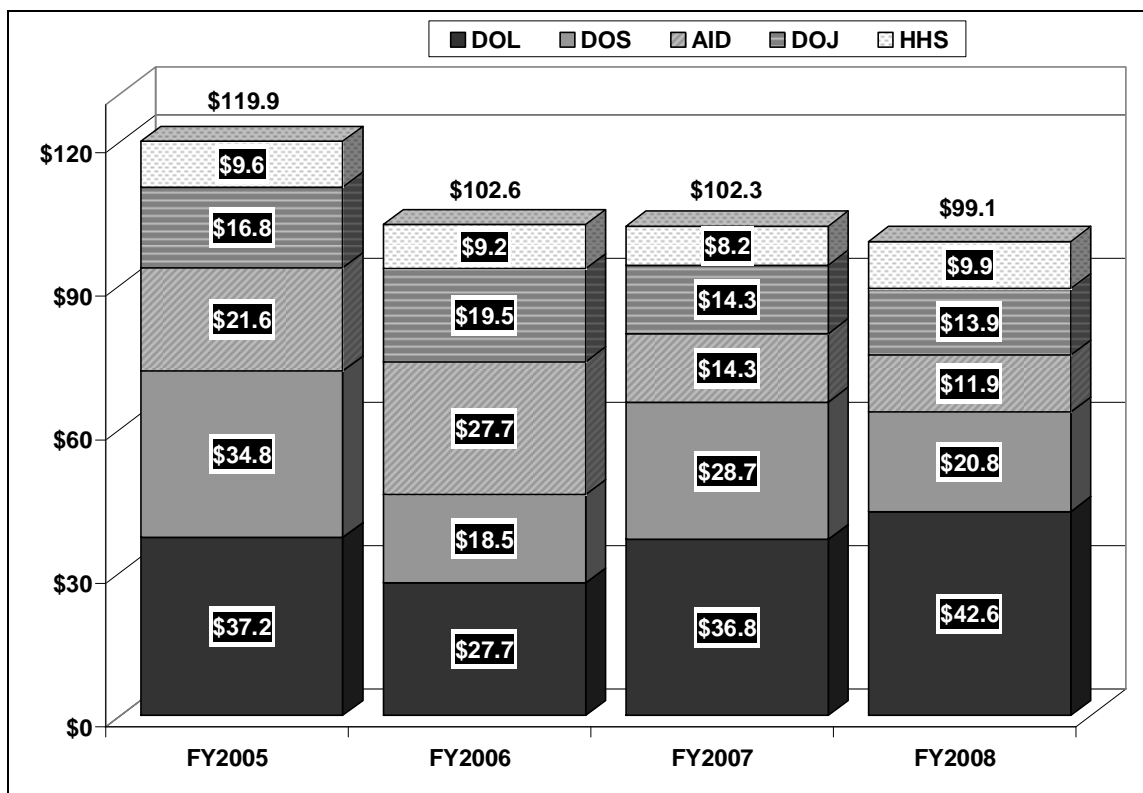
²⁷ U.N. Development Program (UNDP), "Human Trafficking and HIV," August 2, 2007. For resources on trafficking and health, see U.S. Department of State, Bureau of Public Affairs, "Fact Sheet: Health Consequences of Trafficking in Persons," August 8, 2007.

agency for trafficking activities (programs and operations/law enforcement activities). See **Appendix B** for a more detailed discussion of TIP funding issues. Due to the methodological difficulties involved in calculating TIP appropriations and the fact that TIP programs are supported by foreign aid accounts that can be appropriated to remain available for two years, the State Department calculates TIP program obligations by agency per fiscal year. According to G-TIP, this generates the best estimate of the amount of funding spent on TIP programs by agency for each fiscal year.

Figure 1 depicts domestic and international anti-TIP obligations by agency for FY2005 through FY2008. FY2009 obligations and the FY2010 requests by agency are not yet available for all agencies. In FY2008, the USG obligated an estimated \$75.9 million in anti-trafficking assistance to foreign governments, down from the \$79.4 million obligated in FY2007. In FY2008, the USG obligated roughly \$23.2 million for domestic anti-TIP programs, up slightly from the \$22.9 million obligated in FY2007. The total for domestic obligations does not include the costs of administering TIP operations or TIP-related law enforcement investigations. The State Department's FY2010 Congressional Budget Justification (CBJ) for Foreign Operations, released in May 2009, included for the first time a breakdown of it and the U.S. Agency for International Development's (USAID's) combined budget request for international anti-TIP assistance by country and by aid account. The FY2010 CBJ requests \$31.5 million for anti-TIP efforts in 25 countries and the G-TIP office.²⁸

²⁸ See pp. 219-220 at <http://www.state.gov/f/releases/iab/fy2010cbj/pdf/index.htm>.

Figure I. Anti-TIP Obligations by Agency: FY2005-FY2008
(in millions)



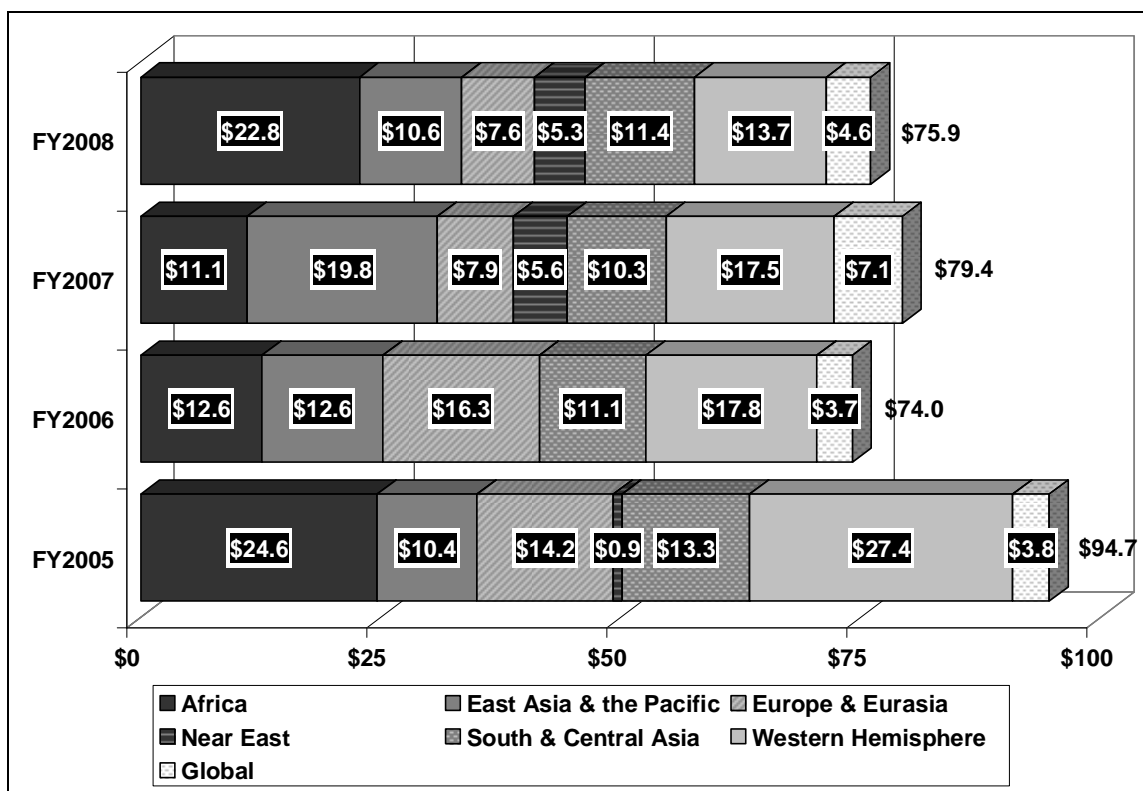
Source: CRS presentation of data from the U.S. Department of State, Global Office on Trafficking in Persons.

Note: Numbers may not total due to rounding. Domestic obligations, which are included in this chart, do not include the costs of administering TIP operations or TIP-related law enforcement investigations.

While some U.S. funding supports the anti-TIP efforts of the United Nations and other international organizations, the bulk of U.S. anti-trafficking programs abroad is administered by the State Department, USAID, and the Department of Labor (DOL). With regard to foreign assistance administered by the State Department and USAID, anti-TIP aid is disbursed through four program accounts: Development Assistance (DA); Economic Support Fund (ESF); Assistance for Europe, Eurasia, and Central America (AEECA); and International Narcotics Control and Law Enforcement (INCLE). Within the State Department, the Bureau of Population, Refugees, and Migration (PRM) funds programs focused on victim’s assistance, return, and reintegration. The Office to Monitor and Combat Trafficking in Persons (G-TIP) and the Bureau of Europe and Eurasian Affairs (EUR) support prevention and public awareness campaigns, victim’s assistance programs, and anti-TIP law enforcement programs. G-TIP and the Bureau of Education and Cultural Exchanges (ECA) also sponsor TIP-related research and exchange programs. USAID has supported prevention programs that include education and income generation for potential victims, protection programs, including training and support for local victim services providers, and anti-TIP training for police, prosecutors, and judges. The Department of Labor’s Bureau of International Labor Affairs (ILAB) supports programs that focus on providing assistance to child victims of trafficking and preventing trafficking and forced labor through policy and legislative reform, public awareness campaigns, and capacity-building for governments and service providers. The Departments of Homeland Security (DHS) and the Department of Justice (DOJ)’s International Criminal Training Assistance Program (ICITAP) also provide some anti-TIP training to law enforcement and judicial officials overseas.

Figure 2 provides a regional breakdown of U.S. international anti-TIP obligations from FY2005 through FY2008 by geographic region. In FY2008, U.S. funding for global anti-TIP activities supported roughly 140 international anti-trafficking programs in some 70 countries.²⁹ The majority of international anti-TIP programs supported by the United States are either regional or aimed at helping countries resolve specific challenges they have had in addressing human trafficking.³⁰

Figure 2. International Anti-TIP Obligations by Region: FY2005-FY2008
(in millions)



Source: CRS presentation of data from the U.S. Department of State, Global Office on Trafficking in Persons.

Note: Numbers may not total due to rounding. Domestic obligations are not included in this chart.

²⁹ For a comprehensive list of all projects funded in FY2008, see <http://www.state.gov/g/tip/rls/reports/2009/121506.htm>.

³⁰ The countries with the largest numbers of programs obligated in recent years include several of the countries selected in 2004 by President George W. Bush as eligible to receive a combined total of \$50 million in strategic anti-TIP assistance. The \$50 million consists of projects, the bulk of which were obligated in FY2004 and FY2005, that were approved by an inter-agency Senior Policy Operating Group (SPOG) on human trafficking and the Deputy Secretary of State for each region. Funding for the President’s initiative came from channeling funds from existing aid programs to the countries identified to participate in the initiative. The funds came from roughly \$25 million in FY2003 Child Survival and Health monies, \$12.5 million in FY2004 Economic Support Funds, and \$12.5 million in FY2005 Economic Support Funds. The President chose countries based on the severity of their trafficking programs, as well as their willingness to cooperate with U.S. agencies to combat the problem. They included Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania. As a result of this initiative, U.S. anti-TIP assistance to foreign governments spiked in FY2004 and FY2005, but is now on a downward trajectory.

U.S. anti-trafficking policy has long emphasized prevention, protection, and prosecution (the three “Ps”). Prevention programs have combined public awareness and education campaigns with education and employment opportunities for those at risk of trafficking, particularly women and girls. Protection programs have involved direct support for shelters, as well as training of local service providers, public officials, and religious groups. Programs to improve the prosecution rates of traffickers have helped countries draft or amend existing anti-TIP laws, as well as provided training for law enforcement and judiciaries to enforce those laws. U.S. policy has recently placed a new, more “victim-centered” focus on rescue, rehabilitation, and reintegration (what it calls the three “Rs”). It has also emphasized the importance of combating forced labor among foreign migrant workers in destination countries, as well as addressing the public health consequences of human trafficking.

As authorized by TVPA, U.S. anti-TIP programs are coordinated at the cabinet level by the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), which is chaired by the Secretary of State. The PITF’s purpose is to de-conflict and prevent duplication of efforts across agencies involved in anti-TIP programming and ensure compliance with USG policies on combating TIP. The PITF meets annually to coordinate broad U.S. anti-TIP policy. There is also an interagency Senior Policy Operating Group (SPOG) that meets quarterly to carry out PITF initiatives and to discuss TIP policy issues. The SPOG, among other activities, facilitates a review by SPOG programming agencies and each other’s grant proposals for anti-trafficking projects. Members of the PITF and SPOG include the Departments of State, Justice, Homeland Security, Labor, Defense, Energy, and Health and Human Services; USAID; the Office of Management and Budget (OMB); the Office of the Director of National Intelligence (O/DNI); the National Security Council; and the Office of the U.S. Global AIDS Coordinator.³¹

The 2009 TIP Report

On June 16, 2009, the State Department issued its ninth annual report on human trafficking, *Trafficking in Persons (TIP) Report, June 2009*, as mandated by the TVPA (P.L. 106-386, as amended). In addition to outlining major trends and ongoing challenges in combating TIP, the report provides a country-by-country analysis and ranking, based on what progress foreign countries have made, from April 2008 through March 2009, in their efforts to prosecute, protect, and prevent TIP. The 2009 TIP report ranks more countries than any previous year, up 20 countries since the 2008 TIP report to 173 countries in 2009. In addition to the 173 countries that are ranked, the report discusses trafficking in two “special case” countries—Haiti and Somalia—where sufficient information was not available to provide a ranking.

One reason for the increase in countries in the 2009 TIP report is because of a change in the TVPA reporting requirement, as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Sec. 106(1) of P.L. 110-457). Prior TIP reports were required to include countries that are a point of origin, transit, or destination for “a significant number of” victims of severe forms of trafficking. This was interpreted by the State Department to mean at least 100 cases per year. P.L. 110-457 struck out the phrase “a significant number of,”

³¹ U.S. Department of State, Fact Sheet for the Office to Combat and Monitor Trafficking in Persons, “The President’s Interagency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group,” March 9, 2009.

resulting in a lower threshold requirement for reporting on countries in the 2009 TIP report and thereafter.

The 2009 report provides a sobering view of the state of U.S. and international campaigns against human trafficking. While acknowledging that significant progress has been made in recent years, particularly in the realm of introducing new or amended legislation in more countries around the world that help prosecute, protect, and prevent TIP, progress in combating TIP globally appears to have become static or is in decline.

The number of prosecutions reported per year worldwide against TIP offenders has declined on average 8.1% per year since 2003, when the State Department first collected this information globally—from 7,992 prosecutions in 2003 to 5,212 in 2008. (See **Table 1.**) The decline in prosecutions in South and Central Asia is particularly notable, dropping on average 18.8% per year from a high of 2,805 prosecutions in 2003 to 644 in 2008. Europe reports the greatest proportion of global TIP-related prosecutions since 2003, at 43.5% of the world total. By contrast, the Sub-Saharan Africa reports the fewest, at only 2% of the global total.

Table 1. Global Prosecutions of TIP Offenders, 2003-2008

Year	Sub-Saharan Africa	Europe	East Asia & the Pacific	Middle East & North Africa	South & Central Asia	Western Hemisphere	Global	Global % change from previous year
2003	50	2231	1727	1004	2805	175	7992	—
2004	134	3270	438	134	2764	145	6885	-13.9%
2005	194	2521	2580	112	1041	170	6618	-3.9%
2006	170	2950	1321	295	629	443	5808	-12.2%
2007	123	2820	1047	415	824	426	5655	-2.6%
2008	109	2808	1083	120	644	448	5212	-7.8%

Source: CRS analysis of law enforcement data in the State Department’s 2009 TIP report.

Notes: Global totals are the sum of the reported totals for all six regions in the 2009 TIP report. The Western Hemisphere does not include the United States in this analysis.

The 2009 TIP report also warns that the recent global financial crisis may detrimentally affect current and future U.S. and international efforts to combat human trafficking, particularly in developing countries. According to this argument, the downward economic trend will increase the supply of potential people willing to work in conditions or situations that will expose them to trafficking vulnerability and place them at greater risk of becoming TIP victims. At the same time, the State Department argues that the global financial crisis will increase demand for forced labor, including child labor, as a result of growing demand for cheaper goods and services and the movement of some businesses underground to avoid taxes and unionized labor.

2009 Country Rankings

As in previous years, the TIP report ranks countries in four categories on the basis of their efforts to combat TIP, with Tier 1 as the best countries and Tier 3 as the worst. In general, countries in

Western Europe are among the most consistent top performers. For example, 13 countries have consistently been ranked Tier 1 for every year they have been listed on the TIP report—and all but two of these countries (Australia and Colombia) are located in Western Europe. At the opposite extreme, four countries have consistently been ranked at Tier 3 for every year they have been listed on the TIP report—Burma and Sudan since 2001 and Cuba and North Korea since 2003. In the 2009 TIP report, more than 40% of the Tier 3 roster is composed of countries in Sub-Saharan Africa.

Tier 1 is made up of countries deemed by the State Department as having fully complied with the minimum standards for eliminating trafficking as outlined in the TVPA, as amended. In keeping with the trend of generally static or declining anti-TIP efforts globally, only about 16% of all countries ranked in the 2009 TIP report as a Tier 1 country; this represents a smaller number of countries in Tier 1 than in 2008. See **Table 2**.

Table 2. 2009 Tier 1 Countries, by Region

Region	Country Names
East Asia & the Pacific (3 of 25)	Australia, New Zealand, and South Korea
Europe (21 of 45)	Austria, Belgium, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Italy, Lithuania, Luxembourg, Macedonia, Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, United Kingdom
Middle East & North Africa (0 of 18)	—
South & Central Asia (0 of 12)	—
Sub-Saharan Africa (2 of 43)	Mauritius and Nigeria
Western Hemisphere (2 of 30)	Canada and Colombia

Source: U.S. Department of State, *2009 TIP Report*.

Notes: The Western Hemisphere does not include the United States in this analysis.

The other three TIP report categories include countries that are non-compliant with the TVPA’s minimum standards for eliminating trafficking. These categories differ on the basis of perceived political effort, or political *will*, to become compliant – ranging from countries that are non-compliant, but making significant efforts to improve (Tier 2) to countries that are non-compliant and making no effort to improve (Tier 3). In total, the number of non-compliant countries described in the 2009 TIP report has grown in absolute size since 2008. Tier 2 grew from 70 countries in 2008 to 76 countries in 2009. Tier 2 Watch List, composed of countries on the border between Tier 2 and Tier 3, grew from 40 in 2008 to 52 in 2009. Tier 3, the worst of the worst, grew from 14 in 2008 to 17 in 2009.

Tier 2 includes countries whose governments the State Department views as not fully complying with the minimum standards for eliminating trafficking, but which are seen as making “significant efforts to bring themselves into compliance.” As in past years, Tier 2 includes the largest number of countries. However, while almost 73% of Tier 2 countries in 2008 remained Tier 2 countries in 2009, more than 24% dropped down to either Tier 2 Watch List or Tier 3. See **Table 3**.

Table 3. 2009 Tier 2 Countries, by Region

Region	Country Names
East Asia & the Pacific (13 of 25)	Brunei, Hong Kong, Indonesia, Japan, Laos, Macau, Mongolia, Palau, Singapore, Taiwan, Thailand, Timor Leste, and Vietnam
Europe (18 of 45)	Albania, Armenia, Belarus, Bosnia & Herzegovina, Bulgaria, Cyprus, Estonia, Greece, Hungary, Iceland, Ireland, Kosovo, Malta, Portugal, Romania, Serbia, Slovak Republic, and Turkey
Middle East & North Africa (4 of 18)	Israel, Jordan, Morocco, and Oman
South & Central Asia (5 of 12)	Afghanistan, Kazakhstan, Kyrgyz Republic, Maldives, and Nepal.
Sub-Saharan Africa (18 of 43)	Benin, Botswana, Burkina Faso, Ethiopia, Gambia, Kenya, Liberia, Madagascar, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, South Africa, Tanzania, Togo, Uganda, and Zambia
Western Hemisphere (18 of 30)	Antigua & Barbuda, Bahamas, Barbados, Bolivia, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, and Uruguay

Source: U.S. Department of State, *2009 TIP Report*.

Notes: The Western Hemisphere does not include the United States in this analysis.

Tier 2 Watch List was first added as a category in the 2004 report. The 2009 TIP report included 52 countries in this group, composed of a subset of Tier 2 countries in which one of the following conditions apply:

1. The absolute number of TIP victims is very significant or is significantly increasing;
2. There is no evidence that increasing efforts to combat severe forms of trafficking in persons from the previous year; or
3. The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

See **Table 4**. Notably, P.L. 110-457 added a new requirement that Tier 2 Watch List countries must be dropped to the Tier 3 category after two consecutive years on the Tier 2 Watch List, unless the President issues a waiver.³² The first year in which this new requirement goes into effect is the 2009 TIP report, which means that this year’s Tier 2 Watch List countries can only remain on the Tier 2 Watch List through next year’s TIP report in 2010. Subsequent to the 2010 TIP report, these countries must drop to Tier 3, unless it has improved its efforts to combat TIP or unless the President issues a waiver.

³² Such a waiver permits the President to waive the Tier 3 listing for up to two years. In exercising this waiver authority, the President must determine that such a waiver is justified because the country has a “written plan” to start making “significant efforts” to comply with the TVPA’s minimum standards to combat TIP, and because the country has committed “sufficient resources” to implement the plan.

Table 4. 2009 Tier 2 Watch List Countries, by Region

Region	Country Names
East Asia & the Pacific (4 of 25)	Cambodia, China, Micronesia, and the Philippines
Europe (6 of 45)	Azerbaijan, Latvia, Moldova, Montenegro, Russia, and Ukraine
Middle East & North Africa (10 of 18)	Algeria, Bahrain, Egypt, Iraq, Lebanon, Libya, Qatar, Tunisia, United Arab Emirates, and Yemen
South & Central Asia (7 of 12)	Bangladesh, India, Pakistan, Sri Lanka, Tajikistan, and Uzbekistan
Sub-Saharan Africa (16 of 43)	Angola, Burundi, Cameroon, Central African Republic, Democratic Republic of Congo, Republic of Congo, Cote D'Ivoire, Djibouti, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Lesotho, Mali, and Senegal
Western Hemisphere (9 of 30)	Argentina, Belize, Dominican Republic, Guatemala, Guyana, Netherlands Antilles, Nicaragua, St. Vincent & the Grenadines, and Venezuela

Source: U.S. Department of State, 2009 TIP Report.

Notes: The Western Hemisphere does not include the United States in this analysis.

Tier 3 includes countries whose governments the State Department deems as not fully complying with those standards and not making significant efforts to do so. This group includes a total of 17 countries. Countries new to Tier 3 in 2009 include Eritrea, Chad, Malaysia, Mauritania, Niger, Swaziland, and Zimbabwe. The TVPA, as amended, subjects to sanctions those countries listed in Tier 3, including termination of non-humanitarian, non-trade-related assistance and loss of U.S. support for loans from international financial institutions. Sanctions are to be imposed if such countries have not improved their performance within 90 days from the release of the report. See **Table 5**.

Table 5. 2009 Tier 3 Countries, by Region

Region	Country Names
East Asia & the Pacific (5 of 25)	Burma, Fiji, Malaysia, North Korea, and Papua New Guinea
Europe (0 of 45)	—
Middle East & North Africa (4 of 18)	Iran, Kuwait, Saudi Arabia, and Syria
South & Central Asia (0 of 12)	—
Sub-Saharan Africa (7 of 43)	Chad, Eritrea, Mauritania, Niger, Sudan, Swaziland, and Zimbabwe
Western Hemisphere (1 of 30)	Cuba

Source: U.S. Department of State, 2009 TIP Report.

Notes: The Western Hemisphere does not include the United States in this analysis.

Results from the 2009 TIP Ranking and Sanctions Process

On September 14, 2009, President Obama issued his determination on whether to impose sanctions during FY2010 on the 17 listed Tier 3 countries from the 2009 TIP report.³³ The

³³ For a detailed description of sanctions and waivers by country, see Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons, no. 2009-5, October 17, 2008.

President has the option to (1) apply a full sanction against nonhumanitarian and nontrade-related foreign assistance, (2) withhold a portion of the sanction-eligible aid by granting partial waivers, or (3) waive the sanctions entirely on the basis of national interest reasons.

For FY2010 the President determined that nonhumanitarian and nontrade-related foreign assistance would be *fully* withheld from two countries: Cuba and North Korea.³⁴ Six countries were granted by the President *partial waivers* from the aid sanction: Burma, Eritrea, Fiji, Iran, Syria, and Zimbabwe. Partial waivers variously allowed government participation in educational and cultural exchange programs, funding to combat infectious disease, and the continuation of other assistance that would otherwise have a “significant effect” on vulnerable populations if suspended. And finally, eight countries – Chad, Kuwait, Malaysia, Mauritania, Niger, Papua New Guinea, Saudi Arabia, and Sudan – were granted by the President *full waivers* from the aid sanction. The President determined that it remained in the U.S. national interest to continue nonhumanitarian and nontrade-related foreign assistance to these countries.

Subsequent to the release of the 2009 TIP Report in June, the State Department determined that one of the Tier 3 countries, Swaziland, had since graduated above Tier 3 status.³⁵ As a result, Swaziland no longer qualified for TIP sanctions in FY2010.

The International Response

The international community has long condemned TIP and related elements of trafficking through multilateral declarations, treaties, and other instruments. Some of the earliest commitments to combating TIP in various forms include the 1921 International Convention for the Suppression of the Traffic in Women and Children, the 1926 Slavery Convention, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the 1957 Convention Concerning the Abolition of Forced Labour.

Although TIP is not a new phenomenon, it became an increasingly high-priority human rights issue of concern in the 1990s. In 1995, 189 countries participating in the Fourth World Conference on Women in Beijing adopted a Plan for Action that included eliminating trafficking in women as a shared goal. The Plan also set out actions for governments to take in order to combat TIP and other forms of violence against women. As the decade progressed, the trafficking of women for sexual exploitation began to be seen as both a form of discrimination against women and as a major human rights violation.³⁶

U.N. Protocol to Prevent, Suppress, and Punish TIP

Members of the international community began meeting in 1999 to draft a Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children in conjunction with the U.N. Convention Against Transnational Organized Crime. The United States, along with Argentina, introduced the draft protocol in January 1999. Negotiations were concluded in 2000

³⁴ George W. Bush, “Presidential Determination With Respect To Foreign Governments’ Efforts Regarding Trafficking In Persons,” *Presidential Determination 2009-5* (73 FR 63839), October 17, 2008.

³⁵ U.S. Department of State, *TIP Interim Assessment: May – November 2008*, January 27, 2009.

³⁶ United Nations General Assembly, “In-Depth Study on All Forms of Violence Against Women,” July 6, 2006.

on a revised draft. On November 15, 2000, the U.N. General Assembly adopted the Convention on Transnational Crime, including the Protocol on Trafficking. The Convention and Protocols formally signed in Palermo, Italy, in December 2000, were designed to enable countries to work together more closely against criminals engaged in cross-border crimes. The Protocol on Trafficking commits countries to take law enforcement actions against traffickers, to provide some assistance and protection for TIP victims, and to share intelligence and increase border security cooperation with other countries. The United States signed the U.N. Protocol on Trafficking in December 2000 and ratified and became party to the Protocol on December 3, 2005, following Senate advice and consent on October 7, 2005. At present, 119 countries are party to the Protocol. The United States signed the U.N. Smuggling Protocol in December 2000 and became party to the Protocol on November 3, 2005. Some 112 countries are party to the Smuggling Protocol. There are as yet no mechanisms in place for reviewing country's implementation of either of these Protocols.

Other Relevant International Agreements

The United States is party to three other international agreements that have been adopted to address aspects of trafficking in children. The 1999 International Labor Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor was ratified by the United States in December 1999. As of June 2009, 169 countries have ratified ILO Convention No. 182. The 1957 ILO Convention No. 105 concerning the Abolition of Forced Labor was ratified by the United States in 1991. Some 169 countries have ratified ILO Convention No. 105. The Optional Protocol to the U.N. Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography was signed by the United States July 2000 and ratified in December 2002. As of June 2009, 131 countries are party to the Protocol.

U.N. and Related Agencies' Anti-Trafficking Programs

UNODC is the guardian and custodian of the U.N. Trafficking Protocol. Launched in 1999, UNODC's Global Program Against Trafficking in Human Beings assists member states in implementing the Protocol and preventing human trafficking. There are currently more than 30 UNODC technical cooperation projects underway. UNODC has developed numerous research projects, including an annual report on patterns in TIP. In February 2006, UNODC, the United States, and India launched the largest USG-funded UNODC trafficking initiative in the world. The project provides training and awareness for law enforcement officers and strengthens their capacity to investigate and prosecute traffickers.

In March 2007, UNODC and several other U.N. agencies and international organizations launched the U.N. Global Initiative to Fight Trafficking (UNGIFT). The purpose of the Initiative was to bring together both state and non-state actors involved in the fight against human trafficking at a series of regional forums that would culminate in a global conference on TIP. Regional forums were held throughout 2007, and the Vienna Forum to Fight Human Trafficking, which brought together 1,500 people from 116 different countries, was convened in February 2008. The Vienna Forum provided a unique opportunity to raise awareness, facilitate anti-TIP

cooperation and partnerships, and assess the progress made and the challenges that remain in combating human trafficking.³⁷

Several U.N. agencies are involved in anti-TIP activities, many of which receive significant U.S. funding. Those agencies include the following:

- The **U.N. Children’s Fund (UNICEF)** provides support to child victims of trafficking, including return and reintegration assistance.
- The **U.N. High Commissioner of Human Rights** created a Special Rapporteur on TIP in 2004 to ensure the protection of trafficked victims’ rights.
- The **United Nations Development Fund for Women (UNIFEM)** has anti-TIP programs that support women’s political and social empowerment.
- The **United Nations Development Program (UNDP)** seeks to identify (and reduce) the vulnerabilities of women and girls to trafficking in source, transit, and destination countries.
- Through the **International Program to Eliminate Child Labor (IPEC)**, the **ILO** works with participating governments to prevent children from becoming child laborers; to remove children from hazardous work; and to offer children and their families education, income and employment opportunities. The ILO works to combat trafficking for forced labor through its **Special Action Program to Combat Forced Labor (SAP-FL)**.
- The **International Organization for Migration (IOM)** addresses trafficking as part of its broader efforts to protect the rights of migrant laborers. IOM conducts information campaigns in countries of origin to warn potential migrants about the dangers of trafficking and irregular migration. IOM helps governments draft anti-TIP legislation, and trains government officials and NGO representatives on how to identify traffickers and to provide proper assistance to victims. IOM maintains a global database on trafficking cases, and sponsors TIP-related research and conferences worldwide.

Other Regional Organizations and International Forums

In addition to supporting the work of the United Nations, the United States has worked with the European Union and the Organization for Security and Cooperation in Europe (OSCE) to eliminate human trafficking.

European Union

The United States and the European Union agreed to launch their first joint initiative to combat trafficking in November 1997. U.S. and EU officials met in Luxembourg to launch a jointly funded initiative against trafficking in women from Russia and Eastern Europe. It was primarily an information campaign, warning potential victims and an education program for law enforcement, customs and consular officials to heighten their awareness.

³⁷ UNODC, “The Vienna Forum Report: a way Forward to Combat Human Trafficking,” New York: United Nations, 2008.

In 2002, the Council of the European Union took a major further step in the fight against human trafficking, reaching agreement on a broad new framework decision. The decision sought to strengthen police and judicial cooperation and to harmonize the laws and policies of member states in areas such as criminalization, penalties, sanctions, aggravating circumstances, jurisdiction, and extradition.

In March 2003, the European Commission created an “Experts Group on Trafficking in Human Beings” to develop a comprehensive report on ways to strengthen EU anti-trafficking efforts. The report, published in December 2004, emphasizes the need for a human rights-based approach that is integrated and multi-disciplinary, as well as to address the specific needs of child victims. The report recommends that the EU establish a legally binding instrument covering the status of trafficked persons, National Rapporteurs on TIP, and comprehensive migration policies that protect migrants’ rights. The Commission’s Experts Group on TIP informed an EU conference on best practices in combating trafficking in Europe that was held in 2005, and supported German efforts to combat human trafficking during the World Cup in 2006.

Organization for Security and Cooperation in Europe (OSCE)

In November 1999, leaders of the OSCE member states from Europe, Central Asia, and North America, agreed to make combating trafficking in the OSCE area a priority issue. Follow-up meetings were held in Vienna in June 2000, and in Bangkok in June 2002. In 2003, the OSCE adopted an Action Plan to Combat Trafficking in Human Beings and created a Special Representative within its Secretariat to coordinate participating countries’ anti-trafficking efforts. The first Special Representative, Helga Konrad, created an international forum of governmental and NGO officials called the “Alliance Against Trafficking in Persons” aimed at bringing together all relevant actors in the fight against trafficking. In May 2006, the OSCE and IOM held a conference in Vienna on improving the investigation of child trafficking cases and another in November 2006 on trafficking for forced labor. The Secretariat has also helped develop handbooks for law enforcement and migration officials on TIP-related topics and launched reports on trafficking in OSCE countries. In addition, the OSCE’s Office for Democratic Institutions and Human Rights has supported the creation of national referral mechanisms for TIP victims.

Trafficking in the United States

Human trafficking happens in the United States to both U.S. citizens (USCs) and noncitizens, and occurs in every state.³⁸ As many as 17,500 people are trafficked to the United States each year, according to U.S. government estimates.³⁹ The trafficking of individuals within U.S. borders is commonly referred to as domestic or “internal” human trafficking. Research indicates that most of the victims of sexual trafficking into and within the United States are women and children, and the victims include USCs and noncitizens. Although labor trafficking can happen to USCs,

³⁸ Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, p. 2, <http://www.state.gov/documents/organization/113612.pdf>.

³⁹ For more on these estimates see the section of this report entitled, “Official Estimates of Human Trafficking into the United States.” Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

noncitizens are more susceptible to this type of trafficking. Migrant labor camps tend to be common settings for labor exploitation and domestic trafficking.⁴⁰

Before 2000, U.S. laws were widely believed to be inadequate to deal with trafficking in women and children or to protect and assist victims. Anti-trafficking legislation and programs have been implemented with the hope of improving the situation.

Official Estimates of Human Trafficking into the United States

For FY2005, the Department of Justice (DOJ) estimated that there were between 14,500 and 17,500 victims trafficked into the United States each year.⁴¹ As of January 2010, this remains the most recent USG estimate of trafficking victims.⁴² This estimate of 14,500 to 17,500 victims first appeared in the 2004 report, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*,⁴³ and subsequent reports have not included estimates of the number of trafficking victims.⁴⁴ The *Attorney General's Report on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006*⁴⁵ stated that this estimate may be “overstated,” and asserted that “[f]urther research is underway to determine a more accurate figure based on more advanced methodologies and more complete understanding of the nature of trafficking.”

Notably, previous reports by the Central Intelligence Agency's Center for the Study of Intelligence, and the Department of Justice produced higher estimates of the number of trafficking victims in the United States. In November 1999, a report issued by the Center for the Study of Intelligence estimated that 45,000 to 50,000 women and children are trafficked annually to the United States.⁴⁶ In addition, the August 2003 version of the report, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*, estimated that between 18,000 and 20,000 people are trafficked into the United States annually. Some researchers contend that the

⁴⁰ Internal human trafficking of migrant labor is primarily occurring in the Southeast and Central regions of the United States, although such conduct has been identified in other places. Human Smuggling and Trafficking Center. *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, pp. 3-6, <http://www.state.gov/documents/organization/113612.pdf>.

⁴¹ Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*, June 2006. (Hereafter DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*.)

⁴² The number of U.S. citizen trafficking victims in the United States is unknown. In addition, there does not seem to be a clear definition of what it means to be a U.S. citizen trafficked within the United States. For example, some would argue that all prostitutes who have pimps are victims of trafficking. In addition, Dr. Louise Shelly, the Director of the Terrorism, Transnational Crime, and Corruption Center at George Mason University, argues that the largest number of trafficking victims in the United States are U.S. citizen children, and estimates the number of these victims to be between 100,000 and 300,000. Conference, *The Profits of Pimping: Abolishing Sex Trafficking in the United States*, at the Hudson Institute, Washington D.C., July 10, 2008.

⁴³ Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

⁴⁴ Notably, the Attorney General's Report for FY2008, released in June 2009, does not contain an estimate of the number of victims trafficked into the United States annually. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009.

⁴⁵ DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*.

⁴⁶ Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, Center for the Study of Intelligence, November 1999, p. iii.

government estimates of human trafficking do not provide a full description of the data and methodologies used to arrive at the estimates. As a result, they argue that the lack of methodological information makes it difficult, if not impossible, to recreate, assess the validity of, or improve upon the estimates.⁴⁷

Response to Trafficking within the United States

The response to human trafficking within the United States has focused on (1) assistance to victims of trafficking and (2) law enforcement efforts to arrest and prosecute traffickers.

Immigration Relief for Trafficking Victims

Many of the trafficking victims in the United States are aliens (noncitizens) who are illegally present (i.e., unauthorized/illegal aliens). Some of these aliens entered legally, but overstayed their length of legal admittance. Other aliens were smuggled into or illegally entered the United States, and then became trafficking victims. In addition, some aliens have had their immigration documents confiscated by the traffickers as a form of control. The lack of immigration status may prevent victims from seeking help, and may interfere with the ability of the victim to provide testimony during a criminal trial. As such, under law, there are certain protections from removal (deportation) available to noncitizen victims of trafficking.

T Nonimmigrant Status

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) created a new nonimmigrant category, known as T status or T-visa, for aliens who are victims of severe forms of TIP.⁴⁸ Aliens who received T status are eligible to remain in the United States for four years and may apply for lawful permanent residence status (LPR) after being continually present in the United States for three years.

To qualify for the “T” category, in addition to being a victim of a severe form of TIP,⁴⁹ the alien must

⁴⁷ Free the Slaves and the Human Rights Center, *Hidden Slaves: Forced Labor in the United States*, September 2004, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1007&context=forcedlabor>.

⁴⁸ Section 107 of Division A of P.L. 106-386. “T” refers to the letter denoting the subsection of the Immigration and Nationality Act (INA) that provides the authority for the alien’s admission into the United States (i.e., INA § 101(a)(15)(T)). Although T nonimmigrant status is often referred to as the T-visa, it is not technically a visa if it is given to aliens present in the United States because status is conferred by the Department of Homeland Security (DHS) who does not have the authority to issue visas. Only the Department of State (DOS) though consular offices may issue visas. Thus, only aliens present outside of the United States can receive T visas while aliens present in the United States receive T status. For more information on nonimmigrant visa issuance see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddal and Ruth Ellen Wasem.

⁴⁹ As discussed previously, TVPA defines a “severe form of trafficking in persons” as either: (1) sex trafficking in which a commercial sex act is induced by force, fraud or coercion or in which the person induced to perform such act has not attained 18 years of age, or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. It is the applicant’s responsibility to demonstrate both elements of a severe form of trafficking in persons.

- be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a U.S. port of entry because of such trafficking including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;⁵⁰
- have complied with any reasonable request for assistance to law enforcement⁵¹ in the investigation or prosecution of acts of trafficking unless unable to do so due to physical or psychological trauma,⁵² or be under the age of 18;⁵³ and
- be likely to suffer extreme hardship involving unusual and severe harm upon removal.

To receive T status, the alien must also be admissible to the United States or obtain a waiver of inadmissibility. A waiver of inadmissibility is available for health related grounds, public charge grounds, or criminal grounds if the activities rendering the alien inadmissible were caused by or were incident to the alien's victimization.⁵⁴ Waivers are not automatically granted, and there is no appeal if the inadmissibility waiver is denied. This waiver is especially important for those involved in sexual trafficking since prostitution is one of the grounds of inadmissibility specified in the Immigration and Nationality Act (INA).⁵⁵ Additionally, aliens who are present without being admitted or paroled⁵⁶ into the United States are inadmissible and would need to obtain a waiver to be eligible for T status. For example, an alien who paid a smuggler to enter the country illegally and then was held in servitude would need to get an inadmissibility waiver to be eligible for T status.

T status is limited to 5,000 principal aliens each fiscal year. Additionally, the spouse, children, or parents of an alien under age 21, in order to avoid extreme hardship, may be given derivative T status which is not counted against the numerical limit.⁵⁷ Individuals who are eligible for T status

⁵⁰ Prior to P.L. 110-457, this was interpreted in the regulations to apply to those aliens who (1) are present because they are being held in some sort of severe form of trafficking situation; (2) were recently liberated from a severe form of trafficking; or (3) were subject to a severe form of trafficking in the past and remain present in the United States for reasons directly related to the original trafficking. P.L. 110-457 expanded the definition of physical presence to include trafficking victims admitted to the United States for trafficking investigations and legal proceedings.

⁵¹ Applicants for T status may submit a Law Enforcement Agency (LEA) Enforcement to prove that they are complying with the investigation. The regulations require that the LEA enforcement come from a federal law enforcement agency since severe forms of trafficking in person are federal crimes under TVPA; however, the TVPRA of 2003 amended the law to allow state and local law enforcement to certify that the trafficking victim is aiding law enforcement.

⁵² Although to be eligible for T status, most aliens must comply with reasonable requests for assistance from law enforcement, it is not necessary for the alien to be sponsored for status from a law enforcement agency as is required by those applying for S nonimmigrant status for alien witnesses and informants.

⁵³ Children under the age of 18 at the time that the application for T status is filed, are exempt from the requirement to comply with law enforcement requests for assistance. In the original law (TVPA of 2000) the age of mandatory compliance was under 15 years, but the TVPRA of 2003 increased the age of mandatory compliance to 18 years.

⁵⁴ INA §212(d)(13).

⁵⁵ INA §212(a)(2)(D).

⁵⁶ "Parole" is a term in immigration law which means that the alien has been granted temporary permission to be in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

⁵⁷ In some cases, immediate family members of trafficking victims may receive a T visa to join the victim in the United States. This may be necessary if the traffickers are threatening the victim's family.

may be granted work authorization.⁵⁸ T status is valid for four years, and may be extended if a federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of TIP.⁵⁹

Under law, aliens who have bona fide T applications⁶⁰ are eligible to receive certain public benefits to the same extent as refugees.⁶¹ Aliens who receive derivative T status (i.e., the family members of trafficking victims) are also eligible for benefits. In addition, regulations require that federal officials provide trafficking victims with specific information regarding their rights and services such as

- immigration benefits;
- federal and state benefits and services (e.g., certification by the Department of Health and Human Services [HHS] and assistance through HHS's Office of Refugee Resettlement [ORR]);
- medical services;
- pro-bono and low cost legal services;
- victim service organizations;
- victims compensation (trafficked aliens are often eligible for compensation from state and federal crime victims programs);⁶²
- the right to restitution; and
- the rights of privacy and confidentiality.⁶³

T Visas Issued

As **Table 6** shows, between FY2002 and May 1, 2009, there were 2,370 applications for T-1 status, and 1,431 of these applications were approved. During the same period, there were 1,580

⁵⁸ From the perspective of trafficking victims' advocates, work authorization is viewed as an important tool in helping the victims become self sufficient and retake control of their lives.

⁵⁹ The four year period of validity for T-visas was codified by The Violence Against Women and Department of Justice Reauthorization Act of 2006 (P.L. 109-162, §821). Prior to P.L. 109-162, the validity period was three years and was specified, not by statute, but by regulation (8 *C.F.R.* 214.11).

⁶⁰ Bona fide application means an application for T status which after initial review has been determined that the application is complete, there is no evidence of fraud, and presents prima facie evidence of eligibility for T status including admissibility.

⁶¹ Refugees are generally eligible for federal, state and local public benefits. In addition, refugees are eligible for Food Stamps and Supplemental Security Income (SSI) for seven years after entry, and for Medicaid and Temporary Assistance for Needy Families for seven years after entrance and then at state option. CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

⁶² Victims may also be repatriated to their home country if they desire with assistance from the Department of State, government of their country of origin, or nongovernmental organizations. The United States Conference of Catholic Bishops *et al.*, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, prepared with a grant from the Department of Health and Human Services, Office of Refugee Resettlement, November 2004, p. Appendix 1-3. (Hereafter cited as Catholic Bishops, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*.)

⁶³ 28 C.F.R. §1100.3-§1100.33.

applications for derivative T status, and 1,212 applications were approved. Of the adjudicated applications for T-1 status, 66% were approved. In addition, of the adjudicated applications for derivative T status (i.e., family members of trafficking victims), 85% were approved.

Table 6. T-visas Issued: FY2002 through FY2009

Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009 ^a	Total
Principal Aliens (Victims)									
Applied	115	557	278	229	345	230	394	222	2,370
Approved	4	285	136	112	182	279	247	186	1,431
Denied	0	28	292	210	52	70	64	30	746
Derivative Aliens (Family)									
Applied	122	331	118	114	324	149	290	132	1,580
Approved	0	207	216	114	99	261	171	144	1,212
Denied	0	13	26	18	43	52	19	37	208

Source: Department of Homeland Security data provided to CRS.

Note: Some approvals are from prior fiscal year(s) filings. Also, some applicants were denied more than once (e.g. filed once, denied, and filed again). For FY2004 and FY2005, 170 of the denials stemmed from one case where the applicants did not qualify as victims of trafficking under TVPA.

a. Data for FY2009 is through May 1, 2009.

Adjustment to Lawful Permanent Residence

T status, which is originally valid for four years, is not renewable after the alien’s presence in the United States is not necessary to assist in the investigation or prosecution of TIP. Nonetheless, after three years, aliens with T status may petition for legal permanent residence (LPR) status (i.e., green card or immigrant status). To adjust to LPR status an alien must

- be admissible (i.e., that the alien is not ineligible for a visa or status adjustment under the so-called “grounds for inadmissibility” of the INA, which include having a criminal history, being a terrorist, and being a security risk to the United States);
- have been physically present in the United States for either (1) a continuous period of at least three years since the date of admission under T status, or (2) a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has certified that the investigation or prosecution is complete;
- since being granted T status, has been a person of good moral character; and
- establish that (1) they have complied with reasonable requests of assistance in the investigation or prosecution of acts of trafficking, or (2) that they would suffer extreme hardship upon removal from the United States.⁶⁴

⁶⁴ INA §245(l)

The regulations concerning adjustment to LPR status from T status were released on December 12, 2008, and became effective on January 12, 2009.⁶⁵ Under statute, 5,000 aliens in T-1 status can adjust to LPR status in a fiscal year. The cap does not apply to family members (i.e., T-2 visa holders).

Continued Presence

Federal law enforcement officials who encounter victims of severe forms of TIP and are potential witnesses to that trafficking may request that DHS grant the continued presence of the alien in the United States. Historically, the Attorney General has had the discretionary authority to use a variety of statutory and administrative mechanisms to ensure the alien's continued presence.⁶⁶ Most of the statutory and administrative mechanisms for continued presence required that the alien depart from the United States once her presence for the criminal investigation or prosecution is no longer required. In most cases, victims granted continued presence are eligible for work authorization.⁶⁷ Requests for continued presence are handled by the Law Enforcement Parole Branch of DHS' Immigration and Customs Enforcement (ICE).

In some cases, law enforcement prefer giving the alien continued presence rather than T status to prevent the appearance during the prosecution of the traffickers that the alien's testimony was "bought." In FY2008, there were 239 requests for continued presence relating to human trafficking cases; 225 were approved while 13 were withdrawn by the law enforcement agency due to insufficient evidence. In addition, there were 101 requests for extensions of existing continued presence grants, all of which were approved.⁶⁸

U Nonimmigrant Status

Some victims of trafficking are eligible for U nonimmigrant status. The Violence Against Women Act of 2000, Division B of TVPA, created the U nonimmigrant status, often called the U-visa, for victims of physical or mental abuse.⁶⁹ To qualify for U status, the alien must file a petition and establish that

- he/she suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activities;⁷⁰

⁶⁵ Department of Homeland Security, "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status," *73 Federal Register* 75540-75564, December 12, 2008.

⁶⁶ 28 *C.F.R.* Part 1000.35. The mechanisms for continued presence may include parole, voluntary departure, stay of final removal orders, or any other authorized form of continued presence in the United States, including adjustment to an applicable nonimmigrant status. Some of these authorities were transferred to the Secretary of DHS in the Homeland Security Act of 2002 (P.L. 107-296). Others remain with or are shared by the Attorney General.

⁶⁷ Viet D. Dinh, Department of Justice. Testimony before the Senate Subcommittee on Near Eastern and South Asian Affairs concerning Monitoring and Combating Trafficking in Persons: How Are We Doing?, March 7, 2002.

⁶⁸ In FY2008, aliens from 31 countries were granted continued presence due to human trafficking. Most victims were from Mexico, the Philippines, and South Korea. In addition, Miami, Newark, Atlanta, San Francisco, and Los Angeles were the cities with the most requests for continued presence. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009: p. 33.

⁶⁹ INA 101(a)(15)(U).

⁷⁰ Certain criminal activity refers to one or more of the following or any similar activity in violation of federal or state criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; (continued...)

- as certified by a law enforcement or immigration official, he/she (or if the alien is a child under age 16, the child's parent, guardian or friend) possesses information about the criminal activity involved;
- he/she has been, is being or is likely to be helpful in the investigation and prosecution of the criminal activity by federal, state or local law enforcement authorities; and
- the criminal activity violated the laws of the United States or occurred in the United States.

The U category is limited to 10,000 principal aliens per fiscal year.⁷¹ After three years, those in U status may apply for LPR status.⁷² Unlike aliens with T status, those with U status are not eligible for assistance through the Office of Refugee Resettlement or for federal public benefits. Those who receive U status may be eligible for programs to assist crime victims through the Department of Justice's Office for Victims of Crime.

Aid Available to Victims of Trafficking in the United States

The Departments of Justice, Health and Human Services, and Labor have programs or administer grants to other entities to provide services to trafficking victims. In addition, the Legal Services Corporation⁷³ has instructed its lawyers to provide legal assistance to trafficking victims.⁷⁴ There is confusion over whether U.S. citizens, as well as noncitizens, are eligible for services under all the anti-trafficking grant programs, and whether Congress has provided funding for programs that target U.S. citizen and LPR victims. Notably, the *FY2008 Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons* states, "the funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and may not currently be used to assist U.S. citizen victims."⁷⁵ Nonetheless, each year since FY2008, Congress has appropriated approximately \$10 million to HHS to "carry out the Trafficking Victims Protection Act of 2000."⁷⁶ Thus, it appears likely that the funding would be available for benefits and programs specifically for U.S. citizens that were authorized under the reauthorization acts.

(...continued)

kidnaping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter, murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

⁷¹ Although the interim final regulations on U status were released in September 2007, prior to that aliens who met the criteria for U status were given immigration benefits similar to U status. In 2005, for example, 287 aliens were given "quasi-U" status. Unpublished data from DHS.

⁷² Department of Homeland Security, "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status," *73 Federal Register* 75540-75564, December 12, 2008.

⁷³ The Legal Services Corporation (LSC), established by Congress, is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil (i.e., non-criminal) matters.

⁷⁴ DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons*, p.7.

⁷⁵ *Ibid*, p. 9.

⁷⁶ (P.L. 111-117, P.L. 111-8, P.L. 110-161). For FY2005 through FY2007, money was appropriated to "carry out the Trafficking Victims Protection Act of 2003 (P.L. 108-193)" (P.L. 110-5, P.L. 109-149, P.L. 108-447).

Regardless of funding, there seems to be disagreement over whether U.S. citizen and noncitizen victims of trafficking are eligible for each of the programs discussed below. Certification by HHS appears to be a necessary condition of receiving trafficking victims' services from HHS, DOL, and the Legal Services Corporation, under the programs created in the Victims of Trafficking and Violence Protection Act (P.L. 106-386, §107(b)(1), 22 U.S.C. §7105(b)(1)), as enacted in 2000.⁷⁷ Certification is a process that enables noncitizen trafficking victims to be classified as such, and therefore eligible for services. U.S. citizen and LPR trafficking victims are not required to be certified by HHS, and indeed would not meet the criteria to be certified because certification applies only to foreign nationals who need an immigration status (e.g., T status or continued presence)⁷⁸ to remain in the United States. Nonetheless, a 2007 report by the Senior Policy Operating Group on Trafficking in Persons (SPOG) states that "there are not many differences in trafficking victims' eligibility for the services we reviewed when one looks at the relevant statutes...." However, the report does note that U.S. citizen victims may have less intensive case management services compared to noncitizens.⁷⁹ In addition, only noncitizen trafficking victims are eligible for refugee-specific programs.⁸⁰

Health and Human Services Grants

The TVPA required HHS to expand benefits and services to victims of severe forms of trafficking in the United States, without regard to the immigration status of such victims.⁸¹ Under the law, to receive these benefits and services, victims of severe forms of trafficking who are at least 18 years of age must be certified by the Secretary of Health and Human Services, after consultation with the Secretary of Homeland Security,⁸² as willing to assist in every reasonable way in the

⁷⁷ "[in] the case of nonentitlement programs, subject to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, . . . without regard to the immigration status of such victims. . . . For the purposes of this paragraph, the term "victim of a severe form of trafficking in persons" means only a person—(i) who has been subjected to an act or practice described in section 103(8) as in effect on the date of the enactment of this Act; and (ii)(I) who has not attained 18 years of age; or (II) who is the subject of a certification. . . . [C]ertification. . . is a certification by the Secretary of Health and Human Services. . . that the person. . . (I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma; and (II)(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act. . . that has not been denied; or (bb) is a person whose continued presence in the United States the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons."

⁷⁸ TVPA of 2000 created a new nonimmigrant category, known as T status or T-visa, for aliens who are victims of severe forms of human trafficking. Federal law enforcement officials who encounter victims of severe forms of trafficking and are potential witnesses to that trafficking may request that DHS grant the continued presence of the alien in the United States. Historically, the Attorney General has had the discretionary authority to use a variety of statutory and administrative mechanisms to ensure the alien's continued presence. For more on immigration relief for trafficking victims, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Liana Sun Wyler and Alison Siskin.

⁷⁹ Senior Policy Operating Group on Trafficking in Persons: Subcommittee on Domestic Trafficking, *Final Report and Recommendations*, Washington, DC, August 2007, <http://www.acf.hhs.gov/trafficking/SPOGReport-Final9-5-07.pdf>.

⁸⁰ Personal conversation with the Department of Health and Human Services, Administration for Children and Families, Congressional Affairs, April 2, 2007.

⁸¹ TVPA §107(b)(1)(B); 22 U.S.C. §7105(b)(1)(B). The act also created a grant program in DOJ for state, local, tribal governments, and nonprofit victims' service organizations to develop, strengthen, or expand service programs for trafficking victims. (22 U.S.C. §7105(b)(2))

⁸² The Homeland Security Act of 2002 (HSA; P.L. 107-296) abolished the Immigration and Naturalization Service (INS) and transferred most of its functions to various bureaus in the new Department of Homeland Security (DHS) (continued...)

investigation and prosecution of severe forms of trafficking, having made a bona fide application for a T-visa that has not been denied, and being granted continued presence in the United States by the Secretary of Homeland Security to effectuate the prosecution of traffickers in persons.⁸³ Under the law, trafficking victims under the age of 18 do not have to be certified to receive benefits and services, but it is HHS policy to issue eligibility letters to such victims. Although the law does not differentiate between U.S. Citizen and noncitizen trafficking victims, according to HHS, U.S. citizen trafficking victims also do not have to be certified to receive services.⁸⁴ HHS' Office of Refugee Resettlement (ORR) provides certification and eligibility letters for victims.

From FY2001 through FY2008, HHS certified 1,696 people; 162 (9.6%) of the victims were minors. In addition, in FY2008, 317 victims received certification or eligibility letters.⁸⁵ The certified victims represented more than 40 different countries; however, the countries with the largest percentage of certified victims were Mexico (23%) and Thailand (20%).⁸⁶

ORR funds and facilitates a variety of programs to help refugees "economic and social self-sufficiency in their new homes in the United States," and noncitizen victims of severe forms of trafficking are eligible for these programs.⁸⁷ ORR-funded activities include cash and medical assistance, social services to help refugees become socially and economically self-sufficient, and targeted assistance for impacted areas. Special refugee cash assistance (RCA) and refugee medical assistance (RMA) are the heart of the refugee program. RCA and RMA, which are administered by the states, are intended to help needy refugees who are ineligible to receive benefits from mainstream federal assistance programs. In addition, minor noncitizen victims can participate in DHS's Unaccompanied Refugee Minor Program.⁸⁸ TVPA and the subsequent reauthorization acts, authorize funds for ORR to provide similar assistance to trafficking victims. While both U.S. citizen and noncitizen trafficking victims are eligible for the general federal public benefits, only noncitizen trafficking victims are eligible for the benefits specifically designed for refugees.⁸⁹

(...continued)

effective March 1, 2003. In addition, due to HSA, much of the Attorney General's authority in immigration law is currently vested in or shared with the Secretary of Homeland Security. For more information on the role of the Attorney General and Secretary of Homeland Security over immigration law, see CRS Report RL31997, *Authority to Enforce the Immigration and Nationality Act (INA) in the Wake of the Homeland Security Act: Legal Issues*, by Stephen R. Vina.

⁸³ TVPA §107(b)(1)(E); 22 U.S.C. §7105(b)(1)(E).

⁸⁴ Personal conversation with Scott Logan, Department of Health and Human Services, Administration for Children and Families, Congressional Affairs, April 2, 2007.

⁸⁵ Certification letters are for adult victims, while minor victims receive eligibility letters since, under law, they do not have to be certified as trafficking victims for services.

⁸⁶ Interestingly, 76% of all victims certified in FY2008 were victims of labor trafficking. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009: pp. 10-11.

⁸⁷ P.L. 106-386, §107(b)(1)(A). The eligibility of noncitizens for public assistance programs is based on a complex set of rules that are determined largely by the type of noncitizen in question and the nature of services being offered. For example, refugees are eligible for Medicaid for five years after entry/grant of status, then made ineligible (unless they became citizens or qualified under another status). For a discussion of the eligibility of trafficking victims for state and federal means tested benefits see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

⁸⁸ P.L. 110-457, §235(b)(2).

⁸⁹ For additional information on programs for refugees see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

ORR also provides grants to organizations that render assistance specific to the needs of victims of trafficking, such as temporary housing, independent living skills, cultural orientation, transportation needs, access to appropriate educational programs, and legal assistance and referrals. These services are available to U.S. citizen and noncitizen trafficking victims. ORR may also supply trafficking victims with intensive case management programs to help the victim find housing and employment, and provide mental health counseling and specialized foster care programs for children. ORR performs outreach to inform victims of services and educate the public about trafficking.⁹⁰

In addition, HHS conducts outreach to inform victims of services and to educate the public about trafficking. HHS has established the Rescue and Restore Victims of Human Trafficking public awareness campaign, which promotes public awareness about trafficking and the protections available for trafficking victims. The goal of the campaign is to help communities identify and serve victims of trafficking, supporting them in coming forward to receive services and aid law enforcement. In addition to promoting public awareness about trafficking, HHS through the Rescue and Restore campaign has established anti-trafficking coalitions in 25 areas.⁹¹ Another component of the campaign is the creation of a toll-free National Human Trafficking Resource Center available for advice 24-hours a day.⁹² (For a discussion of authorizations and appropriations for the HHS grant program, see **Appendix B and Appendix C.**)

Department of Justice, Office for Victims of Crime

The TVPA created a grant program administered by the Attorney General to provide grants to states, Indian tribes, local governments, and nonprofit victims services organizations to develop, expand or strengthen victims service programs for trafficking victims.⁹³ This grant program is administered through DOJ's Office for Victims of Crime (OVC) and provides emergency services, including temporary housing, medical care, crisis counseling and legal assistance, to victims as soon as they have been encountered, prior to certification by HHS (discussed above). According to DOJ, OVC awards grants to non-governmental organizations to provide trafficking victims with comprehensive or specialized services, and training and technical assistance to grantees for program support and enhancement.⁹⁴ (For a discussion of authorizations and appropriations for this program, see **Appendix B and Appendix C.**)

⁹⁰ Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008: p. 10.

⁹¹ These areas are: Houston, Texas; Las Vegas, Nevada; New York, New York; Milwaukee, Wisconsin; Newark, New Jersey; Philadelphia, Pennsylvania; Phoenix, Arizona; Portland, Oregon; St. Louis, Missouri; San Francisco, California; Sacramento, California; Louisville, Kentucky; Nashville, Tennessee; Columbus, Ohio; Cincinnati, Ohio; San Diego, Los Angeles, and Orange Counties in California; and statewide in Colorado, Idaho, Florida, Georgia, Illinois, Minnesota, and North Carolina. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009: p. 14.

⁹² Department of Health and Human Services, "About Human Trafficking," available at <http://www.acf.hhs.gov/trafficking/about/index.html#wwd>.

⁹³ P.L. 106-386, §107(b)(2).

⁹⁴ DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons*, p.6.

Department of Labor

DOL's Employment and Training Administration (ETA) One-Stop Career Centers provide job search assistance, career counseling, and occupational skills training to trafficking victims. In addition, victims between the ages of 16 and 24—both U.S. citizen victims and noncitizen victims who have work authorization—may be eligible to participate in Job Corps.⁹⁵ (For program authorizations, see **Appendix B**.)

Domestic Investigations of Trafficking Offenses

Human trafficking investigations are often complicated by language and humanitarian issues (e.g., the victim has been traumatized and is unable to aid in the investigation), as well as logistical challenges and difficulties (e.g., transporting, housing, and processing the victims especially alien victims). In addition, certain types of investigative techniques, such as controlled delivery operations,⁹⁶ cannot be used. Moreover, unlike drug trafficking cases where the contraband itself is proof of the illegal activity, the successful prosecution of trafficking cases relies on the availability of witnesses who may refuse to testify because of fear of retribution against themselves or their families.⁹⁷

Within the United States, the Departments of Justice (DOJ), Homeland Security (DHS), and Labor (DOL) have primary responsibility for investigating and prosecuting traffickers.⁹⁸ The majority of the cases are investigated by agents in DOJ's Federal Bureau of Investigation (FBI) and DHS's U.S. Immigration and Customs Enforcement (ICE), who coordinate as appropriate.⁹⁹ Agents in the FBI's Civil Rights Unit (CRU) investigate trafficking in the United States. In addition, under the FBI's Human Trafficking Initiative, FBI field offices use threat assessment to determine the existence and scope of trafficking in their region, participate in the anti-trafficking task force, conduct investigations and report significant case developments to the CRU. The CRU opened 787 trafficking cases between FY2001-FY2008.¹⁰⁰

ICE uses a global enforcement strategy to disrupt and dismantle domestic and international criminal organizations that engage in human trafficking. Between FY2004 and FY2008, ICE

⁹⁵ Catholic Bishops, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, p. Appendix 1-6.

⁹⁶ Controlled delivery is an investigative technique in which law enforcement knowingly allows a shipment to travel to its destination so that law enforcement can learn more about a criminal enterprise and the people involved.

⁹⁷ U.S. Government Accountability Office, *Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response*, GAO-05-305, May 2005, p. 10. (Hereafter cited as GAO, *Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response*.)

⁹⁸ This section is based on the information in Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, September 2007.

⁹⁹ The division of responsibilities between these two agencies is not clearly delineated which may lead to a lack of coordination between the agencies as well as possibly some duplicative efforts. In addition, according to an ICE Office of Investigations (OI) official, the Border Patrol only has a minor role in alien smuggling and trafficking investigations and is required to coordinate with OI before initiating anti-smuggling investigations. GAO, *Immigration Enforcement: DHS Has Incorporated Immigration Enforcement Objectives and Is Addressing Future Planning Requirements* (2004), p. 9.

¹⁰⁰ Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009: p. 36.

opened 1,671 trafficking cases.¹⁰¹ In addition, DOL is involved in cases of trafficking through enforcement of labor standards laws such as the Fair Labor Standards Act¹⁰² and the Migrant and Seasonal Agricultural Worker Protection Act.¹⁰³

Human Smuggling and Trafficking Center

In July 2004, the Secretaries of DOS and DHS, and the Attorney General signed a charter to establish the Human Smuggling and Trafficking Center (HSTC), and The Intelligence Reform and Terrorism Protection Act of 2004 (P.L. 108-458, §7202), signed into law on December 17, 2004, formalized the HSTC. The HSTC serves as the federal government's information clearinghouse and intelligence fusion center for all federal agencies addressing human smuggling, human trafficking, and the potential use of smuggling routes by terrorists. Specifically, the HSTC is tasked with

- serving as the focal point for interagency efforts to address terrorist travel;
- serving as a clearinghouse with respect to all relevant information from all federal agencies in support of the United States strategy to prevent clandestine terrorist travel, migrant smuggling, and trafficking of persons;
- ensuring cooperation among all relevant policy, law enforcement, diplomatic, and intelligence agencies of the federal government to improve effectiveness and to convert all information relating to clandestine terrorist travel, and the facilitation migrant smuggling, and trafficking of persons into tactical, operational, and strategic intelligence that can be used to combat such illegal activities; and
- submitting to Congress, on an annual basis, a strategic assessment regarding vulnerabilities that may be exploited by international terrorists, human smugglers and traffickers.

The HSTC has had issues with cooperation between the different agencies and departments, related to funding, staffing, and information sharing.¹⁰⁴ In The Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53, discussed in **Appendix A**), Congress attempted to address these issues.

Policy Issues

A broad consensus appears to be shared in Congress and the policy community on the need for decisive action to curb human trafficking. However, there are some fundamental questions related

¹⁰¹ In FY2008, ICE opened 432 trafficking investigations, of which 170 were for labor trafficking and 262 were for sexual exploitation. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008: p. 23; and Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009: p. 36.

¹⁰² 29 U.S.C. §§201-219.

¹⁰³ 29 U.S.C. Chapter 20.

¹⁰⁴ U.S. Congress, House Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight, *9/11 Reform Act: Examining the Implementation of the Human Smuggling and Trafficking Center*, hearings, 109th Cong., 2nd sess., March 8, 2006.

to how broadly human trafficking should be defined. In addition, questions have been raised about the effective implementation of anti-trafficking programs.

Credibility of TIP Rankings

Many analysts have asserted that the overall impact of the TIP report and sanctions process depends upon the credibility of the State Department's annual country TIP rankings. Some would argue that, although the TIP reports have improved with each year, "inconsistent application of the minimum standards [mandated by TVPA] and superficial country assessments have compromised their credibility."¹⁰⁵ Some argue that it is difficult to determine what standards make a country eligible for Tier 1. They assert that the Tier 2 and Tier 2 "Watch List" have become "catch-all" categories that include countries which should really be placed on Tier 3. According to the GAO, in addition to a lack of clarity in the tier ranking process, the TIP report's "incomplete narratives reduce the report's utility ... " The State Department, while acknowledging the need to continue to increase the comprehensiveness of the report, believes that "keeping the report concise is paramount."¹⁰⁶

Sanctions: A Useful Tool?

Most agree that extensive international cooperation is required in order to stop international trafficking and that both "carrots" and "sticks" may be needed to influence the policies of other governments, including financial and technical assistance, as well as the threat of sanctions. Some assert that unilateral sanctions, when designed in accordance with international norms, can incite countries to internalize those norms.¹⁰⁷ Sanctions seem to be most effective when they are clearly defined and evenly applied, criteria which some say U.S. trafficking sanctions have not yet met.¹⁰⁸ For example, since 2003, no governments in Latin America except Cuba and Venezuela have been subject to partial or full sanctions for failing to meet the minimum standards of TVPA. Some argue that sanctions will probably only be applied to countries already subject to other sanctions—such as Burma, Cuba, or North Korea—and that threatening other countries with sanctions may actually encourage them to become less open to working with the United States. Others argue that while that may be true in a few cases, most countries depend on good political and economic relations with the United States and fear the public humiliation that comes with a Tier 3 designation as much as actual sanctions.

Equal Focus on all Types of Trafficking?

Although the TVPA defines trafficking broadly to include problems such as forced labor, sex slavery, and domestic servitude, and although the USG funds programs to combat all types of TIP, some argue that USG anti-trafficking efforts have a bias, disproportionately focusing on sexual exploitation at the expense of other forms of trafficking. They argue that too high a percentage of the U.S. anti-trafficking budget has been directed to NGOs focused on rescuing women and

¹⁰⁵ Chuang, 2006.

¹⁰⁶ GAO, July 2006, p. 3. (GAO-06-825).

¹⁰⁷ Sarah H. Cleveland, "Norm Internationalization and U.S. Economic Sanctions," *Yale Journal of International Law*, 2001, 1, 31.

¹⁰⁸ Chuang, 2006.

children from the commercial sex industry. Inventories of U.S. anti-trafficking programs since 2004 appear to counter these claims as they show U.S. support for a wide variety of NGOs that strive to protect victims and prosecute traffickers engaged in all types of human trafficking.¹⁰⁹

Forced Labor: A Growing TIP Problem?

Recent research suggests that while TIP for sexual exploitation is both a highly prevalent and particularly visible form of human trafficking, TIP for forced labor exploitation may account for a large, often unreported and possibly growing share of TIP globally. According to the UNODC, sexual exploitation is by far the most commonly identified form of human trafficking, accounting for 79% of reported incidents globally. Forced labor, however, follows as the second-most reported form of human trafficking, at 18%.¹¹⁰ Other groups arrive at different estimates of the prevalence of various forms of human trafficking. The ILO, for example, found that 43% of all trafficking victims were trafficked into sexual exploitation, 32% into labor exploitation, and 25% a combination of both forced labor and sexual exploitation.¹¹¹ Recent interest in forced labor as a form of TIP has sparked calls for greater research in analyzing the prevalence of forced labor, increased international efforts to combat this form of TIP, and more awareness to prevent and educate potential victims. The State Department's TIP reports since 2005 have placed an added emphasis on evaluating country efforts to combat trafficking for forced labor, and several other programmatic efforts to combat TIP for forced labor are underway at the State Department. Other international groups, particularly the ILO, also play a large role in efforts to combat forced labor.

Debates Regarding Prostitution and Sex Trafficking

The current U.N. definition of TIP assumes that there are at least two different types of prostitution, one of which is the result of free choice to participate in the prostitution business while the other is the result of coercion, vulnerability, deception, or other pressures. Of these, only the latter type is considered TIP under the U.N. definition. Based on the TVPA, as amended, sex trafficking is not considered a "severe form of TIP" unless it is associated with commercial sex acts induced by force, fraud, or coercion, or in which the person induced to perform such acts is a minor.¹¹²

Several groups in the United States have sought to redefine TIP to include all prostitution, but many countries have thus far rejected those attempts. Proponents of this broader definition of TIP argue that prostitution is "not 'sex work,' it is violence against women [that] exists because ... men are given social, moral and legal permission to buy women on demand."¹¹³ Countries such as Germany, the Netherlands, Austria, France, and Italy, which have legal or government-regulated prostitution, reject such a definitional change and argue that this broader definition would impede

¹⁰⁹ Jennifer Block, "Sex Trafficking: Why the Faith Trade is Interested in the Sex Trade," *Conscience*, Summer/Autumn 2004; Debbie Nathan, "Oversexed," *The Nation*, August 29 - September 5, 2005, vol. 281; Janie Chuang, Winter 2006, 13, 1, G-TIP Fact Sheets, Available at <http://www.state.gov/g/tip/rls/fs/index.htm>.

¹¹⁰ UNODC and UNGIFT, *Global Report on Trafficking in Persons*, February 2009.

¹¹¹ International Labor Organization (ILO), *ILO Action against Trafficking in Human Beings*, 2008.

¹¹² Sec. 103 (8-9) of P.L. 106-386, as amended.

¹¹³ Janice G. Raymond, "Sex Trafficking is Not 'Sex Work,'" *Conscience*, Spring 2005.

the capacity of the international community to achieve consensus and work together to combat trafficking.¹¹⁴

The U.S. State Department asserts that prostitution and TIP are inextricably linked. In the 2008 TIP Report to Congress, for example, the State Department states that “sex trafficking would not exist without the demand for commercial sex flourishing around the world” and that prostitution and any related activities “should not be regulated as a legitimate form of work for any human being.”¹¹⁵ The Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193) restricts anti-trafficking funds to groups that oppose prostitution. Critics have argued that this policy excludes the people who are most able to report and combat abuses within the sex industry, prostitutes themselves and may hinder the success of well-established anti-TIP programs. They believe that giving prostitutes some measure of legitimacy short of legalization reduces the risk that they will be exposed to the dangers of trafficking.¹¹⁶

Distinctions between Trafficking and Alien Smuggling

The concept of and responses to TIP are often confused with those of alien or human smuggling, irregular migration, and the movement of asylum seekers. In 2000, the United Nations drafted two protocols, known as the Palermo Protocols, to address TIP and human smuggling.¹¹⁷ According to the U.N. Trafficking Protocol, people who have been *trafficked* are considered “victims” and are entitled to government protection and a broad range of social services. In contrast, the U.N. Protocol against the Smuggling of Migrants by Land, Sea, and Air considers people who have been *smuggled* as willing participants in a criminal activity who should be given “humane treatment and full protection of their rights” while being returned to their country of origin.¹¹⁸

Some observers contend that smuggling is a “crime against the state” and that smuggled migrants should be immediately deported, while trafficking is a “crime against a person” whose victims deserve to be given government assistance and protection.¹¹⁹ Others maintain that there are few clear-cut distinctions between trafficking and smuggling and that many people who are considered “smuggled” should actually be viewed as trafficking victims, and, at times, vice versa. Some argue that as immigration and border restrictions have tightened, smuggling costs have increased and migration routes have become more dangerous, putting migrants at a high risk of trafficking. In some cases, smugglers have sold undocumented migrants into situations of forced labor or prostitution in order to recover their costs or obtain greater profits.¹²⁰ Despite the U.N.

¹¹⁴ Notably, some European countries, including Sweden, Norway, and Iceland, have sought to address this policy debate by criminalizing the purchase of sex, while leaving prostitution as legal. See for example, “Norway Set to Make Buying Sex Illegal,” *The Guardian*, April 23, 2007.

¹¹⁵ U.S. Department of State, 2008 TIP Report.

¹¹⁶ U.S. Department of State website, <http://www.state.gov/g/tip/index.htm>; Feingold, September/October 2005.

¹¹⁷ The United Nations Convention Against Organized Crime and Its Protocols, available at http://www.unodc.org/unodc/en/crime_cicp_convention.html.

¹¹⁸ *Ibid.*

¹¹⁹ Statement by Claire Antonelli of Global Rights, Center for Strategic and International Studies Event on Human Trafficking in Latin America, July 9, 2004.

¹²⁰ Kinsey Aldan Dinan, “Globalization and National Sovereignty: From Migration to Trafficking,” In *Trafficking in Humans: Social, Cultural, and Political Dimensions*, Sally Cameron and Edward Newman, eds. New York: U.N. University Press, 2008. “Mexico-U.S.-Caribbean: Tighter Borders Spur People Traffickers,” *Latin America Weekly Report*, April 11, 2006.

Protocols on trafficking and smuggling, many countries in practice conflate the two differing, but sometimes overlapping, phenomena. As a result, some observers argue that TIP policies can directly or indirectly shape migration (and vice versa) in both countries of origin and destination.¹²¹

How to Measure the Effectiveness of Global Anti-TIP Programs

It is often difficult to evaluate the impact of U.S. anti-trafficking efforts on curbing TIP. So far, few reliable indicators have been identified. For example, the new estimates of numbers of trafficking victims in the United States seem considerably lower than some of the previous high-end estimates. Whether these figures reflect the success of U.S. policies and programs or more accurate data gathering is unclear. Hard evidence with regard to the results of the more vigorous international campaign against trafficking is also lacking. Information is often anecdotal. Worldwide estimates of the numbers of victims seemingly have not changed much, when cross-border trafficking and trafficking within countries are taken together. A 2006 GAO study seriously questions the adequacy of any of the estimates.¹²²

Issues Concerning Immigration Relief for Trafficking Victims

Most of the trafficking victims' advocacy community and groups working to end trafficking are supportive of the T status. Nonetheless, these groups have raised concerns about aspects of the application process that may impede victims from applying for T status or create difficulties for the victims to meet the standards of T status. Some advocacy groups have questioned whether the T status protects the victims or is primarily a tool for law enforcement.

Nonetheless, there was opposition to the creation of the T status. Opponents of the T status contend that the status rewards criminal behavior. Immigrant benefits are scarce and some argued that there are more meritorious people who deserve the benefits such as those who have been waiting to come into the country through legal methods. Some argue that there is a need to protect the victims, but that they are being given more access to public benefits than are relatives of United States citizens. Additionally, others expressed concern about the possibility of abuse of T status. For example, some aliens who had knowingly and willfully violated the law, may claim that they were coerced after they were arrested by DHS.

As discussed above, between FY2002 and May 1, 2009, DHS approved 1,431 applications for T-1 status, while it is estimated that at least 14,500 aliens are trafficked into the United States each year. The comparatively small number of T visas issued relative to the estimates of trafficking into the United States raises some questions. Is the number of noncitizen trafficking victims in the United States overestimated? Is the United States government doing a poor job locating and identifying victims?¹²³

¹²¹ UNODC and UNGIFT, *An Introduction to Human Trafficking: Vulnerability, Impact, and Action*, 2008, p. 88.

¹²² GAO, July 2006, p. 3. (GAO-06-825).

¹²³ These issues are discussed in detail in: Jerry Markon, "Human Trafficking Evokes Outrage, Little Evidence; U.S. Estimates Thousands of Victims, But Efforts to Find Them Fall Short," *Washington Post*, September 23, 2007.

Stringency of T Determination

The regulations state that “In view of the annual limit imposed by Congress for T-1 status, and the standard of extreme hardship involving unusual and severe harm, [DHS] acknowledges that the T-1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of trafficking....”¹²⁴ Some contend that the extreme hardship threshold makes it difficult for victims to receive T status.¹²⁵ Nonetheless, some in law enforcement have raised concerns that advocacy organizations are able to ask ICE headquarters without the input of the local ICE agents to have an alien certified as a trafficking victim, contending that some of these aliens are not truly trafficking victims.¹²⁶

Tool of Law Enforcement or Aid to Victims

According to the policy memorandum on T status, “the T classification provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and prosecutions and provide humanitarian protection to the victims.” Some are concerned that the emphasis on aiding law enforcement is more important than aiding the victims, and note that a controversial aspect of the continued presence provision is that federal agents may supersede a victim’s wishes and require the victim to remain in the United States, if the victim’s “departure is deemed prejudicial to the interests of the United States.”¹²⁷ Others argue, however, that the only mechanism for ending trafficking is by encouraging the victims’ cooperation in the prosecution and investigation.

Victims’ Safety

Some victims’ service providers who aid trafficking victims have also expressed concerns that outside of federal protective custody, there are few safe housing options for victims of trafficking. Shelters in many areas are full or inaccessible, and domestic violence shelters are ill-equipped to meet the safety needs of trafficking victims.¹²⁸ Other advocacy groups such as the Coalition to Abolish Slavery and Trafficking (CAST) contend that forcing victims to aid in the investigation and prosecution of traffickers may endanger the victims’ families who remain in the home country especially when the trafficker is deported back to the country. They argue that there needs to be some mechanism to either ensure the victims’ families’ safety in their home country or reunite the families with the victims in the United States.¹²⁹ Dianne Post, an attorney for the Arizona Coalition Against Domestic Violence argues that the TVPA may create problems for victims, because victims can not receive services and benefits until they apply for T status, and if

¹²⁴ *Federal Register* vol. 67, no. 21: p. 4785. January 31, 2002.

¹²⁵ Testimony of Derek J. Marsh, Co-Director Orange County Human Trafficking Task Force, in U.S. Congress, House Committee on Homeland Security, *Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part II*, 110th Cong., 1 sess., March 20, 2007.

¹²⁶ Personal communication with ICE special agents in Los Angeles, California, August 16, 2005.

¹²⁷ Raffonelli, “INS Final Rule to Assist Victims of Trafficking.” p.4.

¹²⁸ Lisa Raffonelli. “INS Final Rule to Assist Victims of Trafficking.” *Refugee Reports*, vol. 23, no. 3 (April 2002): p.9. Hereafter referred to as Raffonelli, “INS Final Rule to Assist Victims of Trafficking.”

¹²⁹ Testimony of Cho. Testimony of Wendy Patten, U.S. Advocacy Director, Human Rights Watch, in U.S. Congress, Senate Committee on Judiciary, Subcommittee on Constitution, Civil Rights and Property Rights, *Examining U.S. Efforts to Combat Human Trafficking and Slavery*, hearings, 108th Cong., 2nd sess., (July 7, 2004). (Hereafter, Testimony Wendy Patten.)

they do not speak English, they can not fill out the application without help. Often they will need to turn to the local immigrant community, and the traffickers may have ties in the same community.¹³⁰

Funding and Authority to Assist U.S. Citizen and LPR Victims of Trafficking

An overriding issue is the extent to which the agencies can provide services to U.S. citizen and LPR trafficking victims who do not receive certification. As discussed above, a 2007 report by the Senior Policy Operating Group on Trafficking in Persons (SPOG) states that “there are not many differences in trafficking victims’ eligibility for the services we reviewed when one looks at the relevant statutes....” However, the report does note that U.S. citizen victims may have less intensive case management services compared to noncitizens.¹³¹ Conversely, the AG’s FY2008 report on anti-trafficking efforts states, “the funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and may not currently be used to assist U.S. citizen victims.”¹³² More recently, ORR has stated that they do not provide services to U.S. citizen trafficking victims.¹³³ Nonetheless, the language in the appropriation acts may give the HHS the authority to provide some services to U.S. citizen trafficking victims. The appropriation acts since FY2008 state that the money appropriated to HHS is to “carry out the Trafficking Victims Protection Act of 2000.”¹³⁴

In addition, as discussed above, beginning in FY2009, OVC is funding a grant, Services for Domestic Minor Victims of Human Trafficking, that includes U.S. citizen and LPR victims.¹³⁵ According to DOJ, this grant is authorized under 22 U.S.C §7105(b)(2)(A), which was included in the TVPA as enacted in 2000. The authorizing language of this grant program does not appear to differentiate between U.S. citizen and noncitizen victims. 22 U.S.C §7105(b)(2)(A) states:

IN GENERAL.—Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims’ service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.¹³⁶

The funding of this grant appears to be inconsistent with the statement in the FY2008 AG’s report that the funds appropriated under TVPA can be used only for noncitizen victims. Thus, it appears

¹³⁰ Raffonelli, “INS Final Rule to Assist Victims of Trafficking.” p. 9.

¹³¹ Senior Policy Operating Group on Trafficking in Persons: Subcommittee on Domestic Trafficking, *Final Report and Recommendations*, Washington, DC, August 2007, <http://www.acf.hhs.gov/trafficking/SPOGReport-Final9-5-07.pdf>.

¹³² DOJ, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, p. 9.

¹³³ Personal Communication with U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Director, Anti-Trafficking in Persons Division, April 14, 2010.

¹³⁴ P.L. 111-117, P.L. 111-8, P.L. 110-161.

¹³⁵ The grant is authorized under 22 U.S.C 7105(b)(2)(A), pertaining to grants made by the Attorney General to develop, expand or strengthen victim service programs for victims of trafficking in the United States. It is a program that was in TVPA as enacted in 2000. U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, “Announcing the Awardees from OVC’s Services for Domestic Minor Victims,” press release, 2009.

¹³⁶ 22 U.S.C §7105(b)(2)(A).

that there is ongoing confusion over the authority and funding available under TVPA to provide services to U.S. citizen trafficking victims.

Appendix A. Anti-Trafficking Administrative Directives and Legislation

The human trafficking problem has gained increased attention in the United States and worldwide since the late 1990s. It has been addressed as a priority by Congress, as well as the Clinton and Bush Administrations. As part of former President Clinton's announced International Crime Control Strategy, an interagency working group was set up to address international crime implications of trafficking. On March 11, 1998, President Clinton issued a directive establishing a government-wide anti-trafficking strategy of (1) prevention, (2) protection and support for victims, and (3) prosecution of traffickers.¹³⁷ The strategy, as announced, had strong domestic and international policy components:

- In the area of prevention, the Administration outlined the need for programs to increase economic opportunities for potential victims and dissemination of information in other countries to increase public awareness of trafficking dangers and funding for more research on trafficking.
- In terms of victim protection and assistance, the Administration argued for legislation to provide shelter and support services to victims who are in the country unlawfully and therefore presently ineligible for assistance. It pressed for the creation of a humanitarian, non-immigrant visa classification to allow victims to receive temporary resident status so they could receive assistance and help to prosecute traffickers. Also, support was sought for developing countries to protect and reintegrate trafficking victims once they were returned.
- As far as prosecution and enforcement, the Administration pressed for laws to more effectively go after traffickers and increase the penalties they can face. In addition, restitution for trafficked victims was sought in part by creating the possibility of bringing private civil lawsuits against traffickers. The Department of Justice (DOJ) called for laws that would expand the definition of involuntary servitude, criminalize a broader range of actions constituting involuntary servitude, and increase the penalties for placing people in involuntary servitude. Justice Department spokesmen also urged that prosecutors be give the capability to go after those who profit from trafficking, not just those directly involved in trafficking.¹³⁸ They also called for amending immigration statutes to punish traffickers who entrap victims by taking their passports and identification from them.

On the domestic side, a Workers' Exploitation Task Force, chaired by DOJ's Civil Rights Division and the Solicitor's Office in the Department of Labor (DOL), was charged with investigating and prosecuting cases of exploitation and trafficking. In addition, DOJ reviewed existing U.S. criminal laws and their enforcement to see if they adequately dealt with the crime of trafficking.

¹³⁷ For a discussion of this directive, see Department of State, Office of the Historian, *History of the Department of State During the Clinton Presidency (1993-2001)*, available at <http://www.state.gov/r/pa/ho/pubs/8523.htm>.

¹³⁸ Testimony of William R. Yeomans, Chief of Staff of the Civil Rights Division, Department of Justice, before the Subcommittee on Near Eastern and South Asian Affairs, Senate Foreign Relations Committee, April 4, 2000.

On the international front, the State Department sponsored the creation of a database on U.S. and international legislation on trafficking. An Interagency Council on Women formed by the Clinton Administration established a senior governmental working group on trafficking. The Administration urged the enactment of legislation to encourage and support strong action by foreign governments and help the work of non-governmental organizations (NGOs) in this area.

Victims of Trafficking and Violence Protection Act of 2000

Several bills were introduced in the 106th Congress on human trafficking. In conference, the bills were combined with the Violence against Women Act of 2000 and repackaged as the Victims of Trafficking and Violence Protection Act of 2000, along with miscellaneous anti-crime and anti-terrorism provisions. President Clinton signed the bill into law on October 28, 2000 (P.L. 106-386). The act's key provisions on human trafficking:

- Directed the Secretary of State to provide an annual report by June 1, listing countries that do and do not comply with minimum standards for the elimination of trafficking, and to provide information on the nature and extent of severe forms of trafficking in persons (TIP) in each country and an assessment of the efforts by each government to combat trafficking in the State Department's annual human rights report;
- Called for establishing an Interagency Task Force to Monitor and Combat Trafficking, chaired by the Secretary of State, and authorized the Secretary to establish within the Department of State an Office to Monitor and Combat Trafficking to assist the Task Force;
- Called for measures to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking, to increase public awareness, particularly among potential victims, of the dangers of trafficking and the protections that are available for victims, and for the government to work with NGOs to combat trafficking;
- Established programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement of victims of trafficking and their children, as well as programs to provide assistance to victims of severe forms of TIP within the United States, without regard to such victims' immigration status and to make such victims eligible for any benefits that are otherwise available under the Crime Victims Fund;¹³⁹
- Provided protection and assistance for victims of severe forms of trafficking while in the United States;
- Amended the Federal Criminal code to make funds derived from the sale of assets seized from and forfeited by traffickers available for victims assistance programs under this act;
- Amended the Immigration and Nationality Act (INA) to allow the Attorney General to grant up to 5,000 nonimmigrant visas (T visas) per year to certain

¹³⁹ For more information on the Crime Victims Fund, see CRS Report RL32579, *Victims of Crime Compensation and Assistance: Background and Funding*, by Celinda Franco.

victims of severe forms of trafficking who are in the United States and who would face unusual and severe harm if they were removed from the United States. In addition, amended the INA to allow up to 5,000 T visas holders per year to adjust to lawful permanent resident status if the aliens have been in the United States continuously for three years since admission, have remained of good moral character, have not unreasonably refused to assist in trafficking investigations or prosecutions, and would suffer extreme hardship if removed from the United States;

- Established minimum standards to combat human trafficking applicable to countries that have a significant trafficking problem. Urged such countries to prohibit severe forms of TIP, to punish such acts, and to make serious and sustained efforts to eliminate such trafficking;
- Provided for assistance to foreign countries for programs and activities designed to meet the minimum international standards for the elimination of trafficking;
- Called for the United States to withhold non-humanitarian assistance and instructed the U.S. executive director of each multilateral development bank and the International Monetary Fund to vote against non-humanitarian assistance to such countries that do not meet minimum standards against trafficking and are not making efforts to meet minimum standards, unless continued assistance is deemed to be in the U.S. national interest;
- Encouraged the President to compile and publish a list of foreign persons who play a significant role in a severe form of TIP. Also encouraged the President to impose sanctions under the International Emergency Economic Powers Act, including the freezing of assets located in the United States, and to exclude significant traffickers, and those who knowingly assist them, from entry into the United States; and
- Amended the Federal Criminal Code (18 U.S.C.) to double the current maximum penalties for peonage, enticement into slavery, and sale into involuntary servitude from 10 years to 20 years imprisonment and to add the possibility of life imprisonment for such violations resulting in death or involving kidnapping, aggravated sexual abuse, or an attempt to kill.

The Bush Administration, as well as Congress, continued the anti-trafficking effort. Then-Attorney General John Ashcroft announced in March 2001 that the fight against trafficking would be a top priority for the Administration and that U.S. law enforcement agencies, including the Federal Bureau of Investigation (FBI), the former Immigration and Naturalization Service, and the Justice Department's Civil Rights Division would cooperate closely to upgrade their efforts to combat trafficking. The Justice Department also announced new guidelines for federal prosecutors to pursue trafficking cases.¹⁴⁰ The State Department issued its first congressionally mandated report on worldwide trafficking in July 2001.

On January 24, 2002, Ashcroft announced the implementation of a special "T" visa, as called for in P.L. 106-386, for victims of trafficking in the United States who cooperate with law enforcement officials. Under the statute, victims who cooperate with law enforcement against their traffickers and would be likely to suffer severe harm if returned to their home countries may

¹⁴⁰ Attorney General John Ashcroft's news conference on March 27, 2001.

be granted permission to stay in the United States. After three years in T status, the victims are eligible to apply for permanent residency and for non-immigrant status for their spouses and children.¹⁴¹

On February 13, 2002, President Bush signed an Executive Order establishing an Interagency Task Force to Monitor and Combat TIP. The Task Force, mandated by the Trafficking Victims Protection Act of 2000 (P.L. 106-386), includes the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services (HHS), the Director of the Central Intelligence Agency, the Administrator of the Agency for International Development, the Director of the Office of Management and Budget, and Office of the National Security Advisor. The Task Force is charged with strengthening coordination among key agencies by identifying what more needs to be done to protect potential victims, to punish traffickers, and to prevent future trafficking. The State Department Office to Monitor and Combat Trafficking in Persons (G-TIP) was tasked with assisting the Interagency Task Force in implementing P.L. 106-386 and Task Force initiatives.

The Foreign Relations Authorization Act of 2003

In 2002, Congress amended the Victims of Trafficking and Violence Protection Act of 2000 in Sec. 682 of the Foreign Relations Authorization Act, FY2003 (P.L. 107-228) to provide

- support for local in-country nongovernmental organization to operated hotlines, culturally and linguistically appropriate protective shelters, and regional and international nongovernmental organizational networks and databases on trafficking;
- support for nongovernmental organizations and advocates to provide legal, social, and other services and assistance to trafficked individuals, particularly those individuals in detention;
- education and training for trafficked women and girls;
- the safe integration or reintegration of trafficked individuals into an appropriate community or family, while respecting the wishes, dignity, and safety of the trafficked individual; and
- support for developing or increasing programs to assist families of victims in locating, repatriating, and treating their trafficked family members.

The amendment also authorized an increase in appropriations for FY2003 to fund such programs.

Trafficking Victims Protection Reauthorization Act of 2003

In 2003, Congress approved the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003. The President signed the act into law on December 19, 2003 (P.L. 108-193). The act authorized substantial increases in funding for anti-trafficking programs in FY2004 and FY2005 (over \$100 million for each fiscal year). P.L. 108-193 refined and expanded the Minimum standards for the elimination of trafficking that governments must meet and placed on such

¹⁴¹ U.S. Department of State, Washington File, January 24, 2002.

governments the responsibility to provide the information and data by which their compliance with the standards could be judged. The legislation created a “special watch list” of countries that the Secretary of State determined were to get special scrutiny in the coming year. The list was to include countries where (1) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (2) there is a failure to provide evidence of increasing efforts to combat severe forms of TIP from the previous year; or (3) the determination that a country is making significant efforts to bring itself into compliance with minimum standards is based on its commitments to take additional steps over the next year. In the case of such countries, not later than February 1st of each year, the Secretary of State is to provide to the appropriate congressional committees an assessment of the progress that the country had made since the last annual report.

Intelligence Reform and Terrorism Protection Act of 2004

In December 2004, Congress approved the Intelligence Reform and Terrorism Protection Act of 2004, signed into law on December 17, 2004 (P.L. 108-458). The law established a Human Smuggling and Trafficking Center (HSTC) to be jointly operated by the Department of Homeland Security (DHS), the State Department, and DOJ. It required that the Center serve as a clearinghouse for Federal agency information in support of U.S. efforts to combat terrorist travel, migrant smuggling, and human trafficking.

Trafficking Victims Protection Reauthorization Act of 2005

On February 17, 2005, Representative Christopher Smith and nine co-sponsors introduced the Trafficking Victims Protection Reauthorization Act of 2005 to authorize appropriations for FY2006 and FY2007 and close loopholes in previous anti-trafficking legislation. The bill was signed into law by the President on January 10, 2006 (P.L. 109-164). Among other things, the legislation had provisions to increase U.S. assistance to foreign trafficking victims in the United States, including access to legal counsel and better information on programs to aid victims. It attempted to address the special needs of child victims, as well as the plight of Americans trafficked within the United States. It directed relevant U.S. government (USG) agencies to develop anti-trafficking strategies for post-conflict situations and humanitarian emergencies abroad. It sought to extend U.S. criminal jurisdiction over government personnel and contractors who are involved in acts of trafficking abroad while doing work for the government. It addressed the problem of peacekeepers and aid workers who are complicit in trafficking.

The Implementing the 9/11 Commission Recommendations Act of 2007

The Implementing the 9/11 Commission Recommendations Act of 2007, P.L. 110-53 (H.R. 1), signed into law on August 3, 2007, directs the Secretary of Homeland Security (Secretary of DHS) to provide specified funding and administrative support to strengthen the HSTC. The act directs the Secretary of DHS to nominate a USG employee to direct the HSTC, and specifics that the HSTC be staffed by at least 40 full-time staff, including detailees.¹⁴² In addition, the act

¹⁴² The act specifies a number of agencies from which, as appropriate, staff may be detailed to the HSTC, including but not limited to U.S Customs and Border Protection, Transportation Security Administration, Coast Guard, Central (continued...)

mandates the hiring of not less than 40 full-time equivalent staff for the HSTC, and would specify the agencies and departments from which the personnel should be detailed (e.g., Transportation and Security Administration, U.S. Coast Guard, ICE, Central Intelligence Agency), and their areas of expertise (e.g., consular affairs, counter terrorism). It also directs the Secretary of DHS to provide the administrative support and funding for the HSTC.

William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008, P.L. 110-457; H.R. 7311) was signed into law on December 23, 2008.¹⁴³ The act authorizes appropriations for FY2008 through FY2011 for the TVPA as amended and establishes a system to monitor and evaluate all assistance under the act. P.L. 110-457 requires the establishment of an integrated database to be used by USG departments and agencies to collect data for analysis on TIP. In addition, the act creates a Presidential award for extraordinary efforts to combat TIP.

Measures to Address Human Trafficking in Foreign Countries

P.L. 110-457 increases the technical assistance and other support to help foreign governments inspect locations where forced labor occurs, register vulnerable populations, and provide more protection to foreign migrant workers. The act requires that specific actions be taken against governments of countries that have been on the Tier 2 Watch-List for two consecutive years. P.L. 110-457 also requires U.S. Department of State to translate the TIP Report into the principal languages of as many countries as possible. In addition, among other measures to address the issue of child soldiers, the act prohibits military assistance to foreign governments that recruit and use child soldiers.

Preventing Trafficking to the United States

TVPRA 2008 requires pamphlets on the rights and responsibilities of the employee to be produced and given to employment-based and educational-based nonimmigrants,¹⁴⁴ P.L. 110-457

(...continued)

Intelligence Agency, National Security Agency, and the Departments of Defense, Justice, and State. The act also specifies that the detailees include an adequate number with specified expertise, and that agencies shall create policies and incentives for the detailees to serve terms of at least two years.

¹⁴³ The House and the Senate had each taken up their own versions of the 2008 reauthorization bill. H.R. 3887, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (Lantos), was passed by the House under suspension of the rules on December 4, 2007. The vote was 405-2. S. 3061, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Biden/Brownback), was reported by the Senate Judiciary Committee on September 8, 2008. H.R. 3887 and S. 3061 included many identical provisions, and most of the differences between the two bills were from provisions that existed in only one of the bills rather than substantial differences between similar provisions in both bills. For a more detailed discussion of the differences between the two bills, see CRS Congressional Distribution Memorandum, *Select Differences Between S. 3061 as Reported, and H.R. 3887 as Passed by the House*, by Alison Siskin and Clare Ribando Seelke, available from the authors.

¹⁴⁴ Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). Under the act, employment-based and educational-based visas refer to: A-3 visa holders (admitted under INA §101(a)(15)(A)(iii)), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, (continued...)

also requires consular officers to make sure that certain aliens interviewing for nonimmigrant visas have received, read, and understood the pamphlet. During the interview, the consular officer is also required to discuss the alien's legal rights under U.S. immigration, labor and employment law. The act contains several provisions aimed to protect A-3 and G-5 visas holders¹⁴⁵ including directing the Secretary of State to deny A-3 and G-5 visas to aliens who would be working at a diplomatic mission or international institution where an alien had been subject to trafficking or exploitation at the mission or institution. In addition, the Secretary of State has maintain records on the presence of A-3 and G-5 visa holders in the United States, including information regarding any allegations of abuse.

Measures to Address Trafficking in the United States

P.L. 110-457 amends the requirements for the T visa, so that an alien would be eligible for a T visa if the alien was unable to comply with requests for assistance in the investigation and prosecution of acts of trafficking due to physical or psychological trauma. TVPRA 2008 also requires when determining whether the alien meets the extreme hardship requirement for T status that the Secretary of DHS consider whether the country to which the alien would be removed can adequately address the alien's security and mental and physical health needs. In addition, P.L. 110-457 amends the requirements for the T visa so that an alien would be eligible if she was present in the United States after being allowed entry to aid in the prosecution of traffickers. The act also broadens the requirements for an alien to receive continued presence in the United States, and makes it easier for families of trafficking victims to be paroled into the United States. In addition, P.L. 110-457 amends the law to allow the Secretary of DHS to waive the good moral character requirement for those adjusting from T to LPR status, and allows the Secretary of DHS to provide a stay of removal for aliens with pending T applications (with a prima facie case for approval), until the application has been adjudicated. The act also makes aliens with pending applications for T status eligible for public benefits, and makes T visa holders, including derivatives, eligible for public benefits.¹⁴⁶ Furthermore, P.L. 110-457 requires the Secretary of HHS to make a prompt determination of eligibility for assistance for child trafficking victims.

TVPRA 2008 has provisions relating to enhancing protections for child victims of trafficking. Among these provision include requiring the United States to enter into agreements with contiguous countries regarding the return of unaccompanied minors designed to protect children

(...continued)

other foreign government officials and employees or the immediate family of such workers; G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations; H visa holders (admitted under INA §101(a)(15)(H)) which is the main category for different types of temporary workers; and J visa holders (admitted under INA §101(a)(15)(J)) which are foreign exchange visitors and include diverse occupations as au pairs, foreign physicians, camp counselors, professors and teachers.

¹⁴⁵ A-3 visa holders refer to workers admitted under INA §101(a)(15)(A)(iii), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers. G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations.

¹⁴⁶ Previously, T visa holders and their derivative were eligible for public benefits because of a provision in Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) stating for the purpose of benefits T visa holders are eligible to receive certain public benefits to the same extent as refugees. TVPRA 2008 amends the Personal Responsibility and Work Opportunity Act (P.L. 104-193, PWORA also known as Welfare Reform) to make T visa holders and their derivatives "qualified aliens" (i.e., eligible for public benefits under PWORA).

from severe forms of TIP,¹⁴⁷ and specifying screening procedures for children suspected of being trafficking victims. In addition, the act directs the Secretary of HHS to the extent possible to provide legal counsel and appoint child advocates to child trafficking victims and other vulnerable unaccompanied alien children.

Moreover, P.L. 110-457 creates new grant programs for U.S. citizen victims of severe forms of trafficking and authorizes appropriations for such programs. The act also requires the Secretary of HHS and the Attorney General, within one year of enactment, to submit a report to Congress identifying any gaps between services provided to U.S. citizen and noncitizen victims of trafficking. It also prohibits DOS from issuing passports to those convicted of sex tourism until the person has completed their sentence. Furthermore, the act creates new criminal offenses related to human trafficking, including criminalizing retaliation in foreign labor contracting. P.L. 110-457 creates additional jurisdiction in U.S. courts for trafficking offenses occurring in other countries if the alleged offender is present in the United States.

¹⁴⁷ Unaccompanied minors are aliens who are in the United States without a parent or guardian.

Appendix B. Trafficking Funding Issues

The U.S. government (USG) supports many types of anti-trafficking (anti-TIP) activities overseas and domestically. U.S. anti-trafficking activities are authorized by the Trafficking Victims Protection Act (TVPA) of 2000 (P.L. 106-386), as amended. **Table B-1** lists trafficking authorization levels for FY2006-FY2011. Figures for FY2008-FY2011 are estimates based on the levels proposed in H.R. 3887 and S. 3061. Those authorizations are for TIP operations (including law enforcement investigations) and TIP programs.

Since many USG agencies do not have a line item in their budget requests for trafficking programs and/or TIP-related operations, it is often difficult to calculate the exact level of funding that Congress appropriated for trafficking activities (programs and operations/law enforcement activities) by agency. Despite the challenges, the Office of Management and Budget (OMB) tracks estimated TIP appropriations levels by gathering agency estimations of TIP-related spending for each fiscal year. See **Table B-2** for TIP authorizations versus appropriations for FY2001-FY2007. According to OMB, funding for TVPA programs comes from appropriations to a number of U.S. departments and agencies, including the Department of State (Economic Support Fund, Migration and Refugee Assistance, International Narcotics Control and Law Enforcement (INCLE) Assistance); the Department of Justice (Victims of Trafficking Grants, Criminal and Civil Rights programs, and the Federal Bureau of Investigations); the Department of Labor (Bureau of International Labor Affairs); the Department of Health and Human Services; and the Department of Homeland Security (Immigration and Customs Enforcement).

In FY2007, aggregate appropriations for international anti-trafficking activities amounted to an estimated \$63.3 million, down from \$66.4 million in FY2006. The bulk of that funding supported anti-TIP programs in foreign countries that are administered by the Department of State, the U.S. Agency for International Development, and the Department of Labor.

Domestic anti-TIP activities include both services to victims, as well as law enforcement operations. Investigations into human trafficking are complex and as a result often require significant resources. According to OMB, in FY2006, Congress appropriated \$113.5 for domestic anti-TIP activities, an increase of \$38.6 million over the FY2005 appropriations level of \$74.9 million. Approximately 17.6% (\$20 million) of the FY2006 appropriations were used for trafficking victims' services, while the majority of the appropriated monies funded the anti-TIP efforts of domestic law enforcement agencies including the Federal Bureau of Investigations (\$47.5 million) and Immigration and Customs Enforcement (\$11.9 million).

Due to the methodological difficulties involved in calculating TIP appropriations and the fact that a large portion of TIP programs are supported by Economic Support Funds, which are appropriated to remain available for two years, the State Department calculates TIP obligations by agency per fiscal year. According to G-TIP, this generates the best estimate of the amount of funding spent on TIP programs by agency for each fiscal year. In FY2007, the USG obligated an estimated \$79.4 million in anti-trafficking assistance to foreign governments, up from \$74.0 million in FY2006. International anti-TIP program totals are compared to roughly \$22.9 million obligated in FY2007 and \$28.6 million obligated in FY2006 for domestic anti-TIP programs. They do not include the costs of TIP operations or law enforcement investigations.¹⁴⁸ See **Table**

¹⁴⁸ "U.S. Government Anti-Trafficking in Persons Obligated Project Funding (FY2006)," G-TIP Fact Sheet, April 23, 2007, (continued...)

C-1 for authorizations and appropriations for grant programs to assist trafficking victims in the United States for FY2001-FY2009.

(...continued)

<http://www.state.gov/g/tip/rls/fs/07/83371.htm>. FY2007 obligations by agency should be available by April 2008.

Table B-I. Current Authorizations to Implement Victims of Trafficking Act
(in millions)

Authorizations to and Purpose	Original Authorizing Language	P.L. 110-457 (current)			
		FY08	FY09	FY10	FY11
International Programs					
Department of State (DOS) and United States Agency for International Development (USAID)					
USAID: Pilot Program Residential Treatment Facilities	P.L. 109-164, §102(b)(2)	\$2.5	\$2.5	\$2.5	\$2.5
DOS: trafficking in human rights report, interagency taskforce, senior policy operating group, Annual country reports	P.L. 106-386, §§104, 105(e), 105(f), 110	\$5.5	\$5.5	\$5.5	\$5.5
DOS: Official receptions Office to Combat Trafficking	P.L. 109-164, §301	\$0.03	\$0.03	\$0.03	\$0.03
DOS: Prevention of trafficking	P.L. 106-386 §106	\$10.0	\$10.0	\$10.0	\$10.0
DOS: Assistance to victims in other countries	P.L. 106-386 §107(a)	\$10.0	\$10.0	\$10.0	\$10.0
DOS: TIP report and aid to countries to meet min standards, including law enforcement training	P.L. 106-386 §§108-109	\$10.25	\$10.25	\$10.25	\$10.25
DOS: Assistance and protection of refugees and displaced persons from traffickers	P.L. 110-457, §104	\$1.0	\$1.0	\$1.0	\$1.0
DOS: Additional Personnel for the Office to Combat Trafficking	P.L. 110-457, §301(1)(B)(i)	\$1.5	\$1.5	\$1.5	\$1.5
President					
President through Attorney General and DOS: foreign law enforcement training	P.L. 106-386, §109	\$25	\$25	\$25	\$25
President:	P.L. 106-386, §106				
Foreign Victims Assistance		\$15.0	\$15.0	\$15.0	\$15.0
President: To help countries meet min. standards	P.L. 106-386, §109	\$15.0	\$15.0	\$15.0	\$15.0
President: Research on human trafficking	P.L. 108-193, §6(g)(1)	\$2.0	\$2.0	\$2.0	\$2.0
Domestic Programs					
Department of Health and Human Services (HHS)					
HHS: Victims' assistance	P.L. 106-386, §107(b)(1)	\$12.5	\$12.5	\$12.5	\$12.5
HHS: Grants to U.S. citizen and LPR victims of trafficking within U.S.	P.L. 109-164, §202	\$8.0	\$8.0	\$8.0	\$8.0
HHS: Pilot program residential treatment facilities juvenile victims in U.S.	P.L. 109-164, §203	\$5.0	\$5.0	\$5.0	\$5.0
HHS: Victims assistance for U.S. citizens and Legal Permanent Residents (LPRs)	P.L. 110-457, §213	\$2.5	\$5.0	\$7.0	\$7.0

Authorizations to and Purpose	Original Authorizing Language	P.L. 110-457 (current)			
		FY08	FY09	FY10	FY11
Department of Homeland Security (DHS)					
DHS' Immigration and Customs Enforcement: trafficking investigations	P.L. 109-164, §301(h)	\$18.0	\$18.0	\$18.0	\$18.0
Department of Justice (DOJ)					
DOJ: Grants to strengthen victims services	P.L. 106-386, §107(b)(2)	\$10.0	\$10.0	\$10.0	\$10.0
DOJ: Study on severe forms of trafficking in persons in U.S.	P.L. 109-164, §201(a)(1)(B)(i)	\$1.5	\$1.5	\$1.5	\$1.5
DOJ: Study on sex trafficking in U.S.	P.L. 109-164, §201(a)(1)(B)(ii)	\$1.5	\$1.5	\$1.5	\$1.5
DOJ: Annual trafficking conference	P.L. 109-164, §201(a)(2)	\$1.0	\$1.0	\$1.0	\$1.0
DOJ: grants to state and local law enforcement for anti-trafficking programs	P.L. 109-164, §204	\$20.0	\$20.0	\$20.0	\$20.0
DOJ Federal Bureau of Investigation: trafficking investigations	P.L. 109-164, §301(h)	\$15.0	\$15.0	\$15.0	\$15.0
DOJ: Victims assistance for U.S. citizens and Legal Permanent Residents (LPRs)	P.L. 110-457, §213	\$2.5	\$5.0	\$7.0	\$7.0
Department of Labor (DOL)					
DOL: Expand services to trafficking victims	P.L. 106-386, §107(b)(1)(B)	\$10.0	\$10.0	\$10.0	\$10.0

a. Excludes funding for §104 of P.L. 106-386, adding information on human trafficking to the annual country reports on Human Rights Practices.

Source: CRS analysis of P.L. 106-386, P.L. 108-193, P.L. 109-164, and P.L. 110-457.

**Table B-2. Trafficking Victims Protection Act (TVPA) of 2000, as Amended
Authorizations and Appropriations, FY2001-2009**
(\$ in millions)

Fiscal Year	Authorizing Public Law	Title	Authorizations (Millions \$)	Appropriations (Millions \$)
2001	106-386 (Part A)	Victims of Trafficking and Violence Protection Act of 2000	\$31.8	N/A
2002	106-386 (Part A)	Victims of Trafficking and Violence Protection Act of 2000	\$63.3	N/A
2003	106-386 (Part A) ^a	Victims of Trafficking and Violence Protection Act of 2000	\$48.3	N/A
2004	108-193	Trafficking Victims Protection Reauthorization Act of 2003	\$105.6	\$109.8
2005			\$105.6	\$109.6
2006	109-164	Trafficking Victims Protection Reauthorization Act of 2005	\$177.3	\$152.4
2007			\$162.3	\$153.1
2008	110-457	William Wilberforce Trafficking Victims Reauthorization Act of 2008	\$180.5	\$167.4
2009			\$185.5	\$182.7

Source: Estimated appropriations levels as calculated by the Office of Management and Budget (response to CRS on November 30, 2009). Estimates not collected prior to FY2004.

a. As amended by Sec. 682 of the Foreign Assistance Act for FY2003 (P.L. 107-228).

Appendix C. Information on Domestic Grant Programs for TIP Victims

Table C-1. Authorizations and Appropriations for Grant Programs to Assist Victims of Trafficking in the United States: FY2001-FY2009
(\$ in millions)

Fiscal Year	Victims Services—DOJ		Office of Refugee Resettlement ^a		DOL
	Authorized	Appropriated	Authorized	Appropriated	Authorized
FY2001	\$5	\$0	\$5	\$5	\$5
FY2002	\$10	\$10	\$10	\$10	\$10
FY2003	N.A.	\$10	N.A.	\$9.9	N.A.
FY2004	\$15	\$10	\$15	\$9.9	\$10
FY2005	\$15	\$10	\$15	\$9.9	\$10
FY2006	\$15	\$9.9	\$15	\$9.8	\$10
FY2007	\$15	\$9.9	\$15	\$9.8	\$10
FY2008	\$10 ^b	\$9.4 ^c	\$12.5 ^b	\$10 ^d	\$10 ^b
FY2009	\$10	\$10	\$12.5	\$9.8 ^d	\$10
FY2010	\$10	\$12.5 ^c	\$12.5	\$9.8 ^d	\$10

Sources: P.L. 106-386, P.L. 108-193, P.L. 109-164, P.L. 107-77, P.L. 107-116, P.L. 108-7, P.L. 108-90, P.L. 108-199, P.L. 108-334, P.L. 108-447, P.L. 109-90, P.L. 109-149, P.L. 109-164, P.L. 110-5, P.L. 110-161, P.L. 110-457, P.L. 111-8, P.L. 111-117.

- a. This only includes authorizations for the HHS grant program, authorized originally in P.L. 106-386, to provide assistance to victims. Three other HHS victims service programs have been authorized but according to HHS none have received appropriations. For a listing of these programs, see **Table B-1**.
- b. Authorizations for FY2008 were enacted during FY2009.
- c. This includes funding for victims services programs under The Victims of Trafficking Act of 2000 P.L. (106-386) and DOJ programs authorized under Trafficking Victims Protection Reauthorization Act of 2005 (P.L. 109-164).
- d. The language in Act states that the money should be available to carry out The Victims of Trafficking Act of 2000.

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