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## Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad

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# SEX SLAVERY IN THE UNITED STATES AND THE LAW ENACTED TO STOP IT HERE AND ABROAD<sup>1</sup>

SUSAN W. TIEFENBRUN\*

## I. INTRODUCTION

### A. History of Trafficking Leading to Sex Slavery

Slavery is not dead. Sex trafficking is a contemporary form of slavery that violates women's<sup>2</sup> fundamental human rights, including the right to life, liberty, and security of person, the right not to be held in slavery or servitude, and the right to be free from cruel or inhuman treatment.<sup>3</sup> These basic rights are enumerated in the United Nations Universal Declaration of Human Rights<sup>4</sup> as well

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1. A shortened version of this article was presented at *Sexual Assaults of International Consequence: A Symposium on the Suppression of International Crimes Against Women* at Case Western Reserve University School of Law on October 10, 2003. An updated version was presented at the *Loyola University Chicago International Law Review Symposium on International Migration* on February 24, 2005, discussing the domestic and international impact of the United States trafficking law. I wish to thank my research assistant Debora Gerads and the librarian at Thomas Jefferson School of Law, Dorothy Hampton, for their invaluable assistance in preparing this article.

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2. Women, girls, men, and boys are sex trafficked all over the world; however, this article concentrates on sex trafficking as a violation of women's human rights and an international crime that victimizes women. See Anne Gallagher, *Contemporary Forms of Female Slavery*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 487 (Kelly D. Askin & Doreen M. Koenig eds., 2000); see also Susan Tiefenbrun, *The Saga of Susannah, A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2002*, 2002 UTAH L. REV. 107, 111 [hereinafter Tiefenbrun, *Saga of Susannah*].

3. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 112; see also Nora Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 164-65 (1994) (referring to international trafficking of women and children for the purposes of prostitution as "white slavery").

4. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

as in many international agreements,<sup>5</sup> treaties, U.N. resolutions, and reports.<sup>6</sup>

In the last few decades, trafficking in persons, predominantly women and girls, has become one of the fastest growing and most lucrative industries supported and developed by international crime syndicates.<sup>7</sup> It has grown into a multi-billion dollar industry due to its high profitability and low risk of punishment.<sup>8</sup> As an industry, sex trafficking generates seven to ten billion dollars annually for traffickers<sup>9</sup> who exploit the vulnerability of women and children lacking the protection of trafficking laws. If such laws exist at all in other countries, they are generally poorly enforced.<sup>10</sup>

Although statistics about trafficking are notoriously unreliable,<sup>11</sup> according to a 2003 U.S. government estimate, "approximately 800,000 to 900,000 people annually are trafficked across international borders worldwide and between 18,000 and 20,000 of those victims are trafficked into the United States."<sup>12</sup> In 2002, the Department of State's (DoS) Annual Trafficking in Persons Report (TIP Report) stated that "at least 700,000, and possibly as many as four million men, women, and children worldwide were bought, sold, transported and held against their will in slave-like

5. For a list of international conventions held to eradicate sex trafficking, see Susan Tiefenbrun, *Sex Sells but Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 T. JEFFERSON L. REV. 161, 187-88 (2002) [hereinafter Tiefenbrun, *Sex Sells*]. There are fourteen international conventions prohibiting trafficking and related crimes. These conventions date back to 1904 and include the most recent U.N. Convention Against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against Smuggling of Migrants by Land, Sea and Air, passed one month after the Victims of Trafficking and Violence Protection Act (TVPA), which is the main focus of this article. Since 1948 the U.N. has passed six declarations, treaties, resolutions, and reports condemning slavery. *Id.*

6. *Id.* at 189.

7. See e.g., Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(8), 114 Stat. 1464 (2000) (codified as amended at 22 U.S.C. § 7101 (2004)) [hereinafter TVPA].

8. See e.g., DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 9 (2003), available at <http://www.state.gov/document/organization/21555.pdf> [hereinafter 2003 TIP REPORT]; see also DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2 (2002), available at <http://www.state.gov/documents/organization/10815.pdf> [hereinafter 2002 TIP REPORT]; DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 1 (2001), available at <http://www.state.gov/documents/organization/4107.pdf> [hereinafter 2001 TIP REPORT].

9. 2003 TIP REPORT, *supra* note 8, at 9.

10. *Id.* at 32. The U.S. Department of State (DoS) acknowledges that it is extremely difficult to gather accurate statistics on either the numbers of women trafficked or the revenue collected by traffickers and their crime syndicates. *Id.* at 17.

11. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at III; see also 2003 TIP REPORT, *supra* note 8, at 17 (noting that the TIP Report has previously been criticized for insufficient data).

12. 2003 TIP REPORT, *supra* note 8, at 7.

conditions.”<sup>13</sup> The 2001 TIP Report cited that “at least 700,000 persons, especially women and children, are trafficked each year across international borders,”<sup>14</sup> and 45,000 to 50,000 people, primarily women and children, are trafficked into the United States annually.<sup>15</sup> The 2001 TIP Report admitted, however, that the numbers may be significantly higher.<sup>16</sup> Earlier sources reported that in 1997 “more than two million women around the world [were] bought and sold each year for the purpose of sexual exploitation,”<sup>17</sup> and 50,000<sup>18</sup> of them are brought into the United States each year to support a lucrative sex trade industry.<sup>19</sup>

If only 20,000 women were reportedly trafficked into the United States in 2003, and 50,000 women were reportedly trafficked into the United States prior to and during 2001, can one assume that the U.S. federal statute, The Trafficking Victims Protection Act,<sup>20</sup> (TVPA) which was passed in October 2000, has had a domestic and international impact on the incidence of trafficking in the United States? Given the disparity and unreliability of statistics on trafficking contained even in official government reports,<sup>21</sup> it is wise to presume that these statistics alone cannot definitively support a finding that the TVPA has had a statistically significant domestic or international impact. Nevertheless, the statistics are dramatic and serve to alert the international and domestic community to the gravity of the crime of sex trafficking.

Trafficking for the purposes of sexual exploitation is a transnational crime that starts in a source country, is facilitated in a transition country, and terminates in a destination country.<sup>22</sup> Women are transported to destination countries by fraud and deception and kept against their will in brothels by force and coercion. There they service clients sexually, to pay off a debt to the trafficker that increases exponentially, and to make money for the

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13. 2002 TIP REPORT, *supra* note 8, at 1.

14. *Id.* at 1.

15. *Id.* at 3.

16. *Id.* at 1.

17. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 111.

18. TVPA § 102(b)(1). *See also* 2002 TIP REPORT, *supra* note 8, at 2 (citing the International Organization for Migration's 1997 estimate that “the number of victims trafficked both internally and across national borders is four million,” and that “50,000 women and children are trafficked annually for sexual exploitation into the United States”).

19. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 111.

20. *See generally* TVPA.

21. *See* 2002 TIP REPORT, *supra* note 8, at 2 (“Given the nature of trafficking and its often hidden face, it is extremely difficult to develop accurate statistics on the extent of the problem.”).

22. *Id.*

trafficker and the crime syndicate that employs the trafficker as its agent.<sup>23</sup> No country is immune from trafficking,<sup>24</sup> but some countries are worse than others because of the absence of trafficking laws or poor law enforcement.<sup>25</sup> The source countries often have a high incidence of poverty, low regard for women, few educational and economic opportunities for women, insufficient public awareness about the crime of trafficking, and inadequate laws to prosecute traffickers.<sup>26</sup> As source countries are typically in war-torn regions of the world experiencing internal strife, post-conflict social and economic hardships, disruption of societal values, and political and economic instability, they remain a valuable market for cheap labor.<sup>27</sup> Trafficking is also on the rise in post-conflict transitioning states where it is easy to plunder a country's resources, including its migratory and vulnerable women and children.<sup>28</sup> Destination countries tend to be relatively wealthy.<sup>29</sup> The economic lure of a better life helps explain why 50,000 women are trafficked into the United States each year.

Ironically, it is the victims of trafficking who are often punished more harshly than the traffickers themselves, despite legislation intended to protect victims from such punishment.<sup>30</sup> Transported unknowingly or unwillingly by force, fraud, or coercion to a destination country, these women are forced by intimidation into committing unlawful acts such as using false documents, entering the country illegally, and working without proper immigration documentation.<sup>31</sup> Some trafficked women who manage to escape from debt bondage, indentured servitude, forced labor, or forced prostitution sometimes naively seek help from the police, who often treat them as criminals and turn them over to immigration authorities.<sup>32</sup> Authorities then transfer the victims

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23. *Id.*; see also Tiefenbrun, *Sex Sells*, *supra* note 5, at 164-66.

24. 2003 TIP REPORT, *supra* note 8, at 7.

25. *Id.* at 9.

26. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 111, 116; see also 2003 TIP REPORT, *supra* note 8, at 7.

27. 2003 TIP REPORT, *supra* note 8, at 8-10.

28. *Id.* at 8.

29. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 111.

30. *Id.* at 112-13; see also TVPA § 102(b)(19) (mandating, "Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked . . .").

31. TVPA § 102(b)(19).

32. *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the Comm'n on Sec. and Cooperation in Europe*, 106th Cong. 21-22 (1999) [hereinafter *The Sex Trade Hearing*] (statement of Dr. Laura J. Lederer).

to women's prisons where they await deportation.<sup>33</sup> The women receive this treatment simply because they are viewed as illegal aliens, rather than as victims of slavery.<sup>34</sup> Upon return to their home countries, they suffer the further humiliation of being treated as outcasts simply because they were duped into believing they could find legitimate work in the United States or in other rich destination countries.<sup>35</sup>

While victims suffer punishment and penalties, the well-protected perpetrators often go unpunished. If they are charged at all, it is with minor immigration law violations.<sup>36</sup> Today, traffickers can cross borders easily due to advanced communication and transportation technology such as cellular phones and privately-owned airplanes.<sup>37</sup>

Ironically, when countries take legal measures to combat trafficking, the zealous enforcement of a good immigration or criminal law may sometimes cause bad results and actually serve to discourage victims from seeking help.<sup>38</sup> Governmental regulations and the criminalization of prostitution can actually worsen the plight of victims because if they go to the police for help, they will likely end up in prison for engaging in illegal acts.<sup>39</sup> Nonetheless, women trafficked to countries where prostitution is legal or tolerated do not necessarily fare better because enforcement of victim protection measures are generally inadequate.<sup>40</sup> For example, in countries like the Netherlands, where prostitution is legal, there is a reportedly high incidence of sex trafficking.<sup>41</sup> Therefore, legalizing prostitution does not necessarily deter the crime of sex trafficking.<sup>42</sup> Rather, keeping brothels open and regulated creates a greater demand for sex, which further promotes sex trafficking and slavery.<sup>43</sup>

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33. *Id.* at 22.

34. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 112.

35. *Id.*

36. *Id.* at 112-13.

37. *Globalization and Its Impact on the Full Enjoyment of All Human Rights, Report of the Secretary General*, at 6, U.N. Doc. A/56/254/Add.1 (2001).

38. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 113.

39. *Id.* at 113-14; see also Ann Lucas, *Women and Prostitution*, in 1 *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW* 638, 696-97 (Kelly D. Askin & Doreen M. Koenig eds., 2000) (discussing the severe sanctions often imposed upon prostitutes in countries outside the United States).

40. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 114; see also Lucas, *supra* note 39, at 696.

41. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 114.

42. *Id.*

43. See Lucas, *supra* note 39, at 702-04 (discussing how regulation of prostitution is often harmful for the women involved).

Stricter immigration laws in source and transition countries are an insufficient means to combat trafficking.<sup>44</sup> Restrictive immigration policies may actually increase the incidence of trafficking because migratory and poverty-stricken women will seek the help of traffickers to get out of their country at any cost.<sup>45</sup> These women need a way out of desperate conditions, and they attempt to improve their economic situation by emigrating to rich countries. Yet, in order to cross the borders to the 'promised land,' the women must "resort to the financial assistance of unscrupulous loan sharks and traffickers" who claim to be able to provide them with legitimate jobs in the destination country as well as the required immigration documents for entry.<sup>46</sup> Enforcement of immigration laws in destination countries usually results in women being deported, which does not deter trafficking but further victimizes the trafficked. Consequently, zealously enforced immigration laws "often have a negative effect on the very victims they seek to protect."<sup>47</sup>

For many years, the United States has recognized the insufficiency of its criminal and immigration laws as they fail to protect the victims of sex trafficking and fail to result in the effective prosecution of perpetrators. Recognizing that sex trafficking is a modern form of slavery that has a global and deleterious impact on women's human rights, President Bill Clinton signed the TVPA on October 28, 2000. The purpose of the TVPA was to "combat trafficking in persons . . . to ensure just and effective punishment of traffickers, and to protect their victims."<sup>48</sup> Clinton hailed the legislation as the "most significant step we've ever taken to secure the health and safety of women around the world."<sup>49</sup> The TVPA established a coordinated, transnational effort to protect trafficked persons, to criminalize the conduct of traffickers and to penalize sex trafficking as severely as rape, which is punishable by a sentence

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44. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 114; see also Gallagher, *Female Slavery*, *supra* note 2, at 499 (arguing that restrictive immigration policies prohibit women who wish to emigrate from doing so without assistance from traffickers, thus perpetuating trafficking).

45. Gallagher, *Female Slavery*, *supra* note 2, at 499.

46. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 114.

47. *Id.*

48. TVPA § 102(a).

49. Tom Strode, *Congress Gives Final Approval to Bill Aimed at Sex Trafficking*, (Oct. 18, 2000), at <http://www.bpnnews.net/bpnnews.asp?ID=6687>; see also Deb Riechmann, *Clinton Signs Bill Protecting Women*, DETROIT NEWS, Oct. 29, 2000, at 3A, available at <http://www.detnews.com/2000/politics/0010/29/a04-140538.htm>.

of twenty years to life imprisonment.<sup>50</sup> The purpose of this far-reaching law is to eradicate trafficking in the United States and abroad, in part by influencing other nations to enact or amend sex trafficking legislation, to correct weak enforcement policies, and to harmonize legislation internationally.<sup>51</sup>

### *B. Purpose of this Article*

This article investigates the role that a U.S. anti-trafficking law, the TVPA, plays in eliminating the heinous crime of sex slavery practiced both in the United States and abroad. As Representative Henry J. Hyde,<sup>52</sup> Chairman of the House Committee on International Relations, noted at the TVPA Implementation Hearing held one year after the passage of the TVPA, "A law without vigorous and effective implementation is worse than no law at all, because it lulls us into the false sense that we have done something to solve the problem."<sup>53</sup>

This article considers the extent to which the TVPA has had either a domestic or international impact on the crime of sex trafficking, whether the law has been strictly enforced both here and abroad, and whether the law has deterred the crime since its enactment in October 2000. The underlying issues discussed in this Article are whether the TVPA has been able to accomplish productive international cooperation between the United States and other nations that engage in trafficking, and, if so, whether this cooperation has led to the identification and capture of the leaders of interlocking rings of businessmen, modern mafias, and corrupt government officials who support this crime. The article also considers whether the United States has effectively addressed the crime of sex trafficking at home and whether its legislative example has influenced other nations.<sup>54</sup>

### *C. The Method of Measuring Impact*

In order to measure the domestic and international impact of the TVPA, this study will take into consideration the unreliable

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50. 18 U.S.C. § 1590 (2000).

51. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 115.

52. Representative Hyde is a Republican from Illinois.

53. *Implementation of the Trafficking Victims Protection Act: Hearing Before the Comm. on Int'l Relations*, H.R. 107th Cong. 1 (2001) [hereinafter *Implementation Hearing*].

54. See *The Sex Trade Hearing*, *supra* note 32, at 24 (statement of Dr. Laura J. Lederer) (stating that many countries are looking to the United States for leadership).



nature of the available statistics on the number of trafficked persons both in the United States and globally, as well as the unreliability of statistics on the amount of revenue collected as a result of trafficking. To determine the extent to which there have been domestic or international impacts of the TVPA on the reduction of crime, this study will consider the weight of various factors and trends published in official government reports, namely the Annual TIP Reports from 2001, 2002, 2003, and 2004, Congressional Hearings on the Implementation of the TVPA, and an Overview of the Congressional Hearings on the Implementation of the TVPA. It will also utilize interviews with U.S. Attorneys and other government officials of the Department of Justice (DoJ) who work in the area of sex trafficking; available statistics on the number of women trafficked into the United States and worldwide; available statistics on the number of domestic and international arrests, prosecutions, and convictions of traffickers; as well as the number and status of effective outreach programs, projects, financial assistance, and benefits and services provided by the United States to victims here and abroad.

#### *D. Summary of the Domestic and International TVPA Impact Study*

In just three short years, the TVPA has had both domestic and international impacts on sex trafficking activities that lead to slavery.<sup>55</sup> Domestically, there is no doubt that the TVPA has helped reform the inequitable policy in the United States of punishing enslaved, sex-trafficked victims, rather than the perpetrators. The TVPA has accomplished this by establishing harsher penalties for traffickers,<sup>56</sup> by training law enforcement and immigration personnel to recognize victims,<sup>57</sup> and by providing benefits, services, and resources to victims.<sup>58</sup> The TVPA, in some cases, authorizes the issuance of a special new "T-visa," which permits trafficking victims to stay in the country through their captor's prosecution and perhaps permanently.<sup>59</sup> The TVPA has also resulted in increased arrests, prosecutions, and convictions for trafficking within the United States as well as in some countries

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55. See generally 2001 TIP REPORT, *supra* note 8.

56. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 166.

57. *Id.* at 168.

58. TVPA § 107(b)(1)(A).

59. 22 U.S.C. § 7105(c)(3) (2004); see also Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 167.

abroad, where the advice and financial assistance of the United States has been used to amend existing trafficking laws or create new laws.<sup>60</sup>

The TVPA has resulted in increased American economic and social assistance to other countries in order to support the creation, enactment, and enforcement of anti-trafficking legislation internationally; to strengthen existing foreign anti-trafficking legislation; to educate potential victims to recognize the dangers of trafficking; and to establish victim assistance programs abroad.<sup>61</sup> The TVPA mandates annual reporting<sup>62</sup> by an Interagency Task Force chaired by the U.S. Secretary of State.<sup>63</sup> The annual report contains the status of other nations' efforts to curb human trafficking and includes an investigation of the incidence of trafficking.<sup>64</sup> It also includes a three-tiered ranking of nations based upon their level of compliance with minimum standards that apply to all nations. Tier 1 includes those nations whose governments fully comply with such standards.<sup>65</sup> Tier 2 is made up of those nations whose governments do not yet fully comply with the standards but are making significant efforts to bring themselves into compliance.<sup>66</sup> Finally, those nations whose governments do not fully comply and are not making significant efforts to bring themselves into compliance comprise Tier 3.<sup>67</sup> Beginning in 2003, Tier 3 countries were subject to withholding of non-humanitarian and non-trade related assistance.<sup>68</sup>

Thus, through increased arrests and convictions for trafficking in the United States and the establishment and implementation of regulations, new criminal statutes, published annual reports, and international assistance, the TVPA has not only made progress in the domestic fight against trafficking, but it has impacted attempts made by other nations to eradicate this transnational crime. Trafficking is nothing less than a living legacy of slavery

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60. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 170.

61. *Id.* at 169–70; *see also Human Trade Nets Three Nations U.S. Penalty*, ORLANDO SENTINEL, Sept. 11, 2003, at A9 (“The United States will impose sanctions on Cuba, Myanmar and North Korea for failing to take steps to stop human trafficking.”).

62. 22 U.S.C. § 7107(b)(1) (2004).

63. *Id.* § 7103(c).

64. *Id.* § 7107(b)(1).

65. *Id.* § 7107(b)(1)(A); *see also Tiefenbrun, Saga of Susannah*, *supra* note 2, at 171.

66. 22 U.S.C. § 7107(b)(1)(B) (2004). Note that an additional level in Tier 2, called the Tier 2 Watchlist, is provided in the Victims of Trafficking Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875.

67. *Id.* § 7107(b)(1)(C).

68. *Id.* § 7107(d)(1); *see also Tiefenbrun, Saga of Susannah*, *supra* note 2, at 171; 2001 TIP REPORT, *supra* note 8, at 5.

that exists internationally. As such, nothing less than an international effort will be effective to eliminate all traces of this heinous crime.

### *E. Organization of this Article*

This article is organized into four parts.

Part I provides a history of the crime of sex trafficking, a statement of the purpose of this article, a description of the investigative method used in the impact study, a summary of the effectiveness of U.S. attempts at eradicating the crime both domestically and internationally, and an outline of the organization of the article.

Part II provides an overview of the United States' response to the crime of trafficking by its enactment of the TVPA in 2000.<sup>69</sup>

Part III considers the domestic impact of the TVPA and the new criminal law statutes and amendments to existing criminal laws resulting from the TVPA's enactment in the United States. These legislative changes are designed to better protect the victims of trafficking in the United States and to more effectively prosecute traffickers.<sup>70</sup> This part of the article discusses evidence of an increase in the number of investigations, prosecutions, and convictions of traffickers in the United States. It also examines the degree to which victim benefits and services authorized by the TVPA have actually been implemented in the United States.

Part IV investigates the international impact of the TVPA including the degree to which the TVPA has led to effective cooperation between the United States and other countries in order to eliminate sex slavery; the enactment and enforcement of new foreign anti-trafficking laws; and the overall reduction of the international crime of trafficking as a result of effective use of the 'carrot and stick' method<sup>71</sup> that characterizes the TVPA. On one hand, the TVPA provides desirable financial assistance, protection, benefits, services, and education to victims both in the United States and abroad as well as the possibility of permanent residency in the United States if the victim of severe forms of trafficking

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69. This article contains only a summary of the basic features of the TVPA because a more detailed analysis of this law was undertaken in an earlier study by this author. See Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 165-73.

70. 22 U.S.C. § 7101(a) (2004).

71. See *Implementation Hearing*, *supra* note 53, at 43 (statement of Janet Ballantyne, Acting Deputy Adm'r, U.S. Agency for Int'l Dev.).

cooperates in the prosecution of her perpetrators.<sup>72</sup> On the other hand, the TVPA establishes a real threat of prosecution and severe punishment for perpetrators of this horrific crime.<sup>73</sup>

## II. THE TVPA

### A. Definition of Trafficking and Sex Trafficking

The TVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>74</sup> The TVPA defines “severe forms of trafficking in persons” 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 an act has not attained 18 years of age.”<sup>75</sup> The TVPA defines a commercial sex act to mean “any sex act on account of which anything of value is given to or received by any person.”<sup>76</sup>

The TVPA “resists efforts to define ‘trafficking’ so broadly” as to dilute the effort to eradicate the crime.<sup>77</sup> There is a “wide range of related offenses such as immigrant smuggling and unfair labor practices which require just and effective remedies. Yet, these remedies are better provided in the context of labor law or immigration law than in an anti-slavery bill.”<sup>78</sup>

The definition of trafficking in the TVPA is similar but narrower than that found in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially

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72. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 167-70.

73. *Id.* at 166-67.

74. TVPA § 103(9).

75. *Id.* § 103(3).

76. *Id.*; see also *id.* § 103(9) (limiting sex trafficking to trafficking for a commercial purpose. This narrow definition has been criticized by some who believe that the TVPA should address all forms of trafficking for the purpose of non-commercial sex, commercial sex, forced labor, domestic service, camel jockeying, inter-country adoptions, military purposes, organ removal, and all forms of exploitation effectuated through trafficking); see also *Global Trends in Trafficking and the “Trafficking in Persons Report,” Int’l Relations Subcomm. on Int’l Terrorism, Nonproliferation and Human Rights*, 108th Cong. 44 (2003) (statement of Mohammed Y. Matter, S.J.D., Co-director, The Prot. Project, Johns Hopkins Univ. Sch. Of Advanced Int’l Studies) [hereinafter Matter Statement].

77. *Implementation Hearing*, *supra* note 53, at 2.

78. *Id.*

Women and Children.<sup>79</sup> The U.N. Protocol was adopted by the General Assembly less than one month after the enactment of the TVPA. It supplements the U.N. Convention against Transnational Organized Crime and recognizes the role that organized crime plays in supporting and committing sex trafficking.<sup>80</sup> The U.N. Protocol is an important tool to facilitate the type of international cooperation authorized by the TVPA because "[g]overnments that sign and ratify this protocol make a commitment to criminalize trafficking and to protect its many victims."<sup>81</sup> In December 2000, the United States and eighty other countries signed the U.N. Protocol.<sup>82</sup>

The U.N. has also adopted two other international instruments that address trafficking in children: the International Labor Organization (ILO) Convention 182,<sup>83</sup> which calls for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, which was ratified by the United States in 1999,<sup>84</sup> and the Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography.<sup>85</sup>

### *B. Purpose of the TVPA*

The purpose of the TVPA is to combat trafficking in persons, to ensure just and effective punishment of traffickers, and to protect

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79. U.N. GAOR, 55th Sess., Agenda Item 105, art. 3(a), U.N. Doc. A/RES/55/25 (2001), available at <http://www1.umn.edu/humanrts/instreet/trafficking.html> (defining "trafficking in persons" as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or 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 shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation.).

80. *Id.*

81. 2001 TIP REPORT, *supra* note 8, at 8.

82. *Id.*

83. *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, International Labour Conference, 87th Sess. (1999), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> (last visited Apr. 26, 2005).

84. *Id.*

85. The *Optional Protocol* criminalizes prostitution and pornography of children under the age of eighteen. The United States ratified the *Optional Protocol* in 2000. See *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, available at <http://www.unicef.org/crc/annex2.htm> (last visited Apr. 3, 2005).

their victims.<sup>86</sup> The TVPA prevents this transnational crime from spreading primarily by establishing and funding international programs to educate women about trafficking.<sup>87</sup> It also grants victims of trafficking permanent residency status and the right to work in the United States if they are willing to assist with the prosecution of their perpetrators.<sup>88</sup> However, the adequate protection of these witnesses and the fear of retaliation against the victims' families in their native countries remain challenges to the enforcement of the TVPA.<sup>89</sup> Moreover, the TVPA requires a show of force, fraud, and coercion to prove a case of trafficking. This requirement often makes it difficult to prosecute cases in which trafficked victims are not coerced into prostitution.<sup>90</sup> These challenges naturally influence the number of successful prosecutions and convictions of traffickers under the TVPA in the United States.

### *C. The Basic Features of the TVPA*

#### *1. One Crime, One Law*

The TVPA establishes one specific law prohibiting sex trafficking, and this feature eliminates the cumbersome necessity of having to sue perpetrators of sex trafficking under several different statutes.<sup>91</sup>

In the past, law enforcement agents in the United States laws to prosecute activities in trafficking.<sup>92</sup> Trafficking in women cases have normally been prosecuted under Title 18 of the United States Code, *Crimes and Criminal Procedure*.<sup>93</sup> Sex trafficking cases have also been prosecuted under Title 8 of the Code, *Aliens and Nationality*.<sup>94</sup> Some of these statutes, such as the Mann Act,

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86. See generally Tiefenbrun, *Sex Sells*, *supra* note 5, at 180.

87. TVPA § 102(A).

88. 22 U.S.C. § 7105(c)(3) (2004).

89. See Mattar Statement, *supra* note 76, at 40.

90. *Id.* at 45.

91. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 166.

92. AMY O'NEIL RICHARD, CTR. FOR THE STUDY OF INTELLIGENCE, INT'L TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 35 (2000), available at <http://www.cia.gov/csi/monograph/women/trafficking.pdf> (last visited Apr. 26, 2005) [hereinafter CIA REPORT].

93. See, e.g., 18 U.S.C. § 2421 (2004) (*Transportation Generally*); *Id.* § 1581 (*Peonage and Obstructing Enforcement*); *Id.* § 894 (*Collection of Extension of Credit by Extortionate Means*).

94. See, e.g., 8 U.S.C. § 1324 (2004) (*Bringing In and Harboring Certain Aliens*); *Id.* § 1328 (*Importation of Aliens for Immoral Purposes*); see also CIA REPORT, *supra* note 92, at 35.

have been in effect for more than one hundred years.<sup>95</sup> Before the enactment of the TVPA, there was a steady increase in the incidence of sex trafficking but a low level of arrests, prosecutions, and convictions of traffickers in the United States.<sup>96</sup>

Recognizing the inadequacy of existing slavery and peonage laws, which are limited in jurisdictional reach and in severity of punishment,<sup>97</sup> the criminal section of the DoJ's Civil Rights Division was eager to assist in the passage of the TVPA. The TVPA is much wider in scope than existing criminal law statutes because the TVPA includes international cooperative measures and increased penalties, which may act as deterrents to the crime of trafficking.<sup>98</sup>

## 2. Increased Penalties

The TVPA has increased the penalties from ten to twenty years imprisonment for trafficking and for related crimes such as involuntary servitude, peonage, and forced labor. If the crime includes kidnaping, aggravated sexual abuse, or an attempt to kill, those convicted of sex trafficking may receive a penalty of up to life imprisonment.<sup>99</sup> Increasing the penalty for sex trafficking increases the costs and risks for the trafficker and can act as an economic deterrent to the crime.<sup>100</sup>

## 3. Protection for Women Victims in Funded Shelters

The TVPA provides protection for women who are victims of sex trafficking violence.<sup>101</sup> Once a trafficking victim has been identified and placed into federal custody, the TVPA requires law enforcement agents and federal officials to protect the victim by assuring her access to information and translation services. Victims are also granted "continued presence" as alien victims in the United States.<sup>102</sup>

95. See Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 140.

96. *Id.* at 130-35.

97. *Id.* at 162-63.

98. Interview with Chris Tenorio, U.S. Attorney, in San Diego, CA. (June 19, 2003) [hereinafter Tenorio Interview].

99. 18 U.S.C. §§ 1581, 1583, 1584 (2004).

100. See generally Tiefenbrun, *Sex Sells*, *supra* note 5.

101. 22 U.S.C. § 7105(c) (2004).

102. See *infra* notes 128-29 and accompanying text.

The TVPA reauthorizes the Violence Against Women Act and allocates funds to provide shelters for victims of domestic violence.<sup>103</sup> It also allocates funds for trafficked women.<sup>104</sup>

#### 4. *T-Visas and Permanent Residency Status*

The TVPA offers victims of "severe forms of trafficking"<sup>105</sup> the opportunity to obtain a T-visa permitting them to stay in the country at least through the duration of their captors' prosecution and, perhaps, even permanently, if they are willing to assist in the prosecution of their perpetrators.<sup>106</sup> To be eligible for the T-visa, the applicant must prove victimization by a "severe form of trafficking" as set forth in section 103(8) of the TVPA.<sup>107</sup> A child involved in sex trafficking does not have to prove coercion, force, or fraud.<sup>108</sup> In the case of an adult, coercion may be proven by physical restraint or by psychological force.<sup>109</sup> Thus, a commercial sexual act involving an adult that is not induced by force, fraud, or physical coercion may still fall under the definition of a "severe form of trafficking" if the victim can prove psychological coercion. She is no longer required to prove legal or physical coercion, as was the standard established in *United States v. Kozminski*.<sup>110</sup> Thus, victims of severe forms of trafficking are defined as people held against their will "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"<sup>111</sup> and are eligible for the T-visa.

The T-visa process begins with an application obtained through the Department of Health and Human Services and results in certification that the applicant is a victim of trafficking and eligible for TVPA benefits.<sup>112</sup> If the applicant is under 18, she may receive TVPA benefits without certification.<sup>113</sup>

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103. 42 U.S.C. § 10419(a)(1) (2004).

104. TVPA § 107.

105. 22 U.S.C. § 7105(c)(1) (2004).

106. *Id.* § 7105(c)(3).

107. See *supra* note 75 and accompanying text.

108. 18 U.S.C. § 1591(b)(1) (2004).

109. See 22 U.S.C. § 7102(2) (2004) (defining coercion to include threats or schemes meant to induce a person to perform some act under a belief that she will not be harmed upon refusal).

110. 487 U.S. 931, 944 (1988).

111. 22 U.S.C. § 7102(8)(a) (2004).

112. *Id.* § 7105(b)(1)(E).

113. *Id.* § 7105(1)(E)(i).



According to the TVPA, a victim of a severe form of trafficking and a potential witness to such trafficking may be eligible for permanent residency status in the United States as well as protection for her family who is still abroad.<sup>114</sup> When the victim is a lawful temporary resident in the United States, she may be granted authorization to work and be provided with an employment authorized endorsement or work permit.<sup>115</sup>

Before the creation of the T-visa, an S-visa had already existed.<sup>116</sup> The quota on S-visas, however, is restricted to 250 per year.<sup>117</sup> Moreover, it is more appropriately applicable to informants of terrorism and organized crime than to victims of trafficking.

The T-visa is essentially a streamlined S-visa, which is specifically designed for trafficking victims and can be issued prior to trial. The purpose of the T-visa is two-fold: to strengthen the ability of law enforcement personnel to detect, arrest, and prosecute trafficking perpetrators and to enable law enforcement personnel to offer protection for trafficked victims.<sup>118</sup>

The Attorney General grants the T-visa and then must refer victims to a non-governmental organization (NGO) that can advise them of their legal rights and options in the United States, including the right to work, as well as the resources that are available to them.<sup>119</sup>

When implemented, the T-visa is effectively a stay of deportation that serves to assist prosecutors, as it ensures them that they have material witnesses for their cases, while also aiding victims.<sup>120</sup> According to DoJ T-visa regulations, the trafficked persons must self-petition for the T-visa rather than receive assistance for this process through the DoJ.<sup>121</sup> The self-petitioning provision is designed to prevent possible allegations of entrapment of the victim or impeachment of the evidence of victim-witnesses. The theory is that these allegations of entrapment or impeachment of the witness cannot be made at trial if there is a cognizable

114. *Id.* § 7105(c)(3).

115. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 170.

116. *Id.* at 158.

117. *Id.*

118. TVPA §§ 1513(a)(2)(A)-(B).

119. *Id.* § 107(e)(4)(i)(1).

120. See CIA REPORT, *supra* note 92, at 42 (noting that eligibility for the T-visa requires that an alien possess material information).

121. Telephone Interview with anonymous former Department of Justice Civil Rights Division employee (June 3, 2003) (discussing international anti-slavery work) [hereinafter Anti-Slavery Interview].

separation of the process of obtaining the victim's residency from the process of law enforcement and prosecution of the perpetrator.<sup>122</sup>

To qualify for the T-visa, the applicant must have suffered "substantial" abuse at the hands of traffickers.<sup>123</sup> In addition, the applicant must possess and be willing to share information that aids law enforcement personnel with prosecuting or investigating traffickers.<sup>124</sup> Alternatively, the T-visa can be granted to a victim under age fifteen who would "suffer extreme hardship involving unusual and severe harm" if forced to leave the United States.<sup>125</sup>

An alien's status as a victim of a severe form of trafficking may be demonstrated in various ways. Some trafficking victims may have the usual immigration documents needed to confirm eligibility.<sup>126</sup> Others will carry letters of certification granted by the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS).<sup>127</sup>

Because the T-visa is essentially a deportation stay, the victim must decide immediately whether she will cooperate with investigators. The law does not allow the victim to delay or even reflect on her choice to assist in prosecution. She must agree to cooperate in order to be given "continued presence."<sup>128</sup> "Continued presence" entitles victims of "severe forms of trafficking" to support and assistance on the same basis as refugees, as well as the ability to work.<sup>129</sup>

In certain circumstances, the T-visa also ensures that involved officials provide the victim and the victim's family safety, including protection "from intimidation and threats of reprisals from traffickers and their associates."<sup>130</sup> Trafficked persons who hold T-visas can apply for permanent residence in the United States if they have been continually present for three years,<sup>131</sup> have not

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122. *Id.*

123. TVPA § 1513(b)(3)(i)(I).

124. *Id.* § 1513(c)(1).

125. 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb) (2004).

126. *Training And Employment Guidance Letter No. 19-01 from Emily Stover Derocco, Assistant Secretary, U.S. Department Of Labor, Employment and Training Administration, Washington, D.C., to All State Workforce Liaisons, All State Workforce Agencies, All State Worker Adjustment Liaisons, All One-Stop Center System Leads 3* (Apr. 23, 2002) (addressing the TVPA), at <http://wdr.doleta.gov/directives/attach/TEGL19-01.pdf>.

127. *Id.*

128. Trafficking Victims Protection Act, H.R. 3244, 106th Cong., at 7 (1999); TVPA § 107(b)(1)(E)(i).

129. TVPA § 107(b)(1)(E)(i)(II)(bb).

130. *Id.* § 107(c)(3).

131. *Id.* § 107(f)(1)(A).

committed any violations,<sup>132</sup> and have complied with reasonable requests to aid in the investigation and prosecution,<sup>133</sup> or if they would suffer extreme hardship involving unusual and severe harm upon removal.<sup>134</sup>

### 5. Certification

In order to obtain a T-visa, a victim must first complete the certification process.<sup>135</sup> Law enforcement personnel must certify that the applicant is willing to assist in prosecuting the perpetrator and that she has suffered severe abuse.<sup>136</sup> After the victim has made contact with a prosecutor, she must submit the documentation required by the Immigration and Naturalization Service (INS). Immigration officials, however, have been advised to "strike while the iron is hot"<sup>137</sup> and to obtain the victim's certification that she is willing to assist in the prosecution from law enforcement as soon as possible.<sup>138</sup> The INS will obtain the certification while the relevant case is being prosecuted or investigated, not after the fact. Immigration officials are also directed to begin to corroborate the victim's abuse and suffering as early as possible.<sup>139</sup> Essentially, immigration officials are encouraged to be proactive in gathering the information and certifications required for the issuance of the T-visa. During the certification and implementation process of the T-visa, trained personnel in NGOs can aid and advise trafficking victims in an effort to make the bureaucratic process as painless as possible.<sup>140</sup>

The number of T-visa applicants whose status may be adjusted to that of permanent resident is limited to five thousand per year.<sup>141</sup> This number does not include family members.<sup>142</sup>

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132. *Id.* § 107(f)(1)(B).

133. *Id.* § 107(f)(1)(C)(i).

134. *Id.* § 107(f).

135. *See id.* § 107(b)(1)(E).

136. *Id.* § 107(b)(1)(E)(i).

137. NATIONAL IMMIGRATION PROJECT, U-VISAS FOR VICTIMS OF CRIMES 4 (2004), at <http://www.ilw.com/lawyers/seminars/July2004-citation2d.pdf> (last visited Mar. 2, 2005).

138. *Id.*

139. *Id.* at 5.

140. *See* TVPA § 107(e)(4)(i)(1).

141. *Id.* § 107(f)(3)(A).

142. *Id.* § 107(f)(3)(B).

### 6. *Enhanced Benefits of Victims*

Victims of severe forms of trafficking are also eligible to receive expanded and enhanced benefits and services. For example, while in the custody of the federal government, the TVPA provides that they shall “not be detained in facilities inappropriate to their status as crime victims.”<sup>143</sup> Thus, the TVPA has made it possible to eliminate the horrendous practice of locking up sex trafficked women in detention cells. Trafficked women are also eligible to receive necessary medical care.<sup>144</sup> As noted, they also receive protection from “intimidation and threats of reprisals from traffickers.”<sup>145</sup> Finally, victims are entitled to translation services when they are needed.<sup>146</sup> The TVPA, therefore, treats the trafficked person not as a criminal, but as a victim worthy of services and enhanced benefits.

### 7. *Training of Law Enforcement Personnel and Immigration Officials*

Investigations, prosecutions, and convictions of alleged traffickers occur more frequently when law enforcement and immigration officers are sensitive to factors affecting trafficked persons in particular. Language differences, culture shock, fear for personal safety, and fears relating to immigration irregularities are just some of the factors impacting victims of trafficking.<sup>147</sup>

The TVPA authorizes DoJ to conduct training programs for law enforcement personnel and immigration officials to enable them to better identify trafficked victims, to make them aware of the victim’s particular problems, and to require officials to inform the victims of their legal rights.<sup>148</sup>

The TVPA also mandates “not later than 180 days after the date of the enactment of this Act, the Attorney General and the Secretary of State shall promulgate regulations” implementing training of law enforcement personnel, immigration officials, and DoS and DoJ officials.<sup>149</sup> The TVPA also contemplates an amendment to the Immigration and Nationality Act in order to

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143. *Id.* § 107(c)(1)(A).

144. *Id.* § 107(c)(1)(B).

145. *See supra* notes 101-04 and accompanying text.

146. TVPA § 107(c)(2).

147. *Id.* § 107(c)(4).

148. *Id.*

149. *Id.* § 107(c).

accomplish its goals and to provide victims of severe forms of trafficking with enhanced benefits.<sup>150</sup>

### 8. Funds Allocated for Programs and Enforcement

The TVPA reserves approximately \$94.5 million in order to fund domestic and overseas projects to eliminate trafficking.<sup>151</sup>

### 9. International Cooperation and International Programs

The United States recognizes that sex trafficking is a serious transnational crime that cannot be deterred unless bilateral and multilateral cooperative work is undertaken to bring traffickers to justice and to protect trafficking victims in the United States and abroad.<sup>152</sup> The United States' commitment to work with other nations to eradicate this global problem is, perhaps, the most significant feature of the TVPA.

To accomplish the lofty goal of eliminating sex trafficking both here and abroad, the TVPA codifies the establishment of an Interagency Task Force,<sup>153</sup> chaired by the Secretary of State, to monitor and combat worldwide human trafficking.<sup>154</sup> The Interagency Task Force establishes minimum standards for the elimination of trafficking<sup>155</sup> and provides assistance to foreign countries to help them meet those minimum standards.<sup>156</sup>

U.S. assistance to countries abroad includes advice in drafting laws to prevent and prohibit trafficking,<sup>157</sup> investigation and prosecution of traffickers,<sup>158</sup> establishment and maintenance of programs, projects, and activities for the protection of victims,<sup>159</sup>

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150. See 8 U.S.C. § 1101(a)(15) (2004) (defining "immigrant" to include aliens who the Attorney General determines are or have been victims of a severe form of trafficking in persons); see also *id.* § 1184 (2004) (stating the requirements to which an alien must adhere to be admitted as a non-immigrant in the United States).

151. See Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 169 (listing domestic projects and funds allocated to each); see also 42 U.S.C. § 13971(a) (2004); 20 U.S.C. § 1152 (2004); 42 U.S.C. § 10416(f) (2004).

152. 22 U.S.C. § 7101(b)(24) (2004).

153. *Id.* § 7103(a).

154. *Id.* § 7103(c).

155. *Id.* § 7106(a).

156. *Id.* § 2152d(A).

157. *Id.* § 2152d(a)(1).

158. *Id.* § 2152d(a)(2).

159. *Id.* § 2152d(a)(3).

and creation and expansion of international exchange programs to combat trafficking.<sup>160</sup>

In order to prevent trafficking, the Interagency Task Force establishes international programs that “enhance economic opportunity for potential victims of trafficking.”<sup>161</sup> These programs include establishing micro-credit lending programs, training programs in business development, skills training programs, and job counseling.<sup>162</sup> The programs may also include promotion of women’s participation in economic decision-making<sup>163</sup> and programs to keep girls in school.<sup>164</sup> The Interagency Task Force will assist in the development of educational curricula regarding the dangers of trafficking<sup>165</sup> and will provide grants to NGOs that “advance the political, economic, social and educational roles and capacities of women” in foreign countries.<sup>166</sup> A specific effort will be made to increase public awareness in the United States and abroad of the serious dangers related to trafficking.<sup>167</sup>

#### *10. Minimum Standards in Other Countries*

The TVPA authorizes the Interagency Task Force to monitor the “progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking. . . .”<sup>168</sup> To achieve this purpose, DoS issues an annual Trafficking in Persons Report (TIP) that ranks international governments’ efforts to eliminate trafficking in persons in accordance with their compliance with minimum standards.<sup>169</sup> The TVPA enumerates four minimum standards<sup>170</sup> for the elimination of severe forms of trafficking in persons and sets forth criteria for evaluating serious and sustained efforts made by foreign governments to meet such standards.<sup>171</sup>

The first standard requires the government of a country to “prohibit severe forms of trafficking in persons and to punish acts

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160. *Id.* § 2152d(a)(4).

161. *Id.* § 7104.

162. TVPA § 106(a)(1).

163. *Id.* § 106(a)(2).

164. *Id.* § 106(a)(3).

165. *Id.* § 106(a)(4).

166. *Id.* § 106(a)(5).

167. *Id.* § 106(b).

168. *Id.* § 105(d)(2).

169. *Id.* § 107(b)(1)(D).

170. *Id.* § 108(a)(1-4).

171. *Id.* § 108(b)(1).

of such trafficking."<sup>172</sup> In order to meet this standard, a country is required to have an anti-trafficking law that makes trafficking a criminal offense and provides for the adequate punishment for such a crime.<sup>173</sup>

Since the TVPA defines severe forms of trafficking in persons to include trafficking for labor or services as well as sex trafficking,<sup>174</sup> the TVPA requires a country to recognize all forms of trafficking as a criminal offense, whether it is committed for the purpose of prostitution or forced labor.<sup>175</sup>

The second standard specifically applies to sex trafficking. It requires governments to prescribe the appropriate sentences in cases of sex trafficking involving children or which include aggravated circumstances, such as rape, kidnapping, or death.<sup>176</sup> These sentences should be comparable to the punishments for grave crimes such as sexual assault.<sup>177</sup>

The third standard requires governments to prescribe a punishment for any act of a severe form of trafficking in persons.<sup>178</sup> The punishment must be "sufficiently stringent" to deter others from committing the same crime,<sup>179</sup> and it must reflect the serious nature of this crime.<sup>180</sup>

The fourth standard requires governments to make "serious and sustained efforts" to eliminate trafficking.<sup>181</sup> To determine whether a government's implementation efforts are "serious and sustained," the TVPA delineates seven criteria.<sup>182</sup> The first three criteria measure government efforts in the areas of prosecution, protection, and prevention.<sup>183</sup> The remaining four criteria measure the degree of international cooperation, including investigation of severe forms of trafficking, extradition of traffickers, monitoring

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172. *Id.* § 108(a)(1).

173. *Id.* § 108(b)(1-4); see also *The Sex Trade Hearing*, *supra* note 32, at 58 (statement of Dr. Laura J. Lederer) (noting that before passage of the TVPA in 2000, more than 154 countries had legislation drafted between 1912 and 1960 that minimally targeted traffickers by "prohibiting the procurement of women or children for the purposes of prostitution and forced labor," but these laws were poorly, if ever, enforced).

174. TVPA § 103(8)(B).

175. *Id.* § 108(a)(4); *id.* § 103(8); *id.* § 102(b)(3) (referring to trafficking in persons as a transnational crime that is not limited to the sex industry, but that includes forced labor and other violations).

176. TVPA § 108(a)(2).

177. *Id.*

178. *Id.* § 108(a)(3).

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* § 108(b).

183. *Id.* § 108(b)(1-3).

of immigration and emigration, and investigation and prosecution of public officials involved in trafficking.<sup>184</sup>

### 11. Sanctions

The TVPA anticipates the use of economic sanctions in order to pressure foreign governments to recognize the gravity of trafficking in persons and to take the necessary measures to eliminate this form of slavery. Sanctions, which began in October 2003, include the denial of non-humanitarian aid, non-trade-related assistance, certain development-related assistance, and aid from international financial institutions,<sup>185</sup> specifically the International Monetary Fund and multilateral development banks such as the World Bank.<sup>186</sup> The President of the United States can waive the sanctions when necessary to avoid significantly adverse effects on vulnerable populations, including women and children.<sup>187</sup>

### 12. Direct Foreign Aid

United States Agency for International Development (USAID) works directly with foreign countries to prevent trafficking by decreasing the vulnerability of trafficked women and children, protecting and assisting the victims of traffickers, and supporting legislative reform and implementation abroad.<sup>188</sup> The goal is to help countries meet minimum standards set forth in the TVPA, with special emphasis on countries that have significant levels of severe forms of trafficking.<sup>189</sup> Because poverty, lack of education, and lack of economic and political opportunities contribute to the vulnerability of trafficking victims, a substantial part of USAID's development assistance targets women<sup>190</sup> in those countries that can greatly benefit from such programs.<sup>191</sup> USAID programs operate in many countries including Azerbaijan, Thailand, Albania, and Romania.<sup>192</sup> One of these programs brought hundreds

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184. *Id.* § 108(b)(4-7).

185. 2003 TIP REPORT, *supra* note 8, at 13-14, 16.

186. *Id.* at 10.

187. *Id.*

188. DEPARTMENT OF STATE, OVERVIEW OF THE ADMINISTRATION'S IMPLEMENTATION OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000, 7 (2002), available at <http://www.state.gov/g/tip/rls/rpt/10531.htm> [hereinafter *Implementation Overview*].

189. *Id.* at 42.

190. *Id.* at 41.

191. *Id.*

192. *Dobriansky Denounces Human Trafficking* 3 (June 3, 2003) (recalling remarks delivered by Under Secretary of State for Global Affairs, Paula J. Dobriansky, at the



of international visitors to the United States in 2003 to learn about trafficking.<sup>193</sup> USAID also manages anti-trafficking programs funded through the DoS.<sup>194</sup>

*13. Monitoring Other Countries, the Interagency Task Force, and the Department of State Annual TIP Report*

The TVPA authorizes DoS, with assistance from the Interagency Task Force, to monitor the status of other nations' sex trafficking activities by classifying those nations into one of three tiers.<sup>195</sup> This classification is based upon the degree of their compliance with the minimum standards for the elimination of trafficking in persons, as stipulated in the TVPA, and is published in the annual TIP Report and submitted to the appropriate Congressional committees.<sup>196</sup>

Tier 1 includes countries whose governments fully comply with the minimum standards set forth in the TVPA and have anti-trafficking legislation with adequate punishments for the crime.<sup>197</sup> Tier 2 includes countries whose governments "do not yet fully comply with [these] standards but are making significant efforts to bring themselves into compliance."<sup>198</sup> Tier 3 includes countries whose governments "do not fully comply with [these] standards and are not making significant efforts to bring themselves into compliance" with them.<sup>199</sup> Since October 2003, sanctions can be levied against Tier 3 countries if they cannot prove that they have adopted and implemented concrete measures to fight trafficking.<sup>200</sup>

The TVPA therefore establishes a multilateral effort to prevent trafficking, protect victims, and prosecute traffickers in the United States and abroad by allocating funds, establishing international and domestic programs to accomplish these goals, and offering real economic and social incentives to victims who are willing to assist in the prosecution of traffickers.<sup>201</sup> While these goals and

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*Conference to Stop Child Trafficking in Helsinki, Finland*), available at <http://usinfo.org/wf-archive/2003/030605/epf417.htm> [hereinafter Dobriansky Conference Remarks].

193. *Id.*

194. *Implementation Hearing*, *supra* note 53, at 42.

195. TVPA § 110(b)(1).

196. *Id.* § 110(b).

197. *Id.* § 110(b)(1)(A).

198. *Id.* § 104(b)(1)(B).

199. *Id.* § 110(b)(1)(C).

200. 2003 TIP REPORT, *supra* note 8, at 13.

201. See *supra* parts II.C.1-11.

measures are laudatory, if they are unenforced or unenforceable, the TVPA will fail to meet its goals of deterrence or elimination of this crime.

Part III of this Article examines the domestic impact of the TVPA to show that as a result of the TVPA's passage, the number of arrests, prosecutions, and convictions of perpetrators of trafficking in the United States has slowly but steadily increased.

### III. THE DOMESTIC IMPACT OF THE TVPA

There is no doubt that the TVPA has led to significant changes in the United States government's effort to eliminate sex trafficking. It is relatively simple to measure the domestic impact of the TVPA on victims receiving benefits in the United States as the TVPA requires this information be published in an annual impact report:<sup>202</sup>

Not later than December 31 of each year, the Secretary of Health and Human Services, in consultation with the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other appropriate Federal agencies shall submit a report, which includes information on the number of persons who received benefits or other services under this paragraph in connection with programs or activities funded or administered by such agencies or officials during the preceding fiscal year. . . .<sup>203</sup>

Generally, the domestic measures implemented by the United States government as a result of the TVPA's enactment have been slow but dramatic. They include restructuring the government's entire approach to trafficking in an attempt to treat the trafficked persons as victims rather than criminals.<sup>204</sup> This policy change is reflected in the creation of several new trafficking implementation offices within agencies of the federal government. It is also reflected in amendments to existing criminal statutes that include a specific crime of sex trafficking and increased penalties for trafficking and other related crimes.<sup>205</sup>

In compliance with the requirements of the TVPA, the U.S. government has also initiated the training of law enforcement

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202. TVPA § 107(b)(1)(D).

203. *Id.*

204. *Id.* § 102(a) (referring to trafficked individuals as "victims").

205. *See, e.g., id.* §§ 105, 112.

personnel and immigration officers in the United States.<sup>206</sup> It has issued work permits, certification, and permanent residency status and other benefits to victims as refugees.<sup>207</sup> It has attempted to provide effective witness protection to victims in the United States, and it has also issued T-visas and certification letters providing enhanced benefits to victims.<sup>208</sup> These measures have resulted in a slow but steady increase in domestic arrests, prosecutions, and convictions of traffickers in the country since 2000 and an increase in immigration benefits for victims.<sup>209</sup> Arguably, in the three years since its enactment, the TVPA has resulted in better enforcement of existing criminal statutes and new anti-trafficking laws in the United States. In that same period, it has provided more enhanced benefits and services to victims.

Under the current Bush administration, support continues for the reduction of sex trafficking here and abroad. In a speech to the United Nations General Assembly on September 25, 2003, President Bush asked each nation to join the United States in a multilateral effort to eliminate this modern-day form of slavery.<sup>210</sup> Moreover, President Bush made reference to *The Protect Act*, a law he had recently signed.<sup>211</sup> *The Protect Act* makes it a crime for a United States citizen (or an alien admitted for permanent residence in the United States) to travel abroad "for the purpose of engaging in any illicit sexual conduct with another person."<sup>212</sup> *The Protect Act* has extra-territorial reach and makes it possible to investigate, prosecute, and convict in the United States a person who engages in sex trafficking abroad or in the United States.<sup>213</sup> If convicted, that person may be fined, imprisoned for not more than thirty years, or both.<sup>214</sup>

This article now considers the specific domestic TVPA implementation measures taken by DoS, DoJ, DoL, and the INS in their coordinated effort to deter trafficking and the universal crime of sex slavery by prevention, prohibition, and prosecution.

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206. *Implementation Overview*, *supra* note 188, at 3.

207. *Id.* at 5.

208. *Id.*

209. *Id.* at 2-3.

210. *President Bush Addresses United Nations General Assembly*, News Release, Sep. 25, 2003, available at <http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html>.

211. Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003) [hereinafter *The Protect Act*].

212. *Id.* § 105(b).

213. *Id.*

214. *Id.*

### *A. DoS Domestic TVPA Implementation Measures*

#### *1. DoS Office to Monitor and Combat Trafficking in Persons To Work with President's Interagency Task Force*

The TVPA set forth specific mandates to be accomplished by several federal government agencies, including the Departments of State, Justice, Labor, Health and Human Services and the U.S. Agency for International Development.<sup>215</sup> One of those mandates requires that the DoS establish the Office to Monitor and Combat Trafficking in Persons (Office to Monitor), which opened one year after the passage of the TVPA, in October 2001.<sup>216</sup> The Office to Monitor provides assistance to the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (Interagency Task Force). The Interagency Task Force held its first meeting one and one-half years after passage of the TVPA, on February 13, 2002, in order to coordinate the federal government's implementation of the TVPA.<sup>217</sup> The Interagency Task Force established the Senior Policy Advisory Group, which first met on March 5, 2002, in order to coordinate policy development and the implementation of the TVPA.<sup>218</sup>

#### *2. DoS Annual Trafficking in Persons Report (TIP Report)*

In compliance with the mandate of the TVPA, the DoS published its first annual TIP Report in July 2001. The report gathered information from "186 embassies and consulates as well as non-governmental organizations and press reports" to assess the impact of the TVPA.<sup>219</sup> The DoS has since published 2002, 2003, and 2004 TIP Reports, providing valuable, albeit scanty, data on the international impact of the TVPA.<sup>220</sup> The earlier Annual TIP Reports were plagued by unreliable statistics; insufficient data about the actual number of investigations, prosecutions, and convictions under the TVPA; and delays in the enactment of implementing regulations.<sup>221</sup> Nonetheless, even the

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215. *Implementation Overview*, *supra* note 188, at 7.

216. *Id.* at 1.

217. *Id.*

218. *Id.*

219. *Id.* at 2.

220. *Id.*

221. 2003 TIP REPORT, *supra* note 8, at 17.

early Annual TIP Reports resulted in increased public awareness of the seriousness of trafficking that leads to sex slavery in the United States and the eventual enactment of implementing regulations, which have contributed to the successful prosecution of sex trafficking and sex slavery cases in 2003.<sup>222</sup>

### *3. DoS Trafficking Brochure*

In late 2000, the DoS created an informational brochure designed to educate potential victims on the tactics that criminal groups use to lure, coerce, and traffic women; the risks associated with trafficking; the self-protective measures women can take to avoid being entrapped by illegitimate groups; and the rights, services, and benefits to which victims are entitled in the United States.<sup>223</sup>

### *4. DoS and DoJ Joint Regulation on Protection and Assistance*

In accordance with the requirements of the TVPA, the DoS with the DoJ issued a joint Regulation on Protection and Assistance which implements Section 107(c) of the TVPA.<sup>224</sup> This regulation provides the INS with the authority to arrange for the "continued presence" of those trafficking victims in the United States who agree to assist law enforcement in its investigation or prosecution of trafficking crimes.<sup>225</sup> "This regulation also requires [the DoJ and the DoS] to identify and appropriately address the particular needs of victims of severe forms of trafficking" and provide them with access to information about their rights and available benefits and services.<sup>226</sup>

### *5. DoS Training of Government Personnel*

Since passage of the TVPA, as part of a comprehensive training program, the DoS regularly briefs Foreign Service Officers, including Consular Officers and Ambassadors, on the nature of trafficking in persons and "how to identify and assist victims."<sup>227</sup>

222. *Id.*

223. *Implementation Overview*, *supra* note 188, at 2.

224. *Id.*

225. *Id.* at 2-3.

226. *Id.* at 2.

227. *Id.* at 3.

The DoS has also participated in interagency training efforts at the DoJ's National Advocacy Center, where T-visas are processed, for the INS adjudicators of T-visas, U.S. Attorney Victim-Witness Coordinators of the Regional Interagency Task Forces, and officials from the INS, the DoL, the Federal Bureau of Investigation (FBI), and prosecutors, as well as NGOs that have been set up in some regions of the United States where trafficking is particularly prevalent.<sup>228</sup> Training of these officials is designed to improve investigation and prosecution of trafficking cases.<sup>229</sup>

### *6. DoS Specialized Working Groups to Fight Trafficking*

As part of its TVPA mandate, the DoS has created Specialized Interagency Working Groups to examine trafficking as it relates to other issues such as public health, domestic violence, alcoholism, psychological well being, HIV/AIDS and other sexually transmitted diseases.<sup>230</sup> Some of these groups consider the link between trafficking in persons and peacekeeping missions, including the impact of civilian policing and the presence of military and relief workers.<sup>231</sup> Still others gather and study anecdotal information on trafficking of refugees and displaced persons in war-torn areas and regions experiencing civil strife.<sup>232</sup>

### *B. DoJ Domestic TVPA Implementation Measures*

#### *1. DoJ Creates New Statutes, New Regulations*

In compliance with the mandates of the TVPA, new criminal offenses have been introduced into the United States criminal law system and have resulted in amendments to the peonage and slavery statutes under the United States Code.<sup>233</sup> These new criminal offenses include trafficking (§ 1590), forced labor (§ 1589), and unlawful possession of documents (§ 1592).<sup>234</sup> The TVPA also defines trafficking involving peonage, slavery, involuntary servitude, or forced labor as crimes.<sup>235</sup>

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228. *Id.* at 2. Such NGOs are located in Los Angeles, Chicago, New York, San Diego, Houston, and Atlanta. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. TVPA § 112.

234. *Id.*

235. *Id.*

Since 2000, new criminal regulations have been passed which make trafficking a crime punishable by fine or imprisonment for up to twenty years, or both.<sup>236</sup> The amended criminal statutes also contain a provision for up to a life sentence in cases involving attempted or completed kidnapping or aggravated sexual abuse or an attempt to kill.<sup>237</sup>

Newly enacted criminal code regulations also prohibit trafficking of children into the sex industry by force, fraud, or coercion (including psychological coercion).<sup>238</sup> However, when the child is a minor, no proof of force, fraud, or coercion is required.<sup>239</sup> This new provision fills a gap in U.S. criminal law in which psychological coercion of a trafficked person was formerly insufficient to prove the crime of involuntary servitude.<sup>240</sup> The punishment for forced labor and sex trafficking through force, fraud, or coercion is the same as it is for trafficking — fine, imprisonment for up to twenty years, or both.<sup>241</sup>

The new criminal code provisions enacted as a result of the passage of the TVPA also criminalize conduct relating to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.<sup>242</sup> Under this section:

Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person [in furtherance of any of the crimes related to peonage and slavery] . . . or to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 shall be fined under this title or imprisoned for not more than 5 years, or both . . . .<sup>243</sup>

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236. 18 U.S.C. § 1590 (2004). By contrast, the TVPA does not grant the victim of trafficking the right to compensation for damages. The TVPA empowers a criminal court to order restitution, but victims are not permitted to file a private civil action for damages, thereby denying them the right to punitive damages. Other legal systems do offer punitive damages to victims of trafficking. See Mattar Statement, *supra* note 76, at 51.

237. 18 U.S.C. § 1590 (2004).

238. *Id.* § 1591(a).

239. *Id.* § 1591(b)(1).

240. Tenorio Interview, *supra* note 98.

241. *Id.*

242. 18 U.S.C. § 1592 (2004).

243. *Id.*

Thus, in accordance with the provisions of the TVPA, trafficked persons are no longer explicitly excluded from prosecution simply for failure to possess required documents such as a visa.<sup>244</sup>

The newly enacted criminal code provision dealing with the confiscation of documents addresses one of the main methods of coercion used by modern-day traffickers.<sup>245</sup> When a trafficker confiscates a trafficked person's passport and visa, he creates a serious impediment to the victim's escape from debt bondage and slavery.<sup>246</sup> Confiscation of documents strips a trafficked woman of her identity and makes her even more afraid of being caught by police or immigration officials and being detained as an undocumented migrant and ultimately deported.<sup>247</sup>

As a result of the passage of new criminal law guidelines mandated by the TVPA, prosecutors may now charge traffickers with either trafficking, slavery, involuntary servitude, or forced labor, depending on which is easiest to prove.<sup>248</sup> The punishment, benefits, and protections are now the same for each of these offenses as they are for trafficked persons under the TVPA.<sup>249</sup>

## *2. DoJ Increases Number of Prosecutions and Investigations*

Since the new and amended trafficking criminal provisions were enacted after 2000, there has been an increase in the number of prosecutions of traffickers.<sup>250</sup> Before 2000, very few traffickers were prosecuted because of the difficulty to obtain proof, the expense and time of trial, the piecemeal nature of the U.S. criminal laws on trafficking, and the reportedly overwhelming amount of paperwork required for the prosecution of traffickers.<sup>251</sup>

After the passage of the TVPA and from January 2001 through January 2003, the DoJ charged, convicted, or secured sentences against ninety-two traffickers in twenty-one cases.<sup>252</sup> Sixty-five

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244. *Id.*; TVPA § 112.

245. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 118.

246. *Id.*

247. *Id.*

248. Tenorio Interview, *supra* note 98.

249. TVPA § 112.

250. *Implementation Overview*, *supra* note 188, at 2-3.

251. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 162-63.

252. UNITED STATES MISSION TO THE EUROPEAN UNION, U.S. JUSTICE DEPT. ANNOUNCES NEW AID FOR VICTIMS OF HUMAN TRAFFICKING, Feb. 25, 2003, available at <http://www.useu.be/Categories/Justice%20and%20Home%20Affairs/Feb2503HumanTraffickingVictims.html> [hereinafter U.S. MISSION TO E.U.].



of those charged were convicted or sentenced for sex trafficking offenses in fourteen separate cases.<sup>253</sup>

As of December 18, 2002, the DoJ reported having 125 open trafficking investigations, twice the number from the previous year.<sup>254</sup> Moreover, the DoJ reported the prosecution of thirty-three traffickers under the criminal statutes created pursuant to the TVPA mandate.<sup>255</sup> Of those thirty-three, nineteen were for sexual exploitation.<sup>256</sup> Thus, between 2001 and 2002, the DoJ more than doubled its number of prosecutions and convictions to thirty-six.<sup>257</sup>

According to one U.S. Attorney, since the TVPA's passage, it has become significantly easier for prosecutors to pursue a sex trafficking case by applying the TVPA and the new criminal statutes implemented as a result of the TVPA. They no longer have to apply several different criminal law statutes. Obtaining a conviction for the crime of sex trafficking, as defined in the TVPA, requires proof of fewer elements than forced labor, peonage, or involuntary servitude.<sup>258</sup> For example, instead of having to prove deception, coercion, or abuse of a position of vulnerability, the crime of sex trafficking requires only proof of "recruitment, harboring, transportation, provision, or obtaining of a person . . . for the purpose of a commercial sex act."<sup>259</sup>

Thus, as a result of the establishment of new and amended criminal statutes and regulations pursuant to the mandates of the TVPA, the number of sex trafficking prosecutions in the United States has increased since 2000. Despite the time consuming and labor intensive nature of these cases, which require the full time dedication of many attorneys and investigators, the DoJ prosecuted thirty-four defendants in 2001, four times the number from the previous year.<sup>260</sup> The DoJ "opened investigations into sixty-four allegations of trafficking in fiscal year 2001."<sup>261</sup> As of May 2002, the DoJ had 111 open investigations, representing a fifty percent increase over the number of open investigations of trafficking the agency had in the previous year and a more

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253. *Id.*

254. DEPARTMENT OF JUSTICE, FACT SHEET, ACCOMPLISHMENTS IN THE FIGHT TO PREVENT TRAFFICKING IN PERSONS, Feb. 25, 2003, available at [http://www.usdoj.gov/opa/pr/2003/February/03\\_crt\\_110.htm](http://www.usdoj.gov/opa/pr/2003/February/03_crt_110.htm) [hereinafter DOJ, FACT SHEET].

255. *Id.*

256. *Id.*

257. Dobriansky Conference Remarks, *supra* note 192, at 5.

258. Tenorio Interview, *supra* note 99; see also Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 166 (stating that the TVPA consists of one law that prohibits sex trafficking).

259. TVPA § 103(9).

260. *Implementation Overview*, *supra* note 188, at 3.

261. *Id.*

than three fold increase since the establishment of the Trafficking in Persons and Worker Exploitation Task Force toll-free complaint line in February 2000.<sup>262</sup>

Because the TVPA was passed in 2000 and its criminal law provisions do not apply retroactively, several of the recently tried criminal cases involving trafficking did not apply the TVPA.<sup>263</sup> Thus, only three of the DoS's recent indictments include charges under the new criminal statutes.<sup>264</sup> But "many of the 111 open investigations include allegations that may lead to indictments under the TVPA" in the future.<sup>265</sup>

### *3. DoJ Intelligence Sharing and the Migrant Smuggling and Trafficking in Persons Coordination Center*

In June 2002, the DoJ opened the Migrant Smuggling and Trafficking in Persons Coordination Center. The Center is located in the Civil Rights Division. Its purpose is to work with the DoS, the CIA, the FBI, the INS, the National Security Agency (NSA), the Coast Guard, and others in an effort to convert intelligence information about trafficking in persons and about alien smuggling activity in order to provide effective law enforcement.<sup>266</sup>

### *4. DoJ Creation of the Trafficking in Persons and Worker Exploitation Task Force*

Pursuant to the mandates of the TVPA, the DoJ created the Trafficking in Persons and Worker Exploitation Task Force to coordinate the investigation and prosecution of trafficking practices and protect trafficking victims.<sup>267</sup> In March 2001, Attorney General Ashcroft announced that there would be permanent funding for the DoJ's Trafficking in Persons and Worker Exploitation Task Force toll-free hotline.<sup>268</sup>

In 2002, the DoJ focused its attention on developing regional task forces to prosecute trafficking cases.<sup>269</sup>

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262. *Id.*

263. *Id.*

264. *Id.* Those cases are *United States v. Kil Soo Lee*, *United States v. Virchenko*, and *United States v. Sarker*. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

### 5. DoJ Outreach Efforts

Following the enactment of the TVPA, Attorney General Ashcroft "announced the creation of a community outreach program to work with local community groups, victims' rights organizations, immigrants' rights organizations, shelters, and other interested groups" affected by sex trafficking.<sup>270</sup>

### 6. DoJ Roundtables with NGOs and Law Enforcement Groups

In January 2002, the DoJ held a meeting with approximately thirty-five NGOs to inform them about the T-visa and its availability to trafficked persons.<sup>271</sup> In order to increase public awareness of the gravity of sex trafficking, the DoJ "plans to continue and expand its public presentations on trafficking . . . including annual meetings of law enforcement groups, victim service organizations, immigrant and refugee advocacy groups, public health professionals, and others" at community-level meetings around the United States.<sup>272</sup>

### 7. DoJ Training

The DoJ has set up an operative training center for federal prosecutors, agents, and victims — the witness coordinators at the DoJ's National Advocacy Center (NAC) in South Carolina.<sup>273</sup> U.S. Attorneys also received training there in 2002, and will continue to receive training in the future through a satellite television network broadcast.<sup>274</sup> The DoJ has made a concerted effort to offer training courses for Assistant U.S. Attorneys and federal agents under The Protection and Assistance for Victims of Trafficking, Interim Rule,<sup>275</sup> which "imposes obligations on all federal law enforcement personnel to (1) identify victims of severe forms of human trafficking; (2) protect victims in custody; and (3) provide victims with access to information and translation services."<sup>276</sup>

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270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. 28 C.F.R. § 1100 (1999).

276. *Implementation Overview*, *supra* note 188, at 3.

The DoJ also instituted training programs for the INS personnel responsible for issuing T-visas.<sup>277</sup> When determining eligibility for a T-visa, the INS personnel have been trained to interpret the guidelines broadly.<sup>278</sup> If a person is in danger of being deported and there is a question about whether the person has been trafficked, the INS officials are now authorized to use mechanisms such as parole, deferred action, and stays of removal to delay the deportation until the person's trafficking status can be determined.<sup>279</sup>

In January 2002, the INS, together with the Civil Rights Division and the Office for Victims of Crime (OVC), conducted training on the adjudication of T-visa applications at its Vermont Service Center.<sup>280</sup> The INS also trained "new Border Patrol agents, district counsels, new attorneys and advanced attorneys, and asylum officers."<sup>281</sup> Through its internet and intranet websites, the INS has provided "employees and the public with information, forms, and procedural guidance related to the provisions of the TVPA."<sup>282</sup>

The DoJ's training initiatives also include the Violence Against Women Office (VAWO).<sup>283</sup> As a result of the passage of the TVPA, "the technical assistance provider for each of the VAWO grant programs . . . conducts several 'technical assistance institutes' annually [to] provide VAWO grantees and sub grantees with an opportunity to receive training and support."<sup>284</sup> The plan is to use these institutes to inform grantees about the TVPA and its resources.<sup>285</sup>

In 2002, The Child Exploitation and Obscenity Section (CEOS) of the Criminal Division reported its intent to "collaborate with police departments and federal law enforcement to provide training on the trafficking of American youth for exploitation."<sup>286</sup> For example, in 2002 CEOS scheduled "programs through the Dallas Children's Advocacy Center and Police Department's annual program and the Children's National Advocacy Center program

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277. *Id.*

278. *Strategy for Obtaining Interim Relief for U-Visa Eligible Non-Citizens*, Nov. 5, 2001, at <http://www.immigration.com/newsletter/uvisaeligible.html> (last visited Mar. 7, 2005).

279. *Id.*

280. *Implementation Overview*, *supra* note 188, at 3.

281. *Id.*

282. *Id.*; see also *Immigration Laws for Protection and Assistance for Victims of Trafficking*, 66 F.R. § 38514 (Jul. 24, 2001).

283. *Implementation Overview*, *supra* note 188, at 3.

284. *Id.* at 3-4.

285. *Id.* at 4.

286. *Id.*

in Huntsville, Alabama.”<sup>287</sup> In coordination with the Civil Rights Division, CEOS also developed training modules to highlight the link between trafficking in persons cases and other types of criminal prosecutions such as organized crime and money laundering.<sup>288</sup>

### 8. DoJ Issuance of Protection and Assistance Regulations

An interim regulation, which went into effect on March 4, 2002, sets forth “the essential elements that must be demonstrated for a victim of a severe form of trafficking in persons to be eligible for classification as a T-visa nonimmigrant alien.”<sup>289</sup> This regulation stipulates “the procedures to be followed by applicants, and evidentiary guidance to assist in the application process.”<sup>290</sup> The number of T-visas issuable is capped at five thousand,<sup>291</sup> but there is a waiting list on which the applicant can be placed if there are no available visa numbers when the application is approved.<sup>292</sup>

Unfortunately, due to the delay in promulgating interim regulations for T-visas, only twenty-three T-visas were actually made available to victims of trafficking between October 2000 and March 2002.<sup>293</sup> By 2003, however, 150 T-visas were being processed.<sup>294</sup> Numbers are likely to go up in 2004 and 2005.

In 2002, the DoJ issued a proposed rule on the U-nonimmigrant status pursuant to the Violence Against Women Act of 2000.<sup>295</sup> The U-visa provides “temporary status for individuals who are not U.S. citizens or lawful permanent residents but who are victims of specific violent crimes such as trafficking, rape or

287. *Id.*

288. *Id.* For an interesting article on the relationship of sex trafficking to trafficking in guns and drugs, see Peter Landesman, *Arms and the Man*, N.Y. TIMES MAG., Aug. 17, 2003, available at <http://www.nytimes.com/2003/08/19/magazine/17BOUT.html>.

289. *Implementation Overview*, *supra* note 188, at 5.

290. *Id.*

291. *Id.*; see also New Classification for Victims of Severe Forms of Trafficking in Persons, Eligibility for “T” Nonimmigrant Status, 67 F.R. 4783 (Jan. 31, 2002).

292. *DOJ Issues Regulations for T-visas, Available to Victims of Trafficking*, 16 IMMIGRANTS RIGHTS UPDATE (Feb. 28, 2002), available at <http://www.nilec.org/immlawpolicy/obtainlpr/oblpr071.htm>.

293. For information about these statistics, see Attorney General John Ashcroft, Remarks at the International Conference *Pathbreaking Strategies in the Global Fight Against Sex Trafficking*, Feb. 23-26, 2003, at <http://www.state.gov/g/tip/rls/rm/17987.htm>.

294. *Id.*

295. *Implementation Overview*, *supra* note 188, at 5.

sexual assault committed against them while in the United States . . . .<sup>296</sup> Ten thousand U-visas are available annually.<sup>297</sup>

In coordination with the DoS, the DoJ also “issued a regulation implementing section 107(c) of the TVPA, which provides authority for the INS to arrange for ‘continued presence’ to allow trafficking victims to remain in the United States while law enforcement is investigating or prosecuting trafficking crimes.”<sup>298</sup>

### *9. DoJ Witness Protection Measures in the United States*

The TVPA authorizes the establishment of witness protection measures to supplement the existing Federal Witness Security Program, which alone is insufficient to protect trafficking victims and their families who remain in the victim’s home country. Under the Federal Witness Security Program, comprehensive witness protection measures are available to witnesses testifying in relation to trafficking, forced labor, slavery, involuntary servitude, and unlawful confiscation of documents.<sup>299</sup> Additional witness protection measures specified under United States federal law include the right to a change of identity, housing, transport costs, financial assistance, assistance to find employment, and “other services necessary to assist the person in becoming self-sustaining.”<sup>300</sup> Federal law states that the immediate family of the witnesses may be protected and relocated if “endangered on account of the participation of the witness in judicial proceeding.”<sup>301</sup> In several trafficking cases, immediate family members of trafficked persons have been provided residence in the United States in order to guarantee their safety.<sup>302</sup> For example, the victims of a prominent San Francisco landlord, Lakireddy Bali Reddy,<sup>303</sup> who trafficked men, women, and children into sexual and other forms of forced labor over a decade, were provided permanent residence in the United States under the witness protection program.<sup>304</sup>

Normally, however, under the witness protection program there must be a ‘real’ threat to trafficked persons, and that kind

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296. *Id.*

297. *Id.*

298. *Id.* The regulation is codified at 66 F.R. 38514 (July 24, 2001).

299. TVPA § 107(c)(3).

300. 18 U.S.C. § 3521(b)(1)(F) (2004).

301. *Id.* § 3521(a)(1).

302. *See, e.g., Doe I. v. Reddy*, 2003 U.S. Dist. LEXIS 26120 (D. Cal., 2003).

303. *Id.*

304. *Id.*

of requirement is difficult to prove.<sup>305</sup> An additional problem arises once an individual enters the program. As one service provider to trafficked women noted, "the witness protection program is premised on the notion of blending into the community — something that is not possible when the people needing protection do not speak the language and cannot immediately function on their own as the witness protection program requires."<sup>306</sup> Thus, the Federal Witness Security Program is not always suitable for trafficked persons.

Because of the secretive nature of sex trafficking, the ability to prosecute traffickers is severely limited without victims' assistance in the prosecution of perpetrators. In order to encourage victim cooperation, the TVPA mandates the promulgation of regulations that seek to protect victims from intimidation, threats, and reprisals from their traffickers in addition to providing medical care and other assistance.<sup>307</sup> The most important aspect of this protection is the T-visa, which provides victims with permanent residence in the United States.

Prior to the enactment of the TVPA, various temporary residence measures, such as 'parole in,' 'deferred action,' or receipt of an 'S-visa' post-trial were available to allow trafficked persons who assisted in the prosecution of traffickers to remain in the United States.<sup>308</sup> Nonetheless, these measures did not ensure that trafficked persons could also work or acquire services and support benefits they can now receive under the TVPA.<sup>309</sup> Before the passage of the TVPA, very few trafficked women would agree to assist in the prosecution of their traffickers because of the general fear of reprisal and the perceived inadequacy of witness protection programs.<sup>310</sup> Arguably, the number of victims who have agreed to assist in the prosecution of perpetrators since the passage of the TVPA has increased due to the protections and benefits offered therein. The increase in investigations, prosecutions, and convictions since 2000 provides proof of the TVPA's effectiveness.

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305. Anti-Slavery Interview, *supra* note 121.

306. *Id.*

307. TVPA § 107(c)(1).

308. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 158. For an explanation of these terms, see CIA REPORT, *supra* note 92, at 42.

309. CIA REPORT, *supra* note 92, at 42.

310. See Kerry M. Healey, National Institute of Justice, *Victim and Witness Intimidation: New Developments and Emerging Responses*, in RES. IN ACTION 1 (1995) (listing fear, strong community ties, and distrust of law enforcement as factors contributing to the reluctance of witnesses to testify).

### 10. DoJ Monetary Grants

In 2002, pursuant to the TVPA, the Commerce-Justice-State Appropriations Act for Fiscal Year 2002 appropriated \$10 million to fund a grant program for governmental and non-governmental victim service organizations "to develop, expand or strengthen victim service programs for victims of trafficking."<sup>311</sup> In 2003, the DoJ's Office for Victims of Crime awarded \$9.5 million in grants to trafficking victim service providers.<sup>312</sup>

### 11. Interagency Trafficking in Persons Brochures

In order to educate women about the dangers of trafficking, the DoJ and the DoS have developed two brochures on trafficking in persons. The first brochure is designed for law enforcement officials to provide to trafficking victims, and the second is for NGOs to use for informational purposes.<sup>313</sup>

## C. DoL TVPA Domestic Implementation Measures

### 1. DoL Prosecutions and Investigations

The DoL has coordinated with the DoJ on investigations of egregious workplace conditions, including sex trafficking in brothels.<sup>314</sup> Some of the cases in which the DoL's Wage and Hour Division and the Solicitor of Labor's Office have assisted the DoJ involve prosecutions under forced labor, slavery, and debt bondage, if not sex trafficking *per se*.<sup>315</sup>

### 2. DoL Interagency Trafficking Informational Brochure and Issuance of Work Permits

The DoL's Women's Bureau helped in the interagency effort to produce an informational brochure entitled *Trafficking in Persons: A Guide for Nongovernmental Organizations*.<sup>316</sup> The Department

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311. *Implementation Overview*, *supra* note 188, at 5.

312. U.S. MISSION TO E.U., *supra* note 252, at 2.

313. *Implementation Overview*, *supra* note 188, at 5.

314. *Id.* at 6.

315. For example, the first criminal prosecution under the TVPA was the prosecution of the owner of a garment sweatshop in American Samoa. The DoL assisted the DoJ in this case as well as other cases that do not involve sex trafficking *per se* but do involve slavery, debt bondage, and immigration violations. *See id.*

316. *Id.* at 6-7.



of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) also participated in the interagency effort, preparing this brochure, which attempts to educate women about trafficking.<sup>317</sup>

*3. HHS Outreach Efforts, Certification Process, Eligibility Letters, and Services to Victims*

ORR staff members have facilitated training and given presentations to about 2000 people since March 2001.<sup>318</sup> Training has taken place in a variety of fora and has focused on "the problem of trafficking, the background of the legislation, the roles and responsibilities of HHS within the law, the role of benefit-issuing offices in the HHS certification process, and the benefits and services available to certified/eligible trafficking victims."<sup>319</sup>

"In May 2001, ORR issued guidance to benefit-granting agencies State Refugee Coordinators and NGOs explaining the requirements for certification and the documentation and eligibility procedures."<sup>320</sup> Since 2001, "ORR has issued 232 certification letters to adults and 14 eligibility letters to minors under the age of 18. Of those victims [who were] issued certification and eligibility letters, 91 applied for assistance in 2001."<sup>321</sup>

Also in 2001, ORR awarded over \$1.25 million to eight organizations throughout the United States. The purpose of the grants was to provide NGOs with the financial resources to assist trafficking victims with the following services: case management, temporary housing, special mental health needs such as trauma counseling, legal assistance referrals, and cultural orientation.<sup>322</sup>

Trafficking victims in the United States have been aided by new immigration guidelines passed since the enactment of the TVPA. For example, once a victim has been determined to be eligible for a T-visa, she may be given authorization to work in the

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317. *Id.* at 7. The new immigration guidelines passed since the enactment of the TVPA have aided trafficking victims in the United States in numerous ways. For example, once a victim is deemed eligible for a T-visa, he or she may be given authorization to work in the United States. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 158. As part of the work authorization benefit provided to T-visa qualifiers, the DoL provides employment services such as "job search assistance, career counseling, and occupational skills" training, which may be of significant value to trafficking victims. *Implementation Overview*, *supra* note 188, at 171.

318. *Implementation Overview*, *supra* note 188, at 10.

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

United States.<sup>323</sup> As part of the work authorization benefit provided to T-visa qualifiers, the DoL has provided on-the-job training, job search assistance, career counseling, occupational skills training, and other services that may be of significant value to trafficking victims.<sup>324</sup>

Since the passage of the TVPA, HHS has provided \$8.4 million in grants to thirty-seven non-profit organizations that provide community education, outreach, and direct assistance to victims of trafficking.<sup>325</sup> In addition, HHS has undertaken a public awareness campaign in the United States to provide those who may encounter a victim of trafficking information about federal and state programs available to assist those victims.<sup>326</sup> DoJ also initiated a hotline for persons seeking information on how victims can obtain support services.<sup>327</sup>

#### *D. INS Domestic TVPA Implementation Measures*

##### *1. Increased Benefits and Services, T-Visas, Continued Presence Requests, and Certification Letters*

Since 2000, INS has assisted approximately three hundred victims to gain access to immigration benefits and granted three hundred "continued presence" requests.<sup>328</sup> Moreover, since the T-visa was actually implemented in 2001, the INS has granted twenty-three T-visas to trafficking victims.<sup>329</sup> In 2003 the INS processed 150 T-visa applications.<sup>330</sup>

Since 2000, "the Department of Health and Human Services has certified 392 victims of severe forms of trafficking, enabling them to receive a wide range of services to help them recover and gain self-sufficiency."<sup>331</sup>

#### *E. USAID Interagency Work in Washington*

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323. TVPA § 107(b).

324. *Implementation Overview*, *supra* note 188, at 10.

325. 2003 TIP REPORT, *supra* note 8, at 171.

326. *Implementation Hearing*, *supra* note 53, at 38.

327. *Implementation Overview*, *supra* note 188, at 3.

328. U.S. MISSION TO E.U., *supra* note 252.

329. *Id.*

330. *Id.*

331. 2003 TIP REPORT, *supra* note 8, at 171.

In 2001, USAID provided more than \$6 million for direct anti-trafficking activities.<sup>332</sup> In particular, USAID's Office of Women in Development coordinated its anti-trafficking efforts and provided financial support within Washington interagency mechanisms.<sup>333</sup> As the Overview of the Administration's Implementation of the Trafficking Victims' Protection Act of 2000 stated, "All USAID regional bureaus are supporting efforts to combat trafficking in their regions."<sup>334</sup>

Despite the delay in enacting regulations to enforce criminal statutes and other mandates, the TVPA has had some impact in the United States. It is the direct cause of the enactment of new and amended criminal statutes and regulations, some of which are designed to streamline investigation, prosecution, and sentencing of traffickers. The TVPA has resulted in a steady increase in the number of investigations, prosecutions, and convictions of traffickers. In 2001 the DoJ prosecuted thirty-three trafficking defendants, four times as many as in the prior year, and as of May 2002, the DoJ had 111 open trafficking investigations, a fifty percent increase over the prior year.<sup>335</sup> However, only three of the cases tried in 2002 were under the TVPA.<sup>336</sup> Nonetheless, given the fact that 50,000 women are trafficked in the United States each year, the number of defendants who have been prosecuted seems woefully inadequate to achieve the goals of deterrence and eradication of the crime of sex trafficking.

Implementation of the TVPA has resulted in the training and sensitization of government personnel, federal prosecutors, law enforcement personnel, and immigration officials. These professionals have, as a result, been able to provide enhanced benefits and services, as well as the possibility of permanent residence in the United States and work permits to victims of trafficking.<sup>337</sup> The TVPA has resulted in the issuance of 392 certification letters since 2000, which is the required preliminary step to obtaining a T-visa. Since 2000, INS has granted three hundred "continued presence" requests and other immigration benefits<sup>338</sup> and reportedly processed 150 T-visas in 2003. The

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332. *Implementation Overview*, *supra* note 188, at 8.

333. *Id.*

334. *Id.*

335. *See supra* part B.2.

336. *See supra* part B.2.

337. *Implementation Overview*, *supra* note 188, at 8.

338. *Id.*

TVPA has also resulted in the implementation of many significant outreach programs, in cooperation with NGOs and law enforcement groups, to assist victims of sex trafficking in their transition to self-sufficiency.

## V. INTERNATIONAL IMPACT OF TVPA

Sex trafficking is an international crime that requires an international response. Rising unemployment, poverty, and a weakened social structure in war torn countries make women and children in developing and transitioning nations particularly vulnerable to trafficking.<sup>339</sup> The United States realizes that it cannot simply combat trafficking domestically.<sup>340</sup> Therefore, the trafficking of women for sexual exploitation and slavery has become a significant U.S. foreign policy issue.<sup>341</sup>

In June 2002, the United States spent over fifty million dollars on anti-trafficking programs in more than fifty countries and has since urged many more countries to join in this effort.<sup>342</sup> One can question if the money is being put to good use and if the TVPA has had an impact on nations other than the United States. In order to effectuate an international solution to the crime of trafficking, all nations must pass adequate trafficking laws, enforce the trafficking laws already in existence, and implement benefits and services to victims of sex trafficking.

To measure the international impact of the TVPA, this section considers the international implementation measures of the DoS, the DoJ, the DoL, and USAID. Additionally, it examines the measures taken by foreign nations to combat trafficking, such as the enactment of new trafficking legislation that reflects the TVPA.

### A. *International TVPA Implementation Measures by the DoS*

#### 1. *DoS Trafficking in Persons Reports*

The TIP Reports are excellent sources for information on the international impact of the TVPA. They are published annually by the DoS and are the product of extensive research and data supplied by a plethora of worldwide sources. For example, the

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339. Tiefenbrun, *Saga of Susannah*, *supra* note 2, at 116.

340. TVPA § 102(b)(24).

341. *Id.*

342. Dobriansky Conference Remarks, *supra* note 192, at 1.

2003 TIP Report listed fifteen countries as Tier 3 countries.<sup>343</sup> Of those fifteen, only six have been consistently named in Tier 3 since the DoS issued its first TIP Report in 2001.<sup>344</sup> Some countries categorized as Tier 3 in the 2003 TIP Report appeared there for the first time because the DoS was unable to gather reliable data on trafficking and legal measures taken to combat trafficking in those countries in previous years.<sup>345</sup>

The TIP Reports have become an "invaluable tool" for the United States in "bilateral dialogues on trafficking."<sup>346</sup> Many countries named in the 2001 TIP Report reacted with a high degree of concern and subsequently took action in response to their inclusion in the Report.<sup>347</sup> Countries placed in Tier 2 or Tier 3 were prompted to engage for the first time with the United States government in programs to reduce trafficking.<sup>348</sup> Countries categorized under Tier 2 naturally sought to strengthen their country's anti-trafficking image in order to avoid the risk of falling into Tier 3,<sup>349</sup> which would render them eligible for economic sanctions beginning in October 2003.<sup>350</sup> Many of the Tier 3 countries have asked for U.S. government assistance to implement changes that would allow names to be removed from the Tier 3 list.<sup>351</sup>

The TIP Reports are more than simply the DoS's assessment of crime statistics. They have gained credibility because the DoS has chosen to omit countries from the Reports when available information was incomplete or could not be verified.<sup>352</sup> Thus, other nations have come to view the TIP Reports as legitimate tools to aid them in combating trafficking rather than as a condemnation of individual countries.<sup>353</sup>

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343. 2003 TIP REPORT, *supra* note 8, at 21. Those countries include Belize, Bosnia & Herzegovina, Burma, Cuba, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Liberia, North Korea, Sudan, Suriname, Turkey and Uzbekistan. *Id.*

344. Those six countries are Bosnia and Herzegovina, Burma, Democratic Republic of Congo, Greece, Sudan, and Turkey. Kazakhstan was included in Tier 3 in the 2001 report, was reduced to Tier 2 in 2002, and returned to Tier 3 in 2003. *See* 2003 TIP REPORT, *supra* note 8, at 21; 2002 TIP REPORT, *supra* note 8, at 17; 2001 TIP REPORT, *supra* note 8, at 12.

345. BUREAU OF PUBLIC AFFAIRS, TRAFFICKING IN PERSONS REPORT SUMMARY (2003).

346. *Implementation Hearing*, *supra* note 53, at 14.

347. *Id.*

348. *See id.* (stating that the report prompted certain countries to "evaluate and improve their efforts").

349. *But see id.* at 59 (arguing that countries in Tier 2 have no incentive to eradicate existing trafficking practices, so long as they are not categorized as Tier 3 countries).

350. 2003 TIP REPORT, *supra* note 8, at 13.

351. *Implementation Hearing*, *supra* note 53, at 14.

352. 2001 TIP REPORT, *supra* note 8, at 4.

353. *Implementation Hearing*, *supra* note 53, at 61.

In July 2001, the DoS published the first annual TIP Report.<sup>354</sup> The report placed the governments of seventy nations into either Tier 1 or Tier 2,<sup>355</sup> and it listed eighty-two nations as having a significant record of cases involving "severe forms of trafficking."<sup>356</sup> After the release of this report, a number of Tier 2 and Tier 3 governments immediately took steps to prevent trafficking, prosecute traffickers,<sup>357</sup> and protect victims.<sup>358</sup> The 2001 TIP Report and a statement by the DoS provide statistically significant data to support the hypothesis that the TVPA has had an international impact on some countries engaged in trafficking.

## 2. DOS Anti-Trafficking Programs Abroad

In 2003, the DoS's Trafficking in Persons Office supported more than 240 anti-trafficking programs in over seventy-five countries.<sup>359</sup> These programs "combat and eradicate human trafficking by focusing worldwide attention on the international slave trade, assisting countries to eliminate trafficking, promoting regional and bilateral cooperation; [and] supporting service providers and NGOs active in trafficking prevention and victim protection efforts."<sup>360</sup> The DoS established worldwide programs pursuant to TVPA mandates. These programs include centers for rehabilitation and work training, special housing shelters, law enforcement training programs, legal reform assistance, information and awareness campaigns, voluntary repatriation for displaced victims, and training for immigration officials, medical personnel, and social workers regarding the treatment of sex-trafficked victims.<sup>361</sup>

## 3. DoS and United Nations Protocol

In an attempt to encourage bilateral and multilateral cooperation within the provisions of the TVPA, and in the interest of eradicating global sex trafficking, the DoS has taken a lead role

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354. 2001 TIP REPORT, *supra* note 8.

355. *Id.* at 12.

356. *Id.*

357. See 2002 TIP REPORT, *supra* note 8, at 17; 2003 TIP REPORT, *supra* note 8, at 21 (categorizing fewer countries at Tier 3 than in the previous year).

358. *Id.*

359. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 256 (2004), available at <http://www.state.gov/g/tips/rls/tiprpt/2004> [hereinafter 2004 TIP REPORT].

360. *Id.*

361. *Id.*

in negotiating the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the *Convention Against Transnational Organized Crime*.<sup>362</sup>

#### 4. DOS Human Rights Reports

The DoS has continued to expand its reporting on trafficking in persons in its annual Country Reports on Human Rights Practices.<sup>363</sup> These reports are produced by the DoS Bureau of Democracy, Human Rights, and Labor, which actually began monitoring trafficking in persons in reports dated as early as 1994.<sup>364</sup> The Reports contain valuable information on all forms of trafficking in persons, conditions under which victims are trafficked, and efforts to assist victims and protect their rights.<sup>365</sup>

#### 5. DoS Trafficking Brochure

As noted above, in 2001 the DoS created the informational brochure targeted to inform potential victims abroad about the dangers of trafficking. It is entitled *Be Smart, Be Safe*.<sup>366</sup> Since 2001, the brochure has been available at twenty-seven U.S. embassies in twenty-four different languages.<sup>367</sup>

### B. International TVPA Implementation Measures by the DoJ

#### 1. DoJ Overseas Activities

Several agencies of the United States government have assisted other governments in trafficking cases. As the overview of

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362. 2001 TIP REPORT, *supra* note 8, at 8. For a list and explanation of additional international instruments of trafficking prevention, see *id.*

363. See, e.g., 2004 TIP REPORT, *supra* note 359; 2003 TIP REPORT, *supra* note 8; 2002 TIP REPORT, *supra* note 8, at 4; 2001 TIP REPORT, *supra* note 8, at 2.

364. See 2001 TIP REPORT, *supra* note 8, at 3.

365. See, e.g., DEPARTMENT OF STATE, 2001 COUNTRY REPORTS ON HUMAN RIGHTS PENALTIES (2001); 2001 TIP REPORT, *supra* note 8.

366. DEPARTMENT OF STATE, BE SMART, BE SAFE (Jan. 1, 2001), available at <http://www.state.gov/unl/rslsf/2001/jan/4229.htm>. The brochure "describes the tactics criminal groups use to coerce and traffic women, the risks of trafficking, what women can do to protect themselves against illegitimate groups, victims' rights in the United States and how women can get help while in the United States." *Implementation Overview*, *supra* note 188, at 2.

367. *Implementation Overview*, *supra* note 188, at 2.

the administration's Implementation of the Trafficking Victims Protection Act of 2000 reported:

The FBI provides personnel overseas who work on trafficking in persons issues, notably in Romania, Albania and Bulgaria through the Southeast European Cooperative Initiative (SECI) Regional Center for Combating Transborder Crime. In addition, the Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) works with various DoJ components and with the Department of State to give expertise and assistance in training prosecutors, investigators and judges overseas in order to eliminate trafficking.<sup>368</sup>

The FBI also works with the DoS "through SECI to create and strengthen civil structures and respect for the rule of law in southeastern Europe," where there is a high incidence of trafficking.<sup>369</sup> In Bucharest, for example, the FBI has worked on developing a proposal for a regional agreement on witness protection.<sup>370</sup> By working with the government of Romania, an FBI special agent "has taken down four significant trafficking organizations."<sup>371</sup> Additionally, special agents of the FBI have been assigned in Tirana, Albania and Sofia, Bulgaria, where trafficking of women remains a serious problem.<sup>372</sup>

## *2. DoJ Overseas Activities of OPDAT*

The DoJ's Criminal Division has worked with OPDAT to "provide technical assistance programs and to establish anti-trafficking in persons task forces in Bulgaria, Romania, Bosnia, Albania, and Kosovo."<sup>373</sup> In January and February 2002, OPDAT also assessed the problem of trafficking in persons in Kazakhstan and Uzbekistan. As a result of the assessment, OPDAT led anti-trafficking seminars or presented roundtables in five Central Asian republics and in Yerevan, Armenia.<sup>374</sup> In that same time period, OPDAT assisted an existing anti-trafficking working

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368. *Id.*

369. *Id.* at 4.

370. *Id.*

371. *Id.*

372. See 2003 TIP REPORT, *supra* note 8, at 22 (describing Albania as a source and transit country for sex-trafficking); 2004 TIP REPORT, *supra* note 359, at 128 (describing Bulgaria as a transit country for sex-trafficking).

373. *Implementation Overview*, *supra* note 188, at 4.

374. *Id.*



group in Chisninau, Moldova,<sup>375</sup> where sex trafficking of women is widespread. OPDAT coordinated two programs on sexual exploitation of children in Asia and the Pacific: the first in India, in March 2002, and the second in Sri Lanka, in May 2002.<sup>376</sup>

### *3. DoJ Criminal Division / CEOS Overseas Activities*

In late 2001 the DoJ's Criminal Division sent an eight-person delegation to the Second World Congress on Commercial Sexual Exploitation of Children (CSEC).<sup>377</sup> There, the U.S. delegation participated in workshops and meetings with other international delegations, discussing strategies for enforcing laws, prosecuting violators, and providing services to the victims of exploitation.<sup>378</sup>

The DoJ Criminal Division attorneys also brief international visitors to the United States regarding the provisions of the TVPA.<sup>379</sup> CEOS plans "to continue to provide training to foreign police and prosecutors in programs funded by the Department of State through OPDAT."<sup>380</sup> These programs "stress the need for legal reforms that ensure adequate punishment of traffickers and protection of victims, [as well as] the benefits of a multi-agency approach to trafficking in persons, and outreach to NGOs."<sup>381</sup>

The DoJ Civil Rights Division's Criminal Section and OPDAT continue to work closely to provide expertise and assistance in training prosecutors, police, and judges overseas in order to combat human trafficking.<sup>382</sup> U.S. attorneys of the Criminal Section have provided such assistance in Poland, Bosnia-Herzegovina, Bulgaria, Kosovo, Macedonia, Romania, Greece, Thailand, and several former Soviet republics, including Ukraine, Kazakhstan, Uzbekistan, and Krygyzstan.<sup>383</sup>

### *4. DoJ Ongoing Research on Overseas Trafficking Activities*

The National Institute of Justice (NIJ), the DoJ's research and development section, has provided grants to study certain

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375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.*

383. *Id.*

areas of the world where trafficking in persons occurs most.<sup>384</sup> These grants will be used to study:

- 1) the commercial sexual exploitation of children in the United States, Mexico and Canada; 2) sex trafficking of women in three U.S. cities and the links between international and domestic sex industries . . . ; 3) trafficking in women from Ukraine [with a data base containing victim profiles of trafficked women and children]; 4) trafficking in persons in the United States; and 5) a study of [how] victim service providers . . . cope with demands [of trafficking] victims.<sup>385</sup>

#### *5. DoJ Working with Congress to Amend The Protect Act*

The DoJ Criminal Division worked with Congress to overhaul the federal policy on sex tourism in 2003. *The Protect Act*, which President George W. Bush signed into law on April 30, 2003,<sup>386</sup> allows prosecution of any American who, while abroad, attempts to or actually engages in statutory rape or sexual abuse of a child or who pays a minor to engage in sex.<sup>387</sup> *The Protect Act* is a powerful tool in the battle against trafficking.<sup>388</sup> It enables the DoJ to conduct undercover operations against American offenders engaging in illicit sexual activities overseas.<sup>389</sup>

#### *6. INS Overseas Activities in Bangkok and Sarajevo*

The INS Bangkok office has “work[ed] jointly with NGOs and the Thai government to identify, deter, and disrupt trafficking organizations and assist victims.”<sup>390</sup> A workshop on trafficking, funded by the DoS, was held at the International Law Enforcement Academy in 2002.<sup>391</sup> In addition, the INS Overseas Enforcement Branch established a task force on human trafficking in Sarajevo with the cooperation and aid of SECI in Romania.<sup>392</sup>

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384. *Id.* at 5.

385. *Id.*

386. *The Protect Act*, *supra* note 211. “Protect” is an acronym for Prosecutorial Remedies and Tools Against the Exploitation of Children Today. *Id.*

387. *Implementation Overview*, *supra* note 188, at 5.

388. *The Protect Act*, *supra*, note 211.

389. *Implementation Overview*, *supra* note 188, at 7.

390. *Id.* at 4.

391. *Id.*

392. *Id.* at 4-5.

*C. International TVPA Implementation Measures of the DoL**1. DoL Cooperative Agreements, Assistance, and Projects*

Beginning in 2001, the DoL's Bureau of International Labor Affairs (ILAB) negotiated a \$1.2 million cooperative agreement with the NGO International Research and Exchange Board (IREX), in order to conduct a two-year anti-trafficking project in Eastern Europe.<sup>393</sup> The purpose of this program is to create economic alternatives for women in seven major cities of Eastern Europe who are at risk of being trafficked.<sup>394</sup>

ILAB also supports projects by the International Labor Organization's International Program on the Elimination of Child Labor that address the problem of trafficking children in seventeen countries in West and Central Africa, Southeast Asia, South Asia, and South America.<sup>395</sup> These projects aim to prevent the trafficking of children as well as to provide children who have been the victims of trafficking with rehabilitation services and educational opportunities.<sup>396</sup>

In order to combat trafficking in persons, ILAB has also developed technical assistance programs, such as the program for Improving Economic Opportunities and Social Safety Nets and the program for Protecting the Basic Rights of Workers.<sup>397</sup> These programs have assisted developing countries to establish basic labor protections so that workers can enjoy the fundamental principles and rights at work that are most relevant to trafficking, including the elimination of child labor, forced labor, and worker discrimination.<sup>398</sup>

To eliminate egregious workplace conditions, the Solicitor of Labor and the Assistant Attorney General for Civil Rights have co-chaired the Trafficking in Persons and Worker Exploitation Task Force.<sup>399</sup> The cooperative task force led to the DoL assisting the DoJ in prosecuting the owner of a garment sweatshop in American Samoa, the first criminal prosecution under the TVPA.<sup>400</sup>

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393. *Id.* at 6.

394. *Id.*

395. *Id.*

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

*D. USAID TVPA International Implementation Measures**1. USAID Protection and Prevention Efforts*

USAID efforts have focused both on protection of trafficking victims and prevention of trafficking altogether. "In fiscal year 2001, USAID provided approximately six million dollars for direct anti-trafficking activities in [twenty-four regions of the world] through field missions, regional bureaus and the Office of Women in Development."<sup>401</sup> Of this amount, approximately \$2.5 million went to the nations of the former Soviet Union and Central Asia.<sup>402</sup> USAID fostered cooperation between NGOs and governments in Central Asia in order to eliminate trafficking.<sup>403</sup> It provided \$1.3 million to fund programs in Asia and more than \$2 million on programs for trafficked children in Africa.<sup>404</sup> USAID also funded programs for the examination of cross-border trafficking in Latin America and the Caribbean.<sup>405</sup>

Additionally, USAID has offered financial assistance to organizations that work toward preventing trafficking by supporting legislative reforms to help countries meet the minimum standards set forth in the DoS's annual TIP Reports. It has focused special attention on funding countries that have high levels of severe forms of trafficking.<sup>406</sup> For example, in Angola and Liberia, USAID set up a partnership with local NGOs to provide "basic literacy and vocational training and rehabilitation to abused women and war wives," including trafficked women.<sup>407</sup> Today, USAID continues its work in Nigeria, Ghana, Ivory Coast, Cameroon, and Guinea.<sup>408</sup>

USAID has funded "a large regional anti-trafficking effort for South Asia managed by the United Nations Development Fund for Women (UNIFEM)."<sup>409</sup> Much of USAID's attention has focused on prevention and education in Bangladesh, India, Nepal, Pakistan, and Sri Lanka.<sup>410</sup> In India, for example, USAID has provided grants to government agencies to support the processes

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401. *Id.* at 7.

402. *Implementation Hearing*, *supra* note 53, at 42.

403. *Id.*

404. *Id.*

405. *Id.*

406. *Implementation Overview*, *supra* note 188, at 7.

407. *Id.*

408. *Id.*

409. *Id.*

410. *Id.*

of planning the following policies: implementation of the National Plan of Action; strengthening the capacity of NGOs that provide services, including legal services and rehabilitation and education for the children of sex workers; and piloting community-based actions to combat trafficking.<sup>411</sup>

In Central Asia, through the International Organization for Migration, USAID's anti-trafficking activities have resulted in increased public awareness and services to victims.<sup>412</sup> USAID/Russia has developed informational and educational campaigns "to report and prevent domestic violence and [to] provide support to women's crisis centers around the country."<sup>413</sup> USAID/Ukraine's Trafficking Prevention Program has established seven regional centers offering job skills training, hot lines, crisis prevention, legal advice, and psycho-social and medical referral services to vulnerable women.<sup>414</sup> Reportedly, more than 30,000 women have used these hotlines in the Ukraine.<sup>415</sup> USAID also funded a docudrama entitled *If I Don't Return*, which graphically depicts the dangers of trafficking.<sup>416</sup> This docudrama aired on Ukraine national television in 2001 and has since been re-broadcast on local television stations.<sup>417</sup>

In Central Europe, USAID's focus lies particularly in the Balkans. It has worked with donors to fund women's shelters for victims of trafficking, to facilitate repatriation, and to provide regional fora that address the issue of trafficking.<sup>418</sup>

In Latin American and the Caribbean, USAID has provided support to the Organization of American States (OAS) and to the International Human Rights Law Institute of DePaul University College of Law,<sup>419</sup> which has conducted a study and published an impressive report on the extent of trafficking of women and children for sexual exploitation in the Americas.<sup>420</sup>

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411. *Id.* at 8.

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.* The International Human Rights Law Institute of DePaul University College of Law is directed by Professor Cherif Bassiouni, under whose able leadership the U.S. has seen great strides in the articulation and enactment of international criminal laws.

420. See INTERNATIONAL HUMAN RIGHTS LAW INSTITUTE, IN MODERN BONDAGE: SEX TRAFFICKING IN THE AMERICAS: CENTRAL AMERICA AND THE CARIBBEAN (2002).

### *E. Measures Taken By Foreign Countries to Combat Trafficking*

In June 2001, only eight months after the passage of the TVPA, the first 2001 TIP Report concluded that "most governments [were] in fact taking steps to curb [trafficking] and to help the hundreds of thousands of men, women, and children who are its victims."<sup>421</sup> While some countries have enacted legislation prohibiting trafficking, others still do not have a specific penal code provision criminalizing the act of trafficking itself.<sup>422</sup>

The 2001 TIP Report placed twenty-three countries in Tier 3.<sup>423</sup> These nations include: Albania, Bahrain, Belarus, Bosnia and Herzegovina, Burma, Democratic Republic of Congo, Gabon, Greece, Indonesia, Israel, Kazakhstan, Lebanon, Malaysia, Pakistan, Qatar, Romania, Russia, Saudi Arabia, South Korea, Sudan, Turkey, United Arab Emirates, and the Federal Republic of Yugoslavia.<sup>424</sup> Twelve<sup>425</sup> of those twenty-three began working on measures designed to acknowledge and address the seriousness of the crime of sex trafficking immediately after the publication of the 2001 TIP Report.<sup>426</sup>

While several of the Tier 3 countries refused to even acknowledge that trafficking exists within their territory,<sup>427</sup> other countries in Tier 3 have taken small steps toward advancing to Tier 2 status.<sup>428</sup> In some Tier 3 countries "in which rebel groups engage in trafficking . . . [and] forc[e] children to become soldiers or laborers, or to provide sexual services to rebels . . . the trafficking problem may be entirely beyond the government's control."<sup>429</sup> Russia, which has been ranked as a Tier 3 country, has argued that the trafficking problem is "beyond [the] purview [of the Russian government] because the victims leave Russia voluntarily

421. 2001 TIP REPORT, *supra* note 8, at 8-9.

422. See FOUNDATION OF WOMEN'S FORUM, TRAFFICKING IN WOMEN FOR THE PURPOSE OF SEXUAL EXPLOITATION: MAPPING THE SITUATION AND EXISTING ORGANIZATIONS WORKING IN BELARUS, RUSSIA, THE BALTIC AND NORDIC STATES 14 (1998), available at <http://www.qweb.kvinnoforum.se/papers/traffickingreport.html#def> (last visited Apr. 26, 2005); see also 2001 TIP REPORT, *supra* note 8, at 97 (acknowledging this legal construct in South Korea).

423. 2001 TIP REPORT, *supra* note 8, at 12.

424. *Id.* at 12.

425. The twelve countries are Albania, Bosnia and Herzegovina, Gabon, Greece, Indonesia, Israel, Malaysia, Romania, Russia, South Korea, Turkey, and Yugoslavia. *Id.*

426. *Monitoring and Combating Trafficking in Persons: How are We Doing?: Hearing Before the Subcomm. on Near Eastern and S. Asian Affairs of the Comm. on Foreign Relations*, 107th Cong. 59-60 (2002) [hereinafter *Foreign Relations Hearing*] (noting examples of actions taken to illustrate the progress of these countries).

427. 2001 TIP REPORT, *supra* note 8, at 7.

428. *Id.*

429. *Id.*

for economic reasons and because the violence and abuse of trafficking in women usually occurs outside Russia's borders, leaving little to prosecute within Russia aside from fraud."<sup>430</sup>

The 2001 TIP Report places countries in Tier 1<sup>431</sup> if they fully comply with the law's minimum standards, offer a wide range of services to victims for protection, and have sponsored or instituted governmental prevention campaigns to eliminate trafficking.<sup>432</sup> In Belgium, a Tier 1 country, trafficking laws similar to the TVPA have existed since 1995, and the government consistently assists victims who agree to testify against traffickers by providing them with temporary work authorization and, in some cases, permanent residence upon completion of the trial.<sup>433</sup>

In many Tier 2 countries, no trafficking legislation exists at all.<sup>434</sup> In spite of the fact that some of these countries' constitutions contain prohibitions against human bondage, there is often no legislation to enforce that prohibition.<sup>435</sup> Neither criminal statutes nor labor laws exist to facilitate prosecution of traffickers.<sup>436</sup> In some Tier 2 countries, laws exist with penalties for trafficking that are equivalent to or more severe than rape penalties, but this does not necessarily create a ready solution.<sup>437</sup> In Cambodia, for example, "implementing legislation has not been passed, and lack of prosecutorial resources prevent enforcement."<sup>438</sup> In Bangladesh, anti-trafficking legislation exists with penalties as severe as those for rape, but "rampant corruption among police, border and immigration officials severely undermines law enforcement efforts."<sup>439</sup>

As noted in the 2002 TIP Report, "Several countries increased their efforts to combat trafficking since issuance of the Department's 2001 report."<sup>440</sup> South Korea, for example, moved from Tier 3 to

430. *Id.* at 95.

431. *Id.* at 12 (listing the 2001 Tier 1 countries as Austria, Belgium, Canada, Colombia, Germany, Hong Kong, Italy, the Netherlands, Spain, Switzerland, Taiwan, and the United Kingdom).

432. *Id.* at 7.

433. *Id.* at 16.

434. *Id.* at 31, 33-34, 39, 44 (describing this problem in the Tier 2 of countries Benin, Bulgaria, Burkina Faso, Côte d'Ivoire, and France).

435. *Id.* at 29 (illustrating this factor as seen in the Tier 2 country Angola).

436. Most Tier 2 countries that lack specific anti-trafficking laws can prosecute traffickers under other criminal laws, such as laws prohibiting slavery or rape. For examples, see 2001 TIP REPORT, *supra* note 8, at 31, 33-34, 39, 44-46, 52-54.

437. *Id.* at 35, 37 (discussing this situation in Cambodia and China).

438. *Id.* at 35.

439. *Id.* at 30.

440. 2002 TIP REPORT, *supra* note 8, at 12.

Tier 1 after the publication of the 2001 TIP Report.<sup>441</sup> Similarly, Romania and Israel demonstrated “a stronger and clearer commitment to this issue and implement[ed] a wide range of activities to combat trafficking. Both have accordingly moved from Tier 3 to Tier 2 [in 2001].”<sup>442</sup> Albania, Gabon, Kazakhstan, Malaysia, Pakistan, and Yugoslavia also moved from Tier 3 to Tier 2 in 2002 because of the impact of the 2001 TIP Report in particular and the TVPA in general.<sup>443</sup>

Several countries<sup>444</sup> placed in Tier 2 on the 2001 TIP Report advanced to Tier 1 in the 2002 Report because they made significant efforts to fully comply with the minimum standards and are now in full compliance.<sup>445</sup> Only a small number of countries dropped from Tier 2 in 2001 to Tier 3 in 2002 due to their disappointing efforts to comply with minimum standards.<sup>446</sup>

Thus, the efforts made by foreign countries in 2001-2002 are a clear indication of the positive international impact of the TVPA. This portion of this article will examine the specific efforts of individual countries toward eradicating trafficking and sex slavery pursuant to the mandates set forth in, and the international cooperation authorized, by the TVPA.

### 1. *South Korea*

The TVPA's international impact can be seen most vividly in the measures to eliminate trafficking taken by the twelve countries listed in Tier 3 on the 2001 TIP Report.<sup>447</sup> South Korea, for example, “submitted an extensive report [to the United States] in early October [2001] detailing various anti-trafficking initiatives [it had taken] in the areas of prosecution, protection and prevention . . . .”<sup>448</sup> After submitting the report, South Korean Foreign Ministry officials met several times with high-level U.S. government officials to convey their government's determination to improve its trafficking

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441. *Id.*

442. *Id.*

443. *Id.*

444. These countries include the Czech Republic, France, Lithuania, Macedonia, and Poland. *Id.* at 12-13.

445. *Id.* at 12.

446. *Id.* at 13.

447. See *Foreign Relations Hearing*, *supra* note 426, at 59-60.

448. *Id.* at 59.



record.<sup>449</sup> As a result of these actions, between 2001 and 2002 South Korea jumped from Tier 3 to Tier 1.<sup>450</sup>

## 2. Romania

While not making the same dramatic improvements seen in South Korea, Romania did make substantial efforts to combat trafficking immediately following the publication of the 2001 TIP Report.<sup>451</sup> One of the first measures Romania undertook was the adoption of a new law aimed at preventing and combating trafficking.<sup>452</sup> This National Action Plan against Trafficking is modeled after the TVPA and clearly reflects the impact that the U.S. anti-trafficking law has had on foreign legislation.<sup>453</sup> In fact, the Romanian government reported that the "U.S. trafficking statute served as a source of inspiration for their new law."<sup>454</sup> In 2002, 150 people were convicted under various provisions of the new anti-trafficking law in Romania.<sup>455</sup>

The Romanian government has also followed the United States' lead in enlisting the help of NGOs to aid trafficking victims.<sup>456</sup> For instance, the Romanian Orthodox Church was asked to help de-stigmatize victims.<sup>457</sup> In its effort to prevent trafficking, the Romanian government has offered anti-trafficking courses for teachers and has instituted mass media campaigns aimed at prevention.<sup>458</sup> The Romanian government has also "drafted regulations for implementing the victim protection aspects of the anti-trafficking laws."<sup>459</sup> These and other protection and prevention efforts made it possible for Romania to move from Tier 3 to Tier 2 in 2002.<sup>460</sup>

449. *Id.*

450. 2002 TIP REPORT, *supra* note 8, at 12. The end reporting date for the June 2002 report was April 2002. *Id.*

451. *Foreign Relations Hearing*, *supra* note 426, at 59.

452. *Id.*; see also 2002 TIP REPORT, *supra* note 8, at 87 (noting Romania's passage of a law in December 2001 that criminalizes trafficking).

453. *Foreign Relations Hearing*, *supra* note 426, at 59.

454. *Id.*

455. 2003 TIP REPORT, *supra* note 8, at 125.

456. *Foreign Relations Hearing*, *supra* note 426, at 59.

457. *Id.*

458. 2003 TIP REPORT, *supra* note 8, at 125.

459. *Id.*

460. Compare 2003 TIP REPORT, *supra* note 8, at 125 with 2001 TIP REPORT, *supra* note 8, at 94.

### 3. Albania

Albania was listed as a Tier 3 country in 2001<sup>461</sup> and a Tier 2 country in 2002 and 2003.<sup>462</sup> In response to the 2001 ranking, the Albanian government immediately began to coordinate with the U.S. embassy in Tirana to create and enact a comprehensive National Action Plan.<sup>463</sup> In June 2003, this plan was in its second phase of implementation, which has resulted in increased arrests and convictions of traffickers.<sup>464</sup>

Albania has made efforts to fashion its governmental response to trafficking after the United States' model to include protection of the victim and coordination of law enforcement and victim resources.<sup>465</sup> Albania appointed a Minister of State to serve as Albania's anti-trafficking coordinator.<sup>466</sup> The Albanian police no longer treat victims as criminals. Instead, they routinely refer victims to NGOs and international organization shelters.<sup>467</sup> In 2002, the country sent 144 trafficking cases to trial, resulting in seventeen convictions.<sup>468</sup> Finally, "the Ministry of Education participated with NGOs to train teachers and to produce and disseminate information in schools on the dangers and mechanics of human trafficking."<sup>469</sup> These few but valuable statistics<sup>470</sup> obtained in the 2003 TIP Report on the increase in Albanian governmental efforts and on the number of criminal arrests, prosecutions, and convictions are clear evidence that the TVPA has made an impact on certain foreign nations engaged in serious levels of trafficking.<sup>471</sup>

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461. 2001 TIP REPORT, *supra* note 8, at 79.

462. 2003 TIP REPORT, *supra* note 8, at 22; 2002 TIP REPORT, *supra* note 8, at 22.

463. 2003 TIP REPORT, *supra* note 8, at 22.

464. *Id.*

465. *See id.* at 22-23.

466. *Id.* at 22.

467. *Id.*

468. *Id.*

469. *Id.*

470. *See id.* at 17. The DoS admitted that insufficient data on the number of arrests, prosecutions, and convictions in foreign countries listed in Tiers 1, 2, or 3 was the greatest weakness of the TIP Reports of 2002 and 2003. The DoS will make efforts to provide these statistics in the next report and thereafter. Our impact study greatly depends upon these statistics.

471. *Id.* at 22-23.

#### 4. Greece, Russia, and Israel

Countries such as Greece, Russia, and Israel were strongly influenced by the 2001 rankings and determined to follow the U.S. model, establishing the now doctrinal three-pronged approach to combating trafficking: prevention, protection, and prosecution.<sup>472</sup> Greece, which was still listed in Tier 3 in the June 2003 report,<sup>473</sup> has since passed new anti-trafficking legislation to criminalize and penalize traffickers.<sup>474</sup> The new laws have resulted in 140 trafficking-related arrests.<sup>475</sup>

Russia, which was listed as a Tier 2 country in the 2003 TIP Report,<sup>476</sup> "conducted a joint operation [with the United States] against . . . trafficking resulting in several ongoing investigations . . . and some final convictions."<sup>477</sup>

Israel, which was also listed under Tier 2 as of June 2003,<sup>478</sup> opened sixty-seven investigations into allegations of trafficking for sexual exploitation in 2002 resulting in ninety-two arrests.<sup>479</sup> That same year, Israel established an inter-ministerial committee on trafficking in persons.<sup>480</sup> Israel has also criminalized trafficking<sup>481</sup> and has established police-funded housing for victims who are willing to assist in trafficking prosecutions.<sup>482</sup>

The degree of movement of countries between tiers is a strong indication that the TVPA has had some international impact on countries that have taken measures to comply with the minimum standards. For example, in 2001 there were twelve countries in Tier 1, forty-seven countries in Tier 2 and twenty-three countries in Tier 3.<sup>483</sup> In 2002, there were eighteen countries in Tier 1, fifty-three countries in Tier 2, and nineteen countries in Tier 3.<sup>484</sup> In 2003, there were twenty-six countries in Tier 1, seventy-five countries in Tier 2, and fifteen countries in Tier 3.<sup>485</sup> There has,

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472. *Id.* at 71, 83, 127 (describing the three-pronged approach to the elimination of trafficking in Greece, Israel, and Russia respectively).

473. *Id.* at 71.

474. *Id.*

475. *Id.*

476. *Id.* at 127.

477. *Id.* at 128.

478. *Id.* at 83.

479. *Id.*

480. 2002 TIP REPORT, *supra* note 8, at 63.

481. 2003 TIP REPORT, *supra* note 8, at 83.

482. *Id.* at 84.

483. 2001 TIP REPORT, *supra* note 8, at 12.

484. 2002 TIP REPORT, *supra* note 8, at 17.

485. 2003 TIP REPORT, *supra* note 8, at 21.

therefore, been a steady increase in the number of countries that are in full compliance with the minimum standards, indicating a positive effect of the TVPA. There has also been a steady increase in the number of countries in Tier 2, which reflects movement from countries formerly in Tier 3 into Tier 2 as well as the DoS's receipt of more documentation on certain countries that were not listed on the 2001 Report (but were listed for the first time on the 2002 report).<sup>486</sup> There has been a steady but small decrease in the number of Tier 3 countries, from twenty-three to nineteen to fifteen to ten, due to the measures taken by foreign countries to comply with the minimum standards set forth in the TIP Reports.<sup>487</sup> This trend is also an indication of the positive international impact the TVPA has had on reducing trafficking in source and transit countries.

#### *F. New Trafficking Legislation in Foreign Countries Post-TVPA*

Examining the recent trafficking legislation of specific countries also provides evidence of the TVPA's international impact. The DoS issued a Model Law to Combat Trafficking in Persons on March 12, 2003.<sup>488</sup> This law was modeled after certain recent foreign anti-trafficking laws,<sup>489</sup> the U.N. Protocol, and the TVPA.<sup>490</sup> Section 306, *Immigration Status of Victims* of the Model Law to Combat Trafficking, states:

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

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486. Compare 2001 TIP REPORT, *supra* note 8, at 12 with 2002 TIP REPORT, *supra* note 8, at 17 (adding documentation of Portugal, Republic of Korea, Equatorial Guinea, Estonia, Latvia, Senegal, Tanzania, Afghanistan, Armenia, Iran, and Tajikistan).

487. See 2004 TIP REPORT, *supra* note 359; 2003 TIP REPORT, *supra* note 8; 2002 TIP REPORT, *supra* note 8; 2001 TIP REPORT, *supra* note 8.

488. See *Model Law to Combat Trafficking in Persons* (2003), available at [http://www.humantrafficking.com/humantrafficking/toolkits\\_ht3/DOS\\_Model\\_Law.htm](http://www.humantrafficking.com/humantrafficking/toolkits_ht3/DOS_Model_Law.htm) (last visited Apr. 26, 2005).

489. For example, the Kosovo and Romanian trafficking laws.

490. See *id.*

provided they have complied with reasonable requests if any to assist in the investigation or prosecution of the traffickers.<sup>491</sup>

Let us compare this Model Law, the TVPA, and some of the trafficking laws now in effect in other countries. Deportation of trafficked victims reflects traditional immigration law practice and is still the norm in most parts of the world, including the countries of the Middle East, Latin America, Africa and Asia. Some countries, however, have followed the United States TVPA model by granting T-visa type benefits to trafficking victims. For example, Belgium, Italy, and the Netherlands allow victims a three-month temporary stay, with costs paid, in order to provide victims with enough time to decide whether they wish to testify against their traffickers.<sup>492</sup> Greece generally permits victims willing to testify against traffickers to remain in the country temporarily, but it is within the prosecutor's discretion to provide this protection.<sup>493</sup> Israel provides room, board, access to medical care, and money to victims willing to testify against their traffickers.<sup>494</sup>

### 1. German Trafficking Law

Germany has "developed a cooperation program between local counseling centers and various state police offices for protection of and assistance to trafficked victims who agree to testify."<sup>495</sup> Germany's Aliens Act grants trafficking victims a grace period of at least twenty-eight days to decide whether to cooperate with authorities.<sup>496</sup> Victims of trafficking willing to testify are then afforded the status of "temporary toleration."<sup>497</sup>

### 2. Portugese Trafficking Law

In Portugal, while most illegal immigrants are deported, "new legal provisions allow the government to bypass residency visa

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491. *Id.*

492. La Strada Foundation, *Migration Dimension*, at <http://free.ngo.pl/lastrada/page4.html> (last visited Mar. 8, 2005).

493. 2003 TIP REPORT, *supra* note 8, at 72.

494. *Id.* at 84.

495. *Id.* at 69.

496. *A Comparative Analysis of the Anti-Trafficking Legislation in Foreign Countries: Towards a Comprehensive and Effective Legal Response to Combating Trafficking in Persons*, House Committee on International Relations 2003 (Statement of Mohamed Y. Mattar) at 14 [hereinafter *Comparative Analysis*].

497. 2003 TIP REPORT, *supra* note 8, at 69.

requirements for victims who assist in the investigation and prosecution of their traffickers.”<sup>498</sup> Thus, victims of trafficking in Portugal can now obtain a residency permit simply by cooperating with authorities.<sup>499</sup>

### 3. Hungarian Trafficking Law

Hungary provides for the “possibility of suspending an expulsion order against victims of trafficking if they intend to testify against their traffickers.”<sup>500</sup> In practice, however, the government only provides limited assistance to trafficking victims.<sup>501</sup>

### 4. Spanish Trafficking Law

In an effort to protect victims, a 2000 Spanish Trafficking Act allows temporary residence for undocumented persons who cooperate with law enforcement.<sup>502</sup> The victim is granted a temporary work permit and given the right to travel.<sup>503</sup> Once legal proceedings have been completed, the victim is permitted to remain in Spain or return to her country of origin.<sup>504</sup>

### 5. Dutch Trafficking Law

“In the Netherlands, expulsion of an illegal alien who is a victim of trafficking may be suspended for three months during which [time] such victim [may] decide[] to report the trafficking offense.”<sup>505</sup> If the victim “decides to report, a residency permit is issued for the complete duration of the investigation, prosecution, and trial.”<sup>506</sup> A residency permit may also be issued to a victim of trafficking on humanitarian grounds if deportation poses a serious “risk of reprisal against the victim or her family,” a “risk of persecution in the victim’s country of origin for committing an offense related

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498. *Id.* at 122.

499. *Id.*

500. *Comparative Analysis*, *supra* note 496, at 14.

501. 2003 TIP REPORT, *supra* note 8, at 78.

502. 2002 TIP REPORT, *supra* note 8, at 95.

503. *Id.*

504. *Id.*

505. *Id.* at 79; *Comparative Analysis*, *supra* note 496, at 14.

506. *Comparative Analysis*, *supra* note 496, at 14; see also Shanthi Dairiam, *Effective Legal Strategies to Combat Trafficking in Women and Children* (Oct. 7-9, 2002) (unpublished discussion paper, Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children), available at <http://www.iwraw-ap.org/aboutus/paper06.htm> (arguing that there were flaws in implementing these laws).

to prostitution," or the possibility of difficult social reintegration in the country of origin, where she may be looked upon as a pariah.<sup>507</sup>

### 6. *Belgian Trafficking Law*

In Belgium, residency status for trafficking victims is dependent on the "legal proceedings."<sup>508</sup> A victim is initially given forty-five days to decide whether to make a statement.<sup>509</sup> If the victim does make a statement during that time, she receives a temporary residency permit and a temporary work permit, both of which are valid for three months.<sup>510</sup> If the case against the trafficker is pursued by the prosecuting authorities, the victim is given a residency permit renewable until the legal proceedings are concluded.<sup>511</sup> Once the proceedings are concluded, however, the victim must return to her country of origin.<sup>512</sup>

These foreign laws have a strong resemblance to the U.S. TVPA and indicate the degree to which the law has impacted foreign legislation.

## VI. CONCLUSION

Many objections have been raised regarding the effectiveness of the TVPA to stem the rising tide of sex trafficking and slavery in the United States and abroad. There is no disputing the fact that implementation of the TVPA started slowly.<sup>513</sup> Members of the Committee on International Relations hoped that "the new office . . . [would have] its own funds to develop anti-trafficking programs."<sup>514</sup> In 2001, more funds were needed to enable NGOs to continue their work against trafficking in the United States.<sup>515</sup> More funds were also needed to offer trafficking victims the enhanced services promised by the TVPA.<sup>516</sup>

Moreover, in 2001, the DoJ had yet to issue final regulations concerning the T-visas.<sup>517</sup> Regulations to implement the new crime

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507. *Comparative Analysis*, *supra* note 496, at 14.

508. *Id.*

509. *Id.*

510. *Id.*

511. *Id.*

512. *Id.*

513. *Implementation Hearing*, *supra* note 53, at 7-8.

514. *Id.* at 5.

515. *Id.*

516. *Id.*

517. *Id.* at 53.

of trafficking and the increase in punishment of existing criminal statutes were not enacted until late in 2001. Moreover, in 2001 only one case was successfully prosecuted under the TVPA.<sup>518</sup>

Despite the slow pace taken by the Bush Administration to implement the TVPA, great strides have been made, and the TVPA has had an impact both domestically and internationally to stem the global tide of this modern form of slavery. The Administration has undergone a complete policy change in its approach to trafficked women, whom it now views as victims rather than criminals. Policy changes of this magnitude naturally take time to implement. The United States government did establish a new trafficking office — the Office to Monitor and Combat Trafficking — on October 15, 2001.<sup>519</sup> That office compiles the important annual TIP Reports, provides an assessment and implementation of programs, and acts as an outreach partner to agencies, Congress, and the NGO community.<sup>520</sup>

The DoS has also made important implementation efforts that have had both a domestic and an international impact on trafficking. The DoS has assisted in convincing eighty-five countries to sign the U.N. Protocol on trafficking.<sup>521</sup> In 2001, the DoS made considerable progress in setting up the Interagency Task Force authorized by the TVPA and had discussions with the CIA, the National Security Agency, and the Bureau of Intelligence and Research to enhance intelligence collection in trafficking.<sup>522</sup> In 2001, the DoS also funded and implemented ninety global anti-trafficking projects in over thirty countries<sup>523</sup> in order to focus on protection, prevention, and prosecution.

Since the publication of the first TIP Report in June 2001, a number of countries have sought guidance and assistance from the DoS because they were clearly interested in improving their trafficking records.<sup>524</sup> However, in 2001 some countries that were found to be major violators of sex trafficking and were listed in Tier 3 emphatically refused to cooperate with the DoS. These countries include Russia, Indonesia, Congo, Bosnia-Herzegovina,

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518. *Id.*

519. *Id.* at 11. The office appointed Dr. Laura Lederer as its Deputy Senior Advisor to the Secretary on Trafficking. Dr. Lederer made a long-term commitment to the study of trafficking. *Id.* at 53.

520. *Id.* at 11.

521. *Id.*

522. *Id.* at 12.

523. *Id.*

524. *Id.* at 16.



and Belarus.<sup>525</sup> Obviously, the soft approach adopted in 2001 and again in 2002 did not have as strong an impact as was intended by the TVPA. In October 2003, punitive economic sanctions were instituted, as authorized by the TVPA.<sup>526</sup>

The International Justice Mission and others have raised serious objections to the TIP Reports. Some claim that these reports fail to measure concretely how many people are being investigated, prosecuted, and convicted for sex trafficking and forced prostitution in foreign countries.<sup>527</sup> They also fault the reports for failing to state whether government employees and police in foreign countries are actually involved in the sex trafficking.<sup>528</sup> Moreover, the TIP reports list countries in Tier 2 if they do not meet minimum requirements but are making significant efforts to do so, and such a ranking gives a false impression that these countries are engaging in something less than egregious human trafficking.<sup>529</sup> In addition, in Tier 2 countries, "a significant percentage of brothel owners and agents are government employees, usually policemen, and the vast number of victimizations is dramatically disproportionate to prosecutions of traffickers and brothel owners."<sup>530</sup> Furthermore, there are countries categorized as Tier 2 in which the police are involved in buying and selling women as well as running brothels,<sup>531</sup> but the TIP Reports do not show this complicity. Instead, the reports issue a passing grade to some of the worst offending countries.<sup>532</sup> Thus, TIP reporting may do a disservice to the local people fighting against sex trafficking because no sanctions will be applied to Tier 2 countries.<sup>533</sup>

The TIP Reports also do not speak to the dangerous "cultural . . . nonchalant attitude"<sup>534</sup> towards trafficking that exists in certain Tier 2 countries. People in these countries consider trafficking a way of life, like bribery, graft, or female genital mutilation

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525. *Id.* at 17.

526. TVPA § 110(a) (authorizing the United States to withdraw non-humanitarian and non-trade related foreign assistance to countries that do not meet the minimum standards).

527. *Implementation Hearing*, *supra* note 53, at 58 (Statement of Gary Hangen).

528. *Id.*

529. *Implementation Hearing*, *supra* note 53, at 18. This is why the "Tier 2 Watchlist" countries were later added as a sub-category to Tier 2. *See supra* note 66.

530. *Implementation Hearing*, *supra* note 53 at 62-63.

531. *Id.* at 18.

532. *Id.* at 58, 60. The TIP Report is supposed to measure "significant efforts" made by Tier 2 countries by (A) the extent of victimization; (B) the extent of official complicity; and (C) whether reasonable steps are taken to eliminate the above, in accordance with TVPA sections 108 and 110. *Id.* at 59.

533. *Id.* at 18 and 58-59.

534. *Id.* at 21.

practiced in other countries.<sup>535</sup> Nevertheless, people in Russia, a country characterized by nonchalance toward trafficking, were shocked when they witnessed busloads of fifty or more trafficked orphan children being carted away to a life of sexual slavery for a handsome fee by the trafficker.<sup>536</sup> It is true that cultural attitudes vary, but cultural relativism cannot excuse criminal activity that rises to the level of the universal crime of slavery.

Despite criticism of the sluggishness with which the TVPA has been implemented and the shortcomings of the TIP Reports, the DoJ has made significant efforts at prosecution, outreach, coordination among agencies, protection, and assistance to victims of trafficking.<sup>537</sup> Attorney General Ashcroft announced in March 2001, and President Bush issued a Presidential Directive to the effect, that "combating trafficking in persons is . . . one of the highest priorities for the Department of Justice."<sup>538</sup> Attorney General John Ashcroft guaranteed that additional funds would be allocated in order to prosecute cases criminally, to do meaningful outreach targeting vulnerable victims of trafficking, and to coordinate between various government agencies in order to eradicate trafficking and ameliorate the suffering that it causes.<sup>539</sup> Ashcroft then issued guidance to all ninety-four United States Attorney's Offices to "improve our prosecution efforts in the Department of Justice."<sup>540</sup> This guidance increased the sentence for trafficking from the ten-year maximum imprisonment mandated by preexisting statutes to the current twenty-year sentence, and in some instances, life imprisonment.<sup>541</sup> The INS sent similar guidance to its district office.<sup>542</sup> The DoJ also created new attorney positions in the Civil Rights Division's Criminal

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535. *Id.*

536. *Id.*

537. *Id.* at 26.

538. *Id.*; see also *Trafficking in Persons National Security Presidential Directive* (2003), available at <http://www.state.gov/g/tip/rls/other/17966pf.htm> [hereinafter *Presidential Directive*]. President Bush signed this directive:

to advance the United States Government's fight against trafficking in persons, a modern day form of slavery. This policy directive follows from the President's actions taken on February 13, 2002, when he signed Executive Order 13257 to establish a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons.

*Id.*

539. *Implementation Hearing*, *supra* note 53, at 26.

540. *Id.*

541. *Id.* at 30.

542. *Id.* at 26.

Section, specializing in investigation and prosecution of human trafficking cases.<sup>543</sup>

In 2001, the DoJ prosecuted thirty-four defendants for trafficking under the criminal statutes created pursuant to the TVPA mandate, nineteen for sexual exploitation.<sup>544</sup> In October 2001, eighty-nine trafficking investigations were pending.<sup>545</sup> This represents a nineteen percent increase from the previous year, three times as many since February 2000 when the Trafficking in Persons and Worker Exploitation Task Force hotline was established by the DoJ.<sup>546</sup>

After the passage of the TVPA and from January 2000 to January 2003, the DoJ charged, convicted, or secured sentences against ninety-two traffickers in twenty-one cases, and sixty-five of those charged, sentenced, or convicted were for sex trafficking in fourteen separate cases.<sup>547</sup> In December 2002, the DoJ reported having 125 open trafficking investigations, twice the number of the previous year.<sup>548</sup> Thus, in the years 2001 and 2002, the DoJ more than doubled the number of its prosecutions for trafficking.<sup>549</sup>

Among the cases prosecuted in 2001 were *United States v. Kil Soo Lee*,<sup>550</sup> *United States v. Gasanova*,<sup>551</sup> *United States v. Virchenko*,<sup>552</sup> and *United States v. Reddy*.<sup>553</sup>

In compliance with the mandates of the TVPA, and in a multi-agency effort, the Office of Refugee Settlement and the HHS have worked diligently to provide benefits and services to victims of trafficking.<sup>554</sup> The HHS correctly emphasized the importance of

543. *Id.* at 26-27.

544. *Id.* at 27.

545. *Id.*

546. *Id.*

547. U.S. MISSION TO E.U., *supra* note 252.

548. DOJ, FACT SHEET, *supra* note 254.

549. *Id.*

550. Dobriansky Conference Remarks, *supra* note 192, at 30. Kil Soo Lee was charged with involuntary servitude for holding 250 Vietnamese and Chinese workers, most of whom were women, for two years in the United States Territory of American Samoa. *Id.*

551. 332 F.3d 297 (2003). Women from Uzbekistan were held in El Paso, Texas to work in strip clubs and bars in order to pay back a \$300,000 debt and smuggling fee. *Id.*

552. See Molly Brown, *Russian Escort Sentenced, Virchenko: Dance Tutor Gets 30 Months for Luring Young Dancers to Strip Club*, ANKORAGE DAILY NEWS, Aug. 29, 2001, at B1. Russian girls were trafficked to Anchorage, Alaska, to dance nude. *Id.*

553. See Matthew Yi, *Guilty Plea in Smuggling of Girls: Landlord Gets 5 Years in Prison*, S.F. CHRON., Mar. 8, 2001, at A21. A Berkeley, California multi-millionaire beat and held captive two girls from India, offering them a sham marriage as a lure. *Id.*

554. *Implementation Hearing*, *supra* note 53, at 37.

aiding victims of severe trafficking in such a manner as to promote their self-sufficiency rather than dependency.<sup>555</sup>

Since the passage of the TVPA, the HHS has developed policies and procedures for certifying individuals who are victims of severe trafficking. In coordination with the ORR, the HHS has worked to produce certification letters for victims. With the INS, the HHS has provided victims access to Employment Authorization Documents, allowing them to work legally in the United States and thereby move toward self-sufficiency.<sup>556</sup> By February 2003, the HHS had certified over 370 victims.<sup>557</sup> In 2001, victims applying for certification letters came from many different countries, and certification/eligibility letters were sent to benefit-issuing offices in nineteen states and the District of Columbia.<sup>558</sup> Many of these victims successfully participated in the Voluntary Agency Matching Grant Program, a refugee program that assists refugees and trafficking victims to attain self-sufficiency through employment, English language training, and cultural orientation.<sup>559</sup>

The TVPA provides victims of trafficking with benefits, and many victims have used these benefits effectively. In 2001, 34% of the trafficked victims applied for food stamps, 21% for Refugee Cash Assistance, and 35% for Refugee Medical Assistance.<sup>560</sup> "Less than 1% of victims applied for Temporary Assistance for Needy Families (TANF) and Supplementary Security Income (SSI)."<sup>561</sup>

Together with the ORR, the HHS has actively been carrying out outreach programs to increase public awareness about trafficking in persons.<sup>562</sup> In 2001, the ORR "reach[ed] out to more than 800 . . . people, [awarding] more than \$1.25 million in discretionary grant money to eight organizations throughout the United States . . . to assist certified and/or eligible victims of trafficking in order to enhance their transition from victimization to self-sufficiency."<sup>563</sup>

USAID has also worked diligently to incorporate the key elements of the TVPA into its overseas programs. After more than eighty overseas missions, USAID has assisted twenty-four

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555. *Id.*

556. *Id.*

557. Presidential Directive, *supra* note 538.

558. *Implementation Hearing, supra* note 53, at 38.

559. *Id.*

560. *Id.*

561. *Id.*

562. *Id.*

563. *Id.*

countries to put anti-trafficking activities in place.<sup>564</sup> USAID has spent \$6.2 million on direct anti-trafficking activities in many regions of the world<sup>565</sup> and is "committed to playing a critical role in the implementation of [the TVPA] in developing and transition[ing] countries,"<sup>566</sup> focusing its efforts on countries in Tiers 2 and 3 of the TIP Reports.<sup>567</sup>

There is no doubt that the TVPA in general and the TIP Reports in particular have yielded positive results among many foreign governments by providing them with financial support and advice to meet the minimum standards set forth in the TVPA.<sup>568</sup> Countries naturally seek to prevent their classification from falling to Tier 3 because the stigma of that classification and the sanctions imposed will directly impact their international trade, tourism industry, and receipt of international aid. However, many argue that more efforts must be made to shut down pimps, traffickers, and madams and to de-legitimize the commercial sex industry, which as a whole promotes trafficking.<sup>569</sup>

Many of the suggestions made in 2001 for further government initiatives to implement the TVPA were largely put into action in 2002 and 2003. For example, it was suggested that the United States train police in foreign countries on sex trafficking, forced prostitution, management methods, and practices in order to infiltrate the secrecy and deception of sex trafficking and to maintain the level of professionalism necessary to control and ultimately eradicate corruption by police and government officials.<sup>570</sup> United Nations peacekeepers have been accused of engaging in or fostering sex trafficking.<sup>571</sup> United States Attorneys and federal

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564. *Id.* at 39.

565. *Id.*

566. *Id.* at 41.

567. *Id.* at 42.

568. *Id.* at 54.

569. *Id.* at 55.

570. *Id.* at 70.

571. See Jennifer Murray, Note, *Who Will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina*, 34 COLUM. HUM. RTS. L. REV. 475 n.86 (2003).

See, e.g., *Child Sex Boom Blamed on U.N.*, GUARDIAN (London), Nov. 4, 1993, at 11 (reporting that the numbers of women and children engaged in prostitution in Phnom Penh during the U.N. deployment increased from 6,000 to 20,000); Barbara Crossette, *Survey Finds "Extensive" Abuses of Refugee Children in Africa*, N.Y. TIMES, Feb. 27, 2002, at A4 (citing a report by the United Nations High Commissioner for Refugees (UNHCR) and Save the Children U.K., which found that relief workers, including peacekeepers, in refugee camps in Guinea, Liberia, and Sierra Leone demanded sex from children in exchange for food and

law enforcement officials have also followed advice about obtaining intelligence from trafficking victims in the United States in order to interdict trafficking within the source countries.<sup>572</sup> Thus, when a victim in the United States identifies a perpetrator of human trafficking and assists in prosecution efforts, this trial can serve as a link in a global chain of international human rights violations.<sup>573</sup> In order to disrupt the profitable market in human cargo, United States intelligence must follow the chain from the dealer in the United States to his transitional transportation network and back to the overseas supplier and operators who are connected to international organized crime syndicates.<sup>574</sup>

In 2003, the United States government spent \$55 million on anti-trafficking programs in over fifty countries.<sup>575</sup> President Bush has since led efforts to eradicate trafficking in persons by issuing the first National Security Presidential Directive on Trafficking.<sup>576</sup> This directive states that the "fight against trafficking in persons is a high priority for [the United States] government, and acknowledges that there is political will at the highest levels to attack it."<sup>577</sup> The Directive calls for more countries to join the United States in the fight to eradicate trafficking.<sup>578</sup>

The United States has supported programs in foreign countries that have resulted in increased arrests and prosecutions overseas. For example, in Albania, the United States supported both Delta Force, an organized crime unit that arrested child traffickers and public officials, and the Office of Internal Control that arrested police officers for complicity in trafficking.<sup>579</sup> In Romania, the

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medicine); Peter Finn, *Sex Slavery Flourishes in Kosovo*, WASH. POST, Apr. 24, 2000, at A1 (stating that peacekeeping troops were among the clients of women sold into sexual slavery in Kosovo); *U.N. Probing Claims Italian Peacekeeper Abused Eritrean Girls*, AGENCE-FRANCE PRESSE, Aug. 25, 2001, available at LEXIS, International News Library, AFP File (referring to allegations that an Italian member of the U.N. mission in Ethiopia and Eritrea was involved in a child prostitution racket); *U.N. Sets Guidelines After Peacekeepers Accused of Inciting Prostitution*, AGENCE-FRANCE PRESSE, Dec. 10, 1996, available at LEXIS, International News Library, AFP File (citing report by a U.N. special representative finding that U.N. peacekeeping forces have contributed to an increase in child prostitution in Angola, Bosnia, Cambodia, Croatia, Mozambique, and Rwanda).

*Id.*

572. *Id.*

573. *Id.*

574. *Id.* at 70-71.

575. Dobriansky Conference Remarks, *supra* note 192, at 5.

576. See Presidential Directive, *supra* note 538.

577. Dobriansky Conference Remarks, *supra* note 193, at 6.

578. *Id.* at 7.

579. *Id.*

United States supported the establishment of the Southeast European Cooperative Initiative (SECI). SECI involves fourteen nations and resulted in four successful operations to arrest and convict traffickers and to provide safe return of hundreds of Romanian women and children to their homes.<sup>580</sup>

Pursuant to the mandates of the TVPA, the United States has also supported the establishment of "concurrent multilateral and in-country law enforcement operations to break up trafficking [crime] rings and [to] rescue victims."<sup>581</sup> These are some of the international efforts that have been made pursuant to the TVPA and have resulted in positive change both domestically and abroad to reduce trafficking and to deter the crime of sex slavery. The fight has just begun, and the United States is playing an important role to eradicate sex trafficking and slavery through legislative example, interagency cooperation, and multilateral efforts.

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580. *Id.*

581. *Id.*