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Human Trafficking and Foreign Policy: An Introduction

What is human trafficking?

Human trafficking (also known as trafficking in persons) refers to the subjection of men, women, or children to exploitative conditions that may be tantamount to modern-day slavery. From a foreign policy perspective, human trafficking can be viewed as a human rights problem, a manifestation of transnational organized crime, and a violation of core international labor standards. Human trafficking also raises economic development, international migration, and global governance and security issues, and disproportionately victimizes vulnerable populations.

The Trafficking Victims Protection Act of 2000 (TVPA, Division A of P.L. 106-386; 22 U.S.C. 7101 et seq.) defined “severe forms of trafficking in persons” to include sex trafficking induced by force, fraud, or coercion, child sex trafficking (under 18 years of age), and forced labor trafficking. The latter involves the recruitment, harboring, transportation, provision, or obtaining of a person—induced by force, fraud, or coercion—for the purpose of subjecting that person, including a child, to involuntary servitude, peonage, debt bondage, or slavery.

The recruitment and use of a “child soldier,” defined in the Child Soldiers Prevention Act of 2008 (CSPA, Title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008; 22 U.S.C. 2370c et seq.), is also a form of human trafficking.

How has Congress responded?

Congress has long been engaged on trafficking-related issues. For nearly two decades, the cornerstone legislative vehicle to address international human trafficking has been the TVPA, as amended and reauthorized in 2003 (P.L. 108-193), 2005 (P.L. 109-164), 2008 (P.L. 110-457), and 2013 (P.L. 113-4). Most recently, the 115th Congress passed the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (H.R. 2200).

Among other key provisions, the TVPA established a ranking system for measuring government efforts to eliminate human trafficking—and prohibits certain types of U.S. foreign assistance to the worst-ranked countries. The TVPA also defines the role and mandate of the Secretary of State to combat human trafficking and requires the State Department to annually publish reports on “trafficking in persons” (known as the TIP Report), discussed below.

Both U.S. policy, including the TVPA, and international law (e.g., the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children) view anti-trafficking responses as encompassing efforts to *protect* victims, *prosecute* traffickers, and *prevent* opportunities for traffickers to exploit (known as the 3Ps).

In addition to funding for anti-trafficking programs through regular appropriations, Congress has shaped U.S. policy to combat international human trafficking, including through provisions that predate the TVPA. In chronological order, key statutes include the following:

- Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), which prohibits the importation of foreign goods made wholly or in part by convict, forced labor, and/or indentured labor.
- Section 504 of the Trade Act of 1974 (19 U.S.C. 2464), as amended by the Trade and Development Act of 2000 (P.L. 106-200), which requires an annual report by the Labor Department on the worst forms of child labor.
- CSPA of 2008, which prohibits certain categories of U.S. security assistance to be furnished to countries involved in the recruitment and use of child soldiers.
- Title XVII of the National Defense Authorization Act, Fiscal Year 2013 (NDAA; P.L. 112-239), which expands provisions in the TVPA to prevent trafficking in federal procurement, including by military contractors engaged in overseas contingency operations.
- Section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I of P.L. 114-26; 19 U.S.C. 4205), which limits the use of trade authorities procedures for negotiating agreements with the worst-ranked countries in the TIP Report.
- International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (P.L. 114-119), which seeks to prevent child sexual exploitation abroad by outbound U.S. sex offenders.
- Sections 910 and 914 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125), which eliminated the so-called “consumptive demand exception” to Section 307 of the Tariff Act of 1930 and amended the trafficking provision in Bipartisan Congressional Trade Priorities and Accountability Act of 2015, discussed above.
- Section 1298 of the FY2017 NDAA (P.L. 114-328; 22 U.S.C. 7114), which authorized a new international public-private partnership to address “modern slavery.”
- Section 321 of the Countering America’s Adversaries Through Sanctions Act (CAATSA, P.L. 115-44), which amends the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9241 et seq.) to require the President to apply sanctions on foreign persons employing North Korean labor and to require the application of Section 307 of the Tariff Act of 1930, discussed above, with respect to certain items mined, produced, or manufactured by North Korean labor.

What is the State Department's role?

The State Department leads federal efforts to combat human trafficking. The Secretary of State chairs the President's Interagency Task Force (PITF) on Trafficking in Persons, held most recently in October 2018. The Director of the Office to Monitor and Combat Trafficking in Persons (J/TIP) chairs the Senior Policy Operating Group (SPOG), a working-level interagency entity to coordinate federal responses. J/TIP also administers several international anti-trafficking grant programs, along with preparing, with department-wide input, the TIP Report.

What is the TIP Report?

Due in June each year, the TVPA requires State to prepare a report for Congress describing the anti-trafficking efforts of the United States and foreign governments.

How are countries ranked?

Countries ranked in the TIP Report fall into one of four possible tiers or categories: Tier 1 (best), Tier 2, Tier 2 Watch List, and Tier 3 (worst). Only Tier 1 countries comply with the TVPA's minimum standards for eliminating trafficking, while the rest are noncompliant and vary in terms of the level of effort to improve.

What are the minimum standards?

To be eligible for a Tier 1 ranking, the TVPA establishes that governments should prohibit severe forms of trafficking in persons, punish acts of such trafficking commensurate with the gravity and heinous nature of the crime, and be making "serious and sustained efforts" to eliminate the problem. The TVPA further identifies criteria for what constitutes serious and sustained effort.

What is at stake in the rankings?

The TVPA establishes restrictions on certain types of U.S. foreign aid (nonhumanitarian, nontrade-related) to Tier 3 countries, although the President is authorized to waive, in part or in full, such aid restrictions. Each year, these decisions are issued in a presidential determination that is published in the *Federal Register*.

How are child soldiers addressed?

Pursuant to the CSPA, TIP Reports since 2010 have included a list of countries that recruit or use child soldiers in their armed forces, or that harbor government-supported armed forces that recruit or use child soldiers. Listed countries are subject to security assistance restrictions, unless the President determines that waivers are necessary.

What international grant programs address trafficking?

Between 2001 and 2018, J/TIP has reportedly managed more than \$300 million in foreign aid for anti-trafficking programming implemented by a range of U.S. and foreign nongovernmental, for-profit, and international organizations, including academic institutions. Such programming has included the following:

- **Bilateral and regional multiyear projects** to address the 3Ps of anti-trafficking in priority countries. As of December 1, 2018, J/TIP reports that it has managed 86 such programs in more than 76 countries, worth a total of more than \$125 million.

- The **Program to End Modern Slavery (PEMS)**, which launched in October 2017 with an initial \$25 million investment, leveraged over time with other donor resources, to support multiyear projects to reduce the prevalence of modern slavery.
- **Child Protection Compact (CPC) Partnerships** with Ghana, the Philippines, Peru, and Jamaica. CPCs are negotiated bilateral partnerships to combat child trafficking for up to five years; up to \$5 million may be awarded in support of each CPC.

How much funding is available?

The Consolidated Appropriations Act, 2018 (P.L. 115-141), provided not less than \$78.8 million in State Department and foreign aid efforts to combat human trafficking. This amount included \$13.8 million to support J/TIP personnel and administrative costs with Diplomatic and Consular Programs (D&CP) funds. Also included was \$65 million in foreign aid for anti-trafficking programs—including not less than \$40 million out of the International Narcotics Control and Law Enforcement (INCLE) account. Of this, \$6 million was directed to be made available for DNA forensic technology programs to combat human trafficking in Central America and Mexico. The joint explanatory statement accompanying FY2018 appropriations also specified up to \$5 million to support CPCs, \$2 million for "West Africa anti-slavery programs," and an additional \$25 million in INCLE funds (separate from the \$40 million listed above) for PEMS.

What changes to the TVPA were made by the latest reauthorization?

The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 authorized appropriations for international anti-trafficking programming through FY2021, including \$13.8 million in D&CP funds for J/TIP and \$65 million to State for bilateral anti-trafficking assistance. Among other provisions, the act made several changes to the TIP Report's country ranking system and expanded the CSPA's reach to include the recruitment or use of children in nonmilitary security forces, including police.

What are the current policy issues?

Human trafficking is a generations-old problem that continues to challenge policymakers for solutions. Basic questions remain, such as how to measure the scope of the problem or foster effective anti-trafficking policies in other countries. Some also question aspects of U.S. policy, including the TIP Report's tier ranking system and the effectiveness of related foreign aid. Key issues also include how to eliminate trafficking in global supply chains; how to protect vulnerable populations, particularly those in conflict zones and women and children; and how to reduce demand for the services provided by and products generated from human exploitation.

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