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

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August 14, 2008

**Abstract.** In the 110th Congress, there are several bills with trafficking-related provisions. The Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110- 53) directs the Secretary of Homeland Security to provide specified funding and administrative support to strengthen the Human Smuggling and Trafficking Center. H.R. 3887 (Lantos) approved by the House on December 4, 2007 by a vote of 405-2, would, among other provisions, reauthorize anti-trafficking programs through FY2011, and amend the criminal code and immigration law related to trafficking. A Senate version of that reauthorization bill, S. 3061 (Biden/Brownback), was reported from the Judiciary Committee on July 31, 2008. Another bill, H.R. 2522 (Lewis), would establish a commission to evaluate the effectiveness of current U.S. anti-slavery efforts, including anti-TIP programs, and make recommendations. S. 1703 (Durbin), approved by the Senate Judiciary Committee on September 20, 2007, would create additional jurisdiction in U.S. courts for trafficking offenses occurring in other countries.

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

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## Summary

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

Since enactment of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), the Administration and Congress have aimed to address the human trafficking problem. The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA), which President Bush signed into law on January 10, 2006 (P.L. 109-164), authorized appropriations for FY2006 and FY2007.

The State Department issued its eighth congressionally mandated Trafficking in Persons (TIP) Report on June 4, 2008. Each report categorizes countries into four tiers according to the government's efforts to combat trafficking. Those countries that do not cooperate in the fight against trafficking (Tier 3) have been made subject to U.S. sanctions since 2003. The group named in 2008 includes a total of 14 countries: Algeria, Burma, Cuba, Fiji, Iran, Kuwait, Moldova, North Korea, Oman, Papua New Guinea, Qatar, Saudi Arabia, Sudan, and Syria.

In the 110<sup>th</sup> Congress, there are several bills with trafficking-related provisions. The Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53) directs the Secretary of Homeland Security to provide specified funding and administrative support to strengthen the Human Smuggling and Trafficking Center. H.R. 3887 (Lantos) approved by the House on December 4, 2007 by a vote of 405-2, would, among other provisions, reauthorize anti-trafficking programs through FY2011, and amend the criminal code and immigration law related to trafficking. A Senate version of that reauthorization bill, S. 3061 (Biden/Brownback), was reported from the Judiciary Committee on July 31, 2008. Another bill, H.R. 2522 (Lewis), would establish a commission to evaluate the effectiveness of current U.S. anti-slavery efforts, including anti-TIP programs, and make recommendations. S. 1703 (Durbin), approved by the Senate Judiciary Committee on September 20, 2007, would create additional jurisdiction in U.S. courts for trafficking offenses occurring in other countries. This report will be updated periodically to reflect major developments.

## Contents

Background .....	1
Definitions.....	1
Trafficking and Alien Smuggling.....	2
Scope of the Problem .....	2
Causes of Rise in Trafficking .....	3
Traffickers and Their Victims.....	4
U.S. Funding for Global Anti-Trafficking Programs.....	6
The Trafficking in Persons Report, 2008 .....	9
Report Highlights .....	9
2008 Country Rankings.....	10
Results from the 2007 TIP Ranking and Sanctions Process.....	11
The International Response .....	11
U.N. Protocol to Prevent, Suppress, and Punish TIP .....	11
Other Relevant International Agreements .....	12
U.N. and Related Agencies' Anti-Trafficking Programs .....	12
Other Regional Organizations and International Forums.....	13
European Union .....	13
Organization for Security and Cooperation in Europe (OSCE).....	14
Trafficking into the United States.....	14
Official Estimates of Human Trafficking into the United States.....	15
Response to Trafficking within the United States .....	16
Immigration Relief for Trafficking Victims .....	16
T Nonimmigrant Status.....	16
Continued Presence.....	20
U Nonimmigrant Status .....	20
Aid Available to Victims of Trafficking in the United States.....	21
Health and Human Services Grants .....	21
Department of Justice, Office for Victims of Crime .....	23
Department of Labor.....	23
Domestic Investigations of Trafficking Offenses.....	23
Human Smuggling and Trafficking Center .....	24
Legislation in the 110 <sup>th</sup> Congress .....	25
The William Wilberforce Trafficking Victims Protection Reauthorization Act; H.R. 3887 (Lantos) and S. 3061 (Biden/Brownback) .....	26
Measures to Address Human Trafficking in Foreign Countries.....	26
Preventing Trafficking to the United States .....	27
Measures to Address Trafficking in the United States .....	27
Select Other Legislation in the 110 <sup>th</sup> Congress .....	28
Policy Issues .....	29
How to Collect Data and Measure Success.....	29
Credibility of TIP Rankings .....	29
Sanctions: A Useful Tool?.....	30
Equal Focus on all Types of Trafficking?.....	30
Debates Regarding Prostitution and Trafficking.....	30
Issues Concerning Immigration Relief for Trafficking Victims.....	31

Stringency of T Determination..... 31  
Tool of Law Enforcement or Aid to Victims..... 32  
Victims’ Safety..... 32

## Figures

Figure 1. Global Anti-TIP Obligations by Agency: FY2005-FY2007 ..... 7  
Figure 2. FY2007 Global Anti-TIP Obligations by Region ..... 8

## Tables

Table 1. T-visas Issued: FY2002 through FY2007 ..... 19  
Table B-1. Current Authorizations to Implement Victims of Trafficking Act ..... 40  
Table B-2. Trafficking Victims Protection Act (TVPA) of 2000, as Amended  
Authorizations and Appropriations, FY2001-2007 ..... 42  
Table C-1. Authorizations and Appropriations for Grant Programs to Assist Victims of  
Trafficking in the United States: FY2001-FY2008 ..... 43

## Appendixes

Appendix A. Anti-Trafficking Administrative Directive and Legislation ..... 33  
Appendix B. Trafficking Funding Issues..... 38  
Appendix C. Information on Domestic Grant Programs for TIP Victims ..... 43

## Contacts

Author Contact Information ..... 43

<http://wikileaks.org/wiki/CRS-RL34317>

## Background

Trafficking in persons for forced labor or sexual exploitation is both an international and domestic crime and a major human rights violation. In 2006, the Federal Bureau of Investigations (FBI) estimated that human trafficking generates approximately \$9.5 billion annually for organized crime.<sup>1</sup> Human trafficking is of great concern to the United States and the international community. Anti-trafficking in persons (anti-TIP) efforts have accelerated in the United States since the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) and internationally since the passage of the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, adopted in 2000. Congress is continuously re-evaluating the efficacy of U.S. anti-trafficking laws and programs, and since 2000 has passed several anti-trafficking statutes. (For a discussion of these statutes, see **Appendix A**.)

This report focuses on human trafficking both internationally and within the United States. The report begins with an overview of human trafficking including a discussion of the definition of human trafficking, the scope of the problem globally, and an examination of the victims. It follows with an analysis of global anti-trafficking efforts by the United States and the international community. The report then focuses on trafficking into and within the United States, examining relief for trafficking victims in the United States and discussing U.S. law enforcement efforts to combat domestic trafficking. The report concludes with an overview of anti-trafficking legislation in the 110<sup>th</sup> Congress, and an analysis of policy issues related to human trafficking.

## Definitions

Severe forms of trafficking in persons have been defined in U.S. law as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or ... the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>2</sup> The United Nations defines human trafficking as the “recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal of organs.”<sup>3</sup> Others have put forward slightly different definitions.<sup>4</sup> In the case of minors, there is general agreement in the United

<sup>1</sup> This figure was cited in the U.S. Department of State, *Trafficking in Persons Report, 2006*, June 5, 2006. <http://www.state.gov/g/tip/rls/tiprpt/2006>.

<sup>2</sup> *Victims of Trafficking and Violence Protection Act of 2000* (P.L. 106-386).

<sup>3</sup> United Nations. Office on Drugs and Crime (UNODC), *Trafficking in Persons: Global Patterns*. April 2006, p. 50.

<sup>4</sup> Some U.S. officials, politicians, religious groups, and non-governmental organizations have campaigned to broaden the definition of trafficking to include all forms of prostitution, whether forced or voluntary, on grounds that prostitution is never truly voluntary and that traffickers will simply force their victims to claim to be acting voluntarily. However, others have rejected this broadened definition, arguing that it would impede the capacity of the international community to achieve consensus and act decisively against major traffickers.

States and much of the international community that the trafficking term applies whether a child was taken forcibly or voluntarily.

## Trafficking and Alien Smuggling

In 2000, the United Nations drafted two protocols, known as the Palermo Protocols, to address trafficking in persons and human smuggling.<sup>5</sup> Trafficking in persons is often confused with alien or human smuggling. Alien smuggling involves the provision of a service, generally procurement or transport, to people who knowingly consent to that service in order to gain illegal entry into a foreign country. It ends with the arrival of the migrant at their destination. The Trafficking Protocol considers people who have been trafficked, who are assumed to be primarily women and children, as “victims” who are entitled to protection and a broad range of social services from governments. In contrast, the Smuggling Protocol considers people who have been smuggled as willing participants in a criminal activity who should be given “humane treatment and full protection of their rights” while being returned to their country of origin.<sup>6</sup>

Some observers contend that smuggling is a “crime against the state” and that smuggled migrants should be immediately deported, while trafficking is a “crime against a person” whose victims deserve to be given government assistance and protection.<sup>7</sup> The Department of Justice asserts that the existence of “force, fraud, or coercion” is what distinguishes trafficking from human smuggling.<sup>8</sup> Under U.S. immigration law, a trafficked alien is a victim, while an alien who consents to be smuggled may be subject to criminal prosecution and deportation. Others maintain that there are few clear-cut distinctions between trafficking and smuggling cases and that many people who are considered “smuggled” should actually be viewed as trafficking victims. Some argue that as immigration and border restrictions have tightened, smuggling costs have increased and migration routes have become more dangerous, putting migrants at a high risk of trafficking. In some cases, smugglers have sold undocumented migrants into situations of forced labor or prostitution in order to recover their costs.<sup>9</sup>

## Scope of the Problem

Trafficking in persons is considered to be one of the leading criminal enterprises of the early 21<sup>st</sup> Century, affecting every country around the globe, according to the United Nations Office of Drugs and Crime (UNODC).<sup>10</sup> It is estimated that between 600,000 and 800,000 people are trafficked across borders each year. If trafficking within countries is included in the total world

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<sup>5</sup> The United Nations Convention Against Organized Crime and Its Protocols, available at [http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_convention.html).

<sup>6</sup> Ibid.

<sup>7</sup> Statement by Claire Antonelli of Global Rights, Center for Strategic and International Studies Event on Human Trafficking in Latin America, July 9, 2004.

<sup>8</sup> U.S. Department of Justice, Human Smuggling and Trafficking Center, “Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking,” January 2005.

<sup>9</sup> Kinsey Aldan Dinan, “Globalization and National Sovereignty: From Migration to Trafficking,” In *Trafficking in Humans: Social, Cultural, and Political Dimensions*, Sally Cameron and Edward Newman, eds. New York: U.N. University Press, 2008. “Mexico-U.S.-Caribbean: Tighter Borders Spur People Traffickers,” *Latin America Weekly Report*, April 11, 2006.

<sup>10</sup> UNODC, *Trafficking in Persons: Global Patterns*, April 2006.

figures, official U.S. estimates are that 2 to 4 million people are trafficked annually. The overwhelming majority of those trafficked are women and children. The International Labor Organization (ILO) estimates that there are some 12.3 million victims of forced labor at any given time. Of those, some 2.4 million people have been trafficked.<sup>11</sup> It should be noted that the accuracy of these and other estimates have been questioned. The U.S. Government Accountability Office (GAO) released a report in 2006 casting doubt on the methodology and reliability of official U.S. government figures. It concluded that the “U.S. government has not yet established an effective mechanism for estimating the number of victims or for conducting ongoing analysis of trafficking related data that resides within various government agencies.”<sup>12</sup> Figures provided by other international organizations are unlikely to be any more accurate.

Generally, the trafficking flows from less developed countries to industrialized nations, including the United States, or toward neighboring countries with marginally higher standards of living. For example, South Africa is a major destination country for men, women, and children trafficked from neighboring African countries. The largest number of victims trafficked internationally are believed to come from Asia. Many women and children trafficked to work in the commercial sex industry (i.e., prostitution) also originate from the former Soviet Union and southeastern Europe. In recent years, Latin America and the Caribbean and Africa have also become major source regions. Most victims are sent to Asia, the Middle East (particularly the oil-rich Gulf states), Western Europe, and North America. These global trends are constantly changing, however. For example, recent press reports indicate that a combination of newfound energy wealth and lax anti-TIP law enforcement efforts has transformed Russia, Azerbaijan, and Kazakhstan into major trafficking destinations.<sup>13</sup> Throughout the world, sex trafficking victims have traditionally ended up in large cities, vacation and tourist areas, or near military bases, where the demand for sex workers is highest, but, more recently, are also ending up in smaller cities and even rural areas. In addition to the sex industry, victims are trafficked to work in seasonal agriculture, manufacturing (particularly the garment industry), construction, and domestic service.

## Causes of Rise in Trafficking

The reasons for the increase in trafficking in the last decade or so are believed to be many. In general, the criminal business feeds on poverty, despair, war, crisis, and ignorance. The globalization of the world economy has increased the movement of people across borders, legally and illegally, especially from poorer to wealthier countries. International organized crime has taken advantage of the freer flow of people, money, goods and services to extend its own international reach. Other contributing factors include the following:

- The continuing subordination of women in many societies, as reflected in economic, educational, and work opportunity disparities between men and women.<sup>14</sup>

<sup>11</sup> International Labor Organization (ILO), “A Global Alliance Against Forced Labor,” 2005.

<sup>12</sup> U.S. Government Accountability Office, “Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad,” July 2006, p. 3. (GAO-06-825).

<sup>13</sup> Radu Busneag and Khadija Ismaylova, “Weak Laws, Energy Wealth Contribute to Rise in Sex Trade,” *Radio Free Europe/Radio Liberty*, July 7, 2008.

<sup>14</sup> United Nations Development Fund for Women (UNIFEM), “Trafficking in Persons, A Gender & Rights Perspective Briefing Kit,” 2002.



- The hardship and economic dislocations caused by the transition following the collapse of Communism in the former Soviet Union and Eastern Europe, as well as the wars in the former Yugoslavia. The lack of opportunity and the eagerness for a better life abroad have made many women and girls especially vulnerable to entrapment by traffickers. With the weakening of law enforcement in post-Communist societies, criminal organizations have grown and established themselves in the lucrative business of trafficking.
- The high demand, worldwide, for women and children to work as sex workers, sweatshop labor, and domestic servants.<sup>15</sup>
- The increasing restrictions on legal immigration to many destination countries—including the United States and Western Europe—has caused many migrants to turn to alien smugglers and even human traffickers, despite the associated risks involved.<sup>16</sup>
- The tendency to treat trafficking victims as criminals has made many victims reluctant to cooperate with law enforcement. When police raid brothels, women are sometimes detained and punished. In some countries, they are swiftly deported. Few steps have been taken to provide TIP victims with support, healthcare, and access to justice. Many TIP victims are reluctant to testify against the traffickers or those who hold them, fearing retribution since most governments do not offer adequate protection for witnesses.<sup>17</sup>
- The inadequacy of laws and law enforcement in some origin, transit, and destination countries hampers efforts to fight trafficking. Penalties for trafficking humans for sexual exploitation are often relatively minor compared with those for other criminal activities like drug and gun trafficking.
- The disinterest and in some cases even complicity of governments is another major problem, according to State Department officials.<sup>18</sup> Some law-enforcement agencies and governments ignore the plight of trafficking victims and downplay the scope of the trafficking problem. In some cases, police and other governmental authorities accept bribes and collude with traffickers by selling fake documentation, etc. Many countries still have no specific laws aimed at trafficking in persons.

## Traffickers and Their Victims

Actors engaged in human trafficking range from amateur family-run organizations to sophisticated transnational criminal organizations. Trafficking in Europe is largely carried out by Russian and Albanian gangs and by the Italian mafia, whereas trafficking in Asia is largely

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<sup>15</sup> UNODC, April 2006, p. 38.

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

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

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

controlled by Chinese criminal groups and the Japanese Yakuza.<sup>19</sup> These international groups increasingly interact with local networks to provide transportation, safe houses, local contacts, and documentation. They are often aided by corrupt police and migration officials.

Traffickers acquire their victims in a number of ways.<sup>20</sup> Sometimes women are kidnaped outright in one country and taken forcibly to another. In other cases, victims are lured with phony job offers. Traffickers entice victims to migrate voluntarily with false promises of well-paying jobs in foreign countries as au pairs, models, dancers, domestic workers, etc. Traffickers advertise these “jobs” as well as marriage opportunities abroad in local newspapers and on the internet. Russian crime gangs reportedly use marriage agency databases and match-making parties to find victims. In some cases, traffickers approach women or their families directly with offers of lucrative jobs elsewhere. After providing transportation and false documents to get victims to their destination, they subsequently charge exorbitant fees for those services, often creating life-time debt bondage.

Traffickers have increasingly begun to rely on a recruitment technique known as “happy trafficking.” Victims who have worked off their debts are released on the condition that they send someone back to replace them. This technique enables traffickers to avoid detection by using former victims to do their bidding.<sup>21</sup>

While there is no single victim stereotype, a majority of trafficked women are under the age of 25, with many in their mid- to late teens. In Latin America, for example, research indicates that children tend to be trafficked within their own countries, while women between the ages of 18 and 30 are often trafficked internationally, sometimes with the consent of their husbands or other family members.<sup>22</sup> The fear of infection with HIV and AIDS among customers has driven traffickers to recruit younger women and girls, erroneously perceived by customers to be too young to have been infected.

Studies from around the world have suggested a number of factors that, in addition to gender, may make certain individuals more vulnerable to trafficking than others. Poverty and a lack of educational and job opportunities in many countries may put children, especially girls, from families with multiple children at risk. Race, ethnicity, and being of a low social caste may also increase an individual’s vulnerability. Refugees, internally displaced persons, and those who are stateless (i.e., lacking identity documents) may also be particularly vulnerable to trafficking.<sup>23</sup>

Trafficking victims are often subjected to cruel mental and physical abuse in order to keep them in servitude, including beating, rape, starvation, forced drug use, confinement, and seclusion. Once victims are brought into destination countries, their passports are often confiscated. Victims are forced to have sex, often unprotected, with large numbers of partners, and to work unsustainably long hours. Many victims suffer mental break-downs and are exposed to sexually transmitted diseases, including HIV/AIDS. A recent study conducted in six countries in South

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<sup>19</sup> Phil Williams, “Trafficking in Women: the Role of Transnational Organized Crime,” in *Trafficking in Humans*, Cameron and Newman, eds. New York: U.N. University Press, 2008.

<sup>20</sup> See UNODC, April 2006, pp. 57-80.

<sup>21</sup> William Finnegan, “The Countertraffickers,” *New Yorker*, May 5, 2008.

<sup>22</sup> Laura Langberg, “A Review of Recent OAS Research on Human Trafficking in the Latin American and Caribbean Region,” in *Data and Research on Human Trafficking: A Global Survey*, International Organization for Migration (IOM), 2005.

<sup>23</sup> A variety of studies are discussed in: Sally Cameron and Edward Newman, “Trafficking in Humans: Structural Factors,” in *Trafficking in Humans: Social Cultural and Political Dimensions*, New York: U.N. University Press, 2008.

Asia by the U.N. Development Program (UNDP) found that trafficking victims are particularly vulnerable to HIV/AIDS infection. This vulnerability is exacerbated by the fact that TIP victims are often denied medical care by their traffickers. Those who become ill are sometimes even killed.<sup>24</sup>

## U.S. Funding for Global Anti-Trafficking Programs

The U.S. government supports many types of anti-trafficking (anti-TIP) initiatives overseas and domestically. U.S. anti-trafficking activities are authorized by the Trafficking Victims Protection Act (TVPA) of 2000 (P.L. 106-386), as amended. For a list of authorizations for all overseas and domestic anti-trafficking activities, see **Table B-1** in **Appendix B**. Since many U.S. government agencies do not have a line item in their budget requests for trafficking programs and/or TIP-related operations, it is often difficult to calculate exact levels of funding that have been appropriated by Congress to each agency for trafficking activities (programs and operations/law enforcement activities). See **Appendix B** for a more detailed discussion of TIP funding issues. Due to the methodological difficulties involved in calculating TIP appropriations and the fact that a large portion of TIP programs are supported by Economic Support Funds, which are appropriated to remain available for two years, the State Department calculates TIP program obligations by agency per fiscal year. According to G-TIP, this generates the best estimate of the amount of funding spent on TIP programs by agency for each fiscal year.

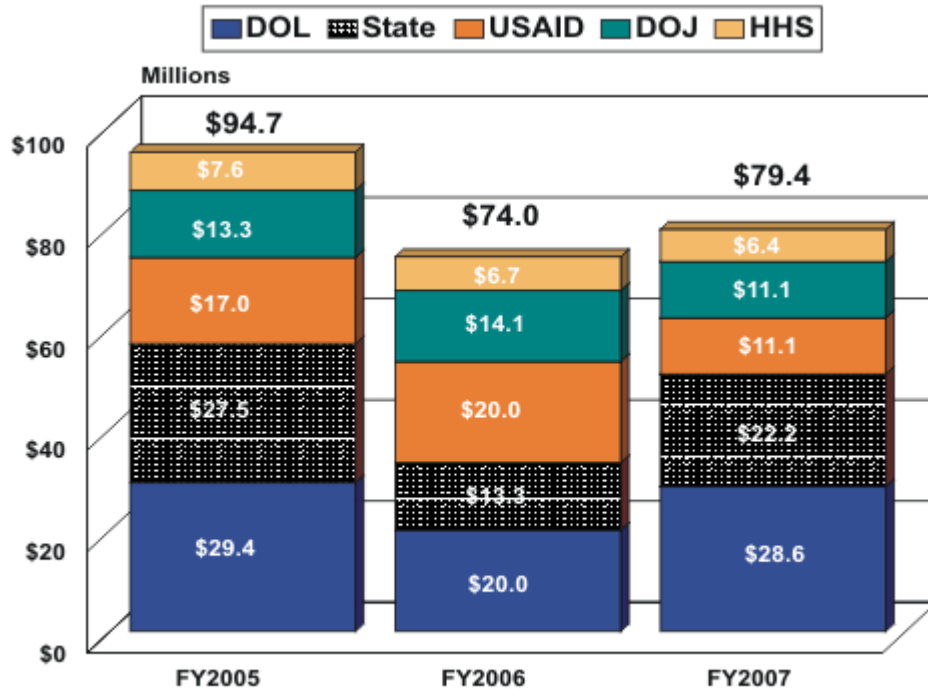
**Figure 1** depicts global anti-TIP obligations by agency for FY2005 through FY2007. FY2008 obligations and the FY2009 request by agency are not yet available. In FY2007, the U.S. government obligated an estimated \$79.4 million in anti-trafficking assistance to foreign governments, up slightly from the \$74 million obligated in FY2006, but down from the \$94.7 million obligated in FY2005. In FY2007, the U.S. government obligated roughly \$28.6 million for domestic anti-TIP programs. The total for domestic obligations does not include the costs of administering TIP operations or law enforcement investigations.

In FY2007, U.S. funding for global anti-TIP activities supported roughly 180 global and regional anti-trafficking programs in some 90 countries.<sup>25</sup> The majority of U.S. anti-TIP programs are either regional, or aimed at helping countries resolve specific challenges they have had in addressing human trafficking. As authorized by TVPA, U.S. anti-TIP programs are coordinated at the cabinet-level by the President's Interagency Task Force (PITF), which is chaired by the Secretary of State. The PITF meets annually to coordinate broad U.S. anti-TIP policy. There is also an inter-agency Senior Policy Operating Group (SPOG) that meets quarterly to carry out PITF initiatives and to discuss TIP policy issues.

<sup>24</sup> U.N. Development Program (UNDP), "Human Trafficking and HIV," August 2, 2007. For resources on trafficking and health, see U.S. Department of State, Bureau of Public Affairs, "Fact Sheet: Health Consequences of Trafficking in Persons," August 8, 2007.

<sup>25</sup> For a comprehensive list of all projects funded in FY2007, see <http://www.state.gov/g/tip/rls/rpt/101295.htm>.

**Figure I. Global Anti-TIP Obligations by Agency: FY2005-FY2007**  
(in millions)



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

**Note:** Numbers may not total due to rounding.

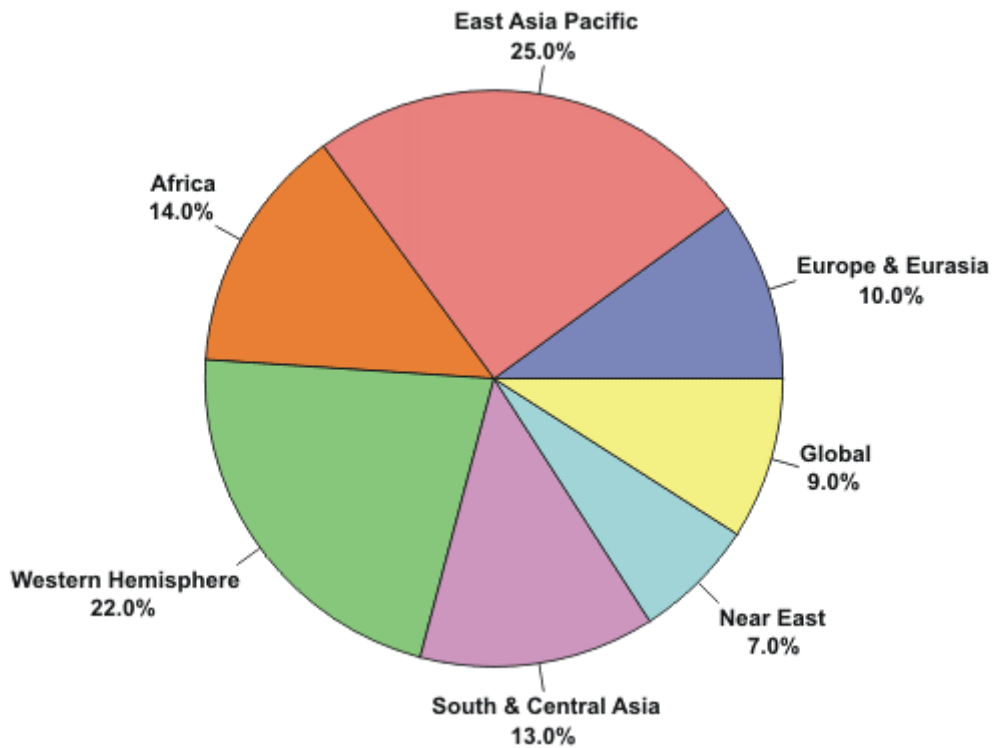
While some U.S. funding supports the anti-TIP efforts of the UN and other international organizations, the bulk of U.S. anti-trafficking programs abroad is administered by the State Department, the U.S. Agency for International Development (USAID), and the Department of Labor (DOL). Within the State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

U.S. anti-trafficking policy has long emphasized prevention, protection, and prosecution (“the 3 Ps”). Prevention programs have combined public awareness and education campaigns with education and employment opportunities for those at-risk of trafficking, particularly women and

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girls. Protection programs have involved direct support for shelters, as well as training of local service providers, public officials, and religious groups. Programs to improve the prosecution rates of traffickers have helped countries draft or amend existing anti-TIP laws, as well as provided training for law enforcement and judiciaries to enforce those laws. U.S. policy has recently placed a new, more “victim-centered” focus on rescue, rehabilitation, and reintegration (what it calls the “3 Rs”). It has also emphasized the importance of combating forced labor among foreign migrant workers in destination countries, as well as addressing the public health consequences of human trafficking.

**Figure 2. FY2007 Global Anti-TIP Obligations by Region**



**Source:** U.S. Department of State, Global Office on Trafficking in Persons.

**Figure 2** provides a regional breakdown of U.S. international anti-TIP obligations for FY2007. The countries with the largest numbers of programs obligated in recent years include several of the countries selected in 2004 by President George W. Bush as eligible to receive a combined total of \$50 million in strategic anti-trafficking in persons assistance.<sup>26</sup> The President chose countries based on the severity of their trafficking programs, as well as their willingness to cooperate with U.S. agencies to combat the problem. They include Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania. As a result of this initiative, U.S. anti-

<sup>26</sup> The \$50 million consists of projects, the bulk of which were obligated in FY2004 and FY2005, that were approved by an inter-agency Senior Policy Operating Group (SPOG) on human trafficking and the Deputy Secretary of State for each region. Funding for the President’s initiative came from channeling funds from existing aid programs to the countries identified to participate in the initiative. The funds came from roughly \$25 million in FY2003 Child Survival and Health monies, \$12.5 million in FY2004 Economic Support Funds, and \$12.5 million in FY2005 Economic Support Funds.

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TIP assistance to foreign governments spiked in FY2004 and FY2005, but is now on a downward trajectory.

## The Trafficking in Persons Report, 2008

On June 4, 2008, the State Department issued its seventh annual report on human trafficking, *Trafficking in Persons Report (TIP), June 2008*, as mandated by P.L. 106-386 and P.L. 108-193.<sup>27</sup> The 2008 TIP report is more comprehensive than prior reports, including several new features and ranking 153 countries as compared with 151 countries in the 2007 report.<sup>28</sup> In addition to the 153 countries that are ranked, the report discusses trafficking in 17 “special case” countries where sufficient information was not available to provide a ranking.<sup>29</sup>

The 2008 report highlights how the U.S. and international campaign against human trafficking has begun to show results. What had been perceived by many as a largely invisible problem, characterized by disinterest and even complicity of governments, is now being confronted by governments around the world. Many countries have enacted new anti-trafficking laws or amended existing laws to better address human trafficking, including 28 in the 2007 reporting period. Some 3,427 traffickers were convicted worldwide in 2007, up from 3,160 in 2006.

## Report Highlights

The 2008 report contains several new features as compared with previous reports, and is the first TIP report to include statistics on forced labor trafficking prosecutions and convictions. Of the 3,427 traffickers convicted in 2007, just 326 were convicted of forced labor trafficking. The report also includes a list of industries suspected of using forced labor during the 2007 reporting period. Those industries include, but are not limited to, cocoa from Ghana and Cote d’Ivoire, shrimp processed in Thailand and Bangladesh, sugarcane harvested for ethanol production in Brazil, and bricks made in India, China, and Pakistan.

The 2008 TIP report also highlights several vulnerable groups of individuals that have been particularly vulnerable to trafficking. Among them are North Koreans in China, Burmese in Thailand, migrant workers, stateless people, and foreign domestic servants. It suggests ways in which both sending and receiving countries might work together to combat trafficking of migrant workers. While sending countries need to protect migrant workers from unscrupulous labor recruiters, destination countries should devise ways for migrant workers to report and escape from situations of forced labor.

Some countries made significant progress during the 2007 reporting period, but others lagged behind. By adopting a TIP law, cracking down on child sex tourism, and stepping up its law enforcement efforts, Madagascar became the only African country to earn a Tier 1 ranking. Mexico, a country that spent four years on the Tier 2 Watch List, earned a Tier 2 ranking by

<sup>27</sup> U.S. Department of State, *Trafficking in Persons Report, 2007*, June 12, 2007, <http://www.state.gov/g/tip/rls/tiprpt/2007/index.htm>.

<sup>28</sup> Countries not included in the report either do not appear to have a trafficking problem (at least 100 cases per year) or there is insufficient data to ascertain whether or not they have a trafficking problem.

<sup>29</sup> Special case countries include Bahamas, Barbados, Brunei, Haiti, Iraq, Kiribati, Kosovo, Lesotho, Namibia, Palau, Solomon Islands, Somalia, Swaziland, Tonga, Tunisia, and Turkmenistan.

enacting a comprehensive anti-TIP law, constructing shelters for TIP victims, and sponsoring public awareness campaigns on human trafficking. Although the United Arab Emirates and Bahrain improved their ranks in this year's report, several other Persian Gulf states remained on Tier 3, including Saudi Arabia, Kuwait, and Oman. Additionally, China and India both remained on the Tier 2 Watch List in this year's report for taking uneven measures against human trafficking. While India made progress in addressing child labor and rescuing victims of sex trafficking, it did not address the problem of bonded labor or adequately prosecute traffickers. Similarly, China released a national anti-TIP action plan and continued prosecuting some traffickers, but failed to adequately protect Chinese and foreign victims of trafficking.

## 2008 Country Rankings

In the 2008 TIP report, as in previous years, countries are ranked in four groups:

**Tier 1** is made up of countries deemed by the State Department to have a serious trafficking problem but fully complying with the statute's minimum standards for eliminating trafficking. Twenty-nine countries are included. Three countries were moved up from Tier 2 to Tier 1, including Croatia, Macedonia, and Madagascar. Malawi and Morocco were moved down to Tier 2 from Tier 1.<sup>30</sup>

**Tier 2**, as in past years, includes the largest number of countries, 70 in 2008, (down from 75 in 2007), whose governments the State Department views as not fully complying with those standards but which are seen as making "significant efforts to bring themselves into compliance." Of these, two moved down from Tier 1, one was previously a Special Case, 11 moved up to Tier 2, 16 fell from the Tier 2 list, and the rest remained the same as last year.<sup>31</sup>

**Tier 2 Watch List** was first added as a category in the 2004 report. In 2007, it is made up of 40 countries that are on the border between Tier 2 and Tier 3 (up from 32 in 2006). P.L. 108-193 requires that the Department of State issue an interim report on how these countries are performing by February 2009 in advance of the 2007 TIP report.<sup>32</sup>

In **Tier 3** are those countries whose governments the State Department deems as not fully complying with those standards and not making significant efforts to do so. This group includes a total of 14 countries (down from 16 in 2007). Countries new to Tier 3 in 2008 include Fiji,

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<sup>30</sup> Tier 1 includes Australia, Austria, Belgium, Canada, Colombia, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Hong Kong, Hungary, Italy, Lithuania, Luxembourg, Macedonia, Madagascar, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, South Korea, Sweden, Switzerland, and the United Kingdom.

<sup>31</sup> Tier 2 includes Afghanistan, Angola, Bangladesh, Belarus, Belize, Benin, Bolivia, Bosnia-Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Chile, Djibouti, East Timor, Ecuador, El Salvador, Estonia, Ethiopia, Ghana, Greece, Honduras, Indonesia, Ireland, Israel, Jamaica, Japan, Kazakhstan, Kenya, Kyrgyz Republic, Laos, Latvia, Lebanon, Liberia, Macau, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, Philippines, Portugal, Romania, Rwanda, Senegal, Serbia, Sierra Leone, Singapore, Slovak Republic, Suriname, Taiwan, Tanzania, Thailand, Togo, Turkey, Uganda, Ukraine, United Arab Emirates, Uruguay, Vietnam, and Yemen.

<sup>32</sup> The Tier 2 Watch List of countries include Argentina, Armenia, Azerbaijan, Albania, Bahrain, Burundi, Cameroon, Congo (DRC), Congo, Rep., Central African Republic, Chad, China (PRC), Costa Rica, Cyprus, Cote D'Ivoire, Dominican Republic, Egypt, Gabon, Gambia, Guatemala, Guinea, Guinea-Bissau, Guyana, India, Jordan, Libya, Malaysia, Montenegro, Mozambique, Niger, Panama, Russia, South Africa, Sri Lanka, Tajikistan, Uzbekistan, Venezuela, Zambia, and Zimbabwe.

Moldova, Papua New Guinea, and Qatar.<sup>33</sup> On a positive note, Bahrain, Equatorial Guinea, Malaysia, Uzbekistan, and Venezuela were able to move off Tier 3 in 2008. P.L. 106-386 subjects to sanctions those countries listed in Tier 3, including termination of non-humanitarian, non-trade-related assistance and loss of U.S. support for loans from international financial institutions. Sanctions are to be imposed if such countries have not improved their performance within 90 days from the release of the report.

**Special Cases.** Some countries were not ranked due to limited information on their trafficking problems, either as a result of internal upheaval or for other reasons. Nevertheless, available information was included on these 13 countries.<sup>34</sup>

## Results from the 2007 TIP Ranking and Sanctions Process

On October 18, 2007, President Bush issued his determination on sanctions for TIP Report Tier 3 countries.<sup>35</sup> He decided to impose sanctions on Burma, Cuba, Iran, North Korea, Syria, and Venezuela, however, consistent with his waiver authority, the President determined that provision of certain assistance would promote the purposes of P.L. 106-386 or is otherwise in the U.S. national interest. He waived all trafficking-related sanctions with regard to Algeria, Bahrain, Malaysia, Oman, Qatar, Saudi Arabia, Sudan, and Uzbekistan on national interest grounds. He indicated that Equatorial Guinea and Kuwait would not be made subject to sanctions because of positive actions taken by their governments since release of the 2006 TIP Report.

## The International Response

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

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

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

<sup>33</sup> Tier 3 countries include Algeria, Burma, Cuba, Fiji, Iran, Kuwait, Moldova, North Korea, Oman, Qatar, Saudi Arabia, Sudan, and Syria.

<sup>34</sup> Special case countries include Bahamas, Barbados, Brunei, Haiti, Iraq, Ireland, Kiribati, Lesotho, Solomon Islands, Somalia, Swaziland, Tunisia, and Turkmenistan.

<sup>35</sup> For a detailed description of sanctions and waivers by country, see Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons, October 18, 2007. <http://www.state.gov/g/tip/rls/prsr/07/93704.htm>.

<sup>36</sup> United Nations General Assembly, "In-Depth Study on All Forms of Violence Against Women," July 6, 2006.



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

## **Other Relevant International Agreements**

The United States is party to two other international agreements that have been adopted to address aspects of trafficking in children. The International Labor Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor was ratified by the United States in December 1999. As of July 2008, 168 countries have ratified ILO Convention 182. ILO Convention 105 concerning the Abolition of Forced Labor was ratified by the United States in 1991. Some 169 countries have ratified ILO Convention 105. The Protocol to the U.N. Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography was signed by the United States July 2000 and ratified in December 2002. As of July 2008, 127 countries are party to the Protocol.

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

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

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

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

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

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

## Other Regional Organizations and International Forums

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

### European Union

The United States and the European Union agreed to launch their first joint initiative to combat trafficking in November 1997. U.S. and EU officials met in Luxembourg to launch a jointly funded initiative against trafficking in women from Russia and Eastern Europe. It was primarily

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

an information campaign, warning potential victims and an education program for law enforcement, customs and consular officials to heighten their awareness.

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

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

### **Organization for Security and Cooperation in Europe (OSCE)**

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

## **Trafficking into the United States**

The United States is primarily a destination country for trafficking victims. As many as 17,500 people are trafficked to the United States each year, according to State Department estimates.<sup>38</sup> Most are believed to come from Southeast Asia, the former Soviet Union, and, more recently, Latin America. About half of those are forced into sweatshop labor and domestic servitude. The rest are forced into prostitution and the sex industry, or in the case of young children, kidnaped and sold for adoption. While many victims come willingly, they are not aware of the terms and

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<sup>38</sup> The 2007 TIP report does not contain figures on people trafficked to the United States. This estimate is taken from the U.S. Department of State, *Trafficking in Persons Report, 2006*, June 5, 2006.

conditions they will face. Women trafficked to the United States most often wind up in the larger cities in New York, Florida, North Carolina, California, and Hawaii. But the problem is also migrating to smaller cities and suburbs.

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

## Official Estimates of Human Trafficking into the United States

For FY2005, the Department of Justice (DOJ) estimated that there were between 14,500 and 17,500 victims trafficked into the United States each year.<sup>39</sup> As of August 2008, this remains the most recent U.S. government estimate of trafficking victims.<sup>40</sup> This estimate of 14,500 to 17,500 victims first appeared in the 2004 report, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*,<sup>41</sup> and subsequent reports have not included estimates of the number of trafficking victims.<sup>42</sup> The *Attorney General's Report on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006*<sup>43</sup> stated that this estimate may be "overstated," and asserted that "[f]urther research is underway to determine a more accurate figure based on more advanced methodologies and more complete understanding of the nature of trafficking."

Notably, previous reports by the Central Intelligence Agency's Center for the Study of Intelligence, and the Department of Justice produced higher estimates of the number of trafficking victims in the United States. In November 1999, a report issued by the Center for the Study of Intelligence estimated that 45,000 to 50,000 women and children are trafficked annually to the United States.<sup>44</sup> In addition, the August 2003 version of the report, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*, estimated that between 18,000 and 20,000 people are trafficked into the United States annually. Some researchers contend that the government estimates of human trafficking do not provide a full description of the data and methodologies used to arrive at the estimates. As a result, they argue that the lack of

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<sup>39</sup> Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*, June 2006. (Hereafter DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*.)

<sup>40</sup> The number of U.S. citizen trafficking victims in the United States is unknown. In addition, there does not seem to be a clear definition of what it means to be a U.S. citizen trafficked within the United States. For example, some would argue that all prostitutes who have pimps are victims of trafficking. In addition, Dr. Louise Shelly, the Director of the Terrorism, Transnational Crime, and Corruption Center at George Mason University, argues that the largest number of trafficking victims in the United States are U.S. citizen children, and estimates the number of these victims to be between 100,000 and 300,000. Conference, *The Profits of Pimping: Abolishing Sex Trafficking in the United States*, at the Hudson Institute, Washington D.C., July 10, 2008.

<sup>41</sup> Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

<sup>42</sup> Notably, the Attorney General's Report for FY2007, released in May 2008, does not contain an estimate of the number of victims trafficked into the United States annually. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008.

<sup>43</sup> DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*.

<sup>44</sup> Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, Center for the Study of Intelligence, November 1999, p. iii.

methodological information makes it difficult, if not impossible, to recreate, assess the validity of, or improve upon the estimates.<sup>45</sup>

## Response to Trafficking within the United States

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

### Immigration Relief for Trafficking Victims

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

#### T Nonimmigrant Status

As discussed above, the Victims of Trafficking and Violence Protection Act of 2000 (TVPA) created a new nonimmigrant category, known as T status or T-visa, for aliens who are victims of severe forms of trafficking in persons.<sup>46</sup> Aliens who received T status are eligible to remain in the United States for four years and may apply for lawful permanent residence status (LPR) after being continually present in the United States for three years.

To qualify for the “T” category, in addition to being a victim of a severe form of trafficking in persons,<sup>47</sup> the alien must

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<sup>45</sup> Free the Slaves and the Human Rights Center, *Hidden Slaves: Forced Labor in the United States*, September 2004, available at [http://hrcberkeley.org/download/hiddenslaves\\_report.pdf](http://hrcberkeley.org/download/hiddenslaves_report.pdf).

<sup>46</sup> Section 107 of Division A of P.L. 106-386. “T” refers to the letter denoting the subsection of the Immigration and Nationality Act (INA) that provides the authority for the alien’s admission into the United States (i.e., INA §101(a)(15)(T)). Although T nonimmigrant status is often referred to as the T-visa, it is not technically a visa if it is given to aliens present in the United States because status is conferred by the Department of Homeland Security (DHS) who does not have the authority to issue visas. Only the Department of State (DOS) though consular offices may issue visas. Thus, only aliens present outside of the United States can receive T visas while aliens present in the United States receive T status. For more information on nonimmigrant visa issuance see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddal and Ruth Ellen Wasem.

<sup>47</sup> As discussed previously, TVPA defines a “severe form of trafficking in persons” as either: (1) sex trafficking in which a commercial sex act is induced by force, fraud or coercion or in which the person induced to perform such act has not attained 18 years of age, or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. It is the applicant’s responsibility to demonstrate both elements of a severe form of trafficking in persons.

- be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a U.S. port of entry because of such trafficking;<sup>48</sup>
- have complied with any reasonable request for assistance to law enforcement<sup>49</sup> in the investigation or prosecution of acts of trafficking,<sup>50</sup> or be under the age of 18;<sup>51</sup> and
- be likely to suffer extreme hardship involving unusual and severe harm upon removal.

To receive T status, the alien must also be admissible to the United States or obtain a waiver of inadmissibility. A waiver of inadmissibility is also available for health related grounds, public charge grounds, or criminal grounds if the activities rendering the alien inadmissible were caused by or were incident to the alien's victimization.<sup>52</sup> Waivers are not automatically granted, and there is no appeal if the inadmissibility waiver is denied. This waiver is especially important for those involved in sexual trafficking since prostitution is one of the grounds of inadmissibility specified in the Immigration and Nationality Act (INA).<sup>53</sup> Additionally, aliens who are present without being admitted or paroled<sup>54</sup> into the United States are inadmissible and would need to obtain a waiver to be eligible for T status. For example, an alien who paid a smuggler to enter the country illegally and then was held in servitude would need to get an inadmissibility waiver to be eligible for T status.

T status is limited to 5,000 principal aliens each fiscal year. Additionally, the spouse, children, or parents of an alien under age 21, in order to avoid extreme hardship, may be given derivative T status which is not counted against the numerical limit.<sup>55</sup> Individuals who are eligible for T status may be granted work authorization.<sup>56</sup> T status is valid for four years, and may be extended if a

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<sup>48</sup> This is interpreted in the regulations to apply to those aliens who (1) are present because they are being held in some sort of severe form of trafficking situation; (2) were recently liberated from a severe form of trafficking; or (3) were subject to a severe form of trafficking in the past and remain present in the United States for reasons directly related to the original trafficking.

<sup>49</sup> Applicants for T status may submit a Law Enforcement Agency (LEA) Enforcement to prove that they are complying with the investigation. The regulations require that the LEA enforcement come from a federal law enforcement agency since severe forms of trafficking in person are federal crimes under TVPA; however, the TVPRA of 2003 amended the law to allow state and local law enforcement to certify that the trafficking victim is aiding law enforcement.

<sup>50</sup> Although to be eligible for T status, the aliens must comply with reasonable requests for assistance from law enforcement, it is not necessary for the alien to be sponsored for status from a law enforcement agency as is required by those applying for S nonimmigrant status for alien witnesses and informants.

<sup>51</sup> Children under the age of 18 at the time that the application for T status is filed, are exempt from the requirement to comply with law enforcement requests for assistance. In the original law (TVPA of 2000) the age of mandatory compliance was under 15 years, but the TVPRA of 2003 increased the age of mandatory compliance to 18 years.

<sup>52</sup> INA §212(d)(13).

<sup>53</sup> INA §212(a)(2)(D).

<sup>54</sup> "Parole" is a term in immigration law which means that the alien has been granted temporary permission to be in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

<sup>55</sup> In some cases, immediate family members of trafficking victims may receive a T visa to join the victim in the United States. This may be necessary if the traffickers are threatening the victim's family.

<sup>56</sup> From the perspective of trafficking victims' advocates, work authorization is viewed as an important tool in helping the victims become self sufficient and retake control of their lives.

federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of trafficking in persons.<sup>57</sup>

Under law, aliens who have bona fide T applications<sup>58</sup> are eligible to receive certain public benefits to the same extent as refugees.<sup>59</sup> Aliens who receive derivative T status (i.e., the family members of trafficking victims) are also eligible for benefits. In addition, regulations require that federal officials provide trafficking victims with specific information regarding their rights and services such as

- immigration benefits;
- federal and state benefits and services (e.g., certification by the Department of Health and Human Services (HHS) and assistance through HHS' Office of Refugee Resettlement (ORR));
- medical services;
- pro-bono and low cost legal services;
- victim service organizations;
- victims compensation (trafficked aliens are often eligible for compensation from state and federal crime victims programs);<sup>60</sup>
- the right to restitution; and
- the rights of privacy and confidentiality.<sup>61</sup>

### *T Visas Issued*

As **Table 1** shows, between FY2002 and May 5, 2008, there were 1,959 applications for T-1 status, and 1,094 of these applications were approved. During the same period, there were 1,282 applications for derivative T status, and 998 applications were approved. Of the adjudicated applications for T-1 status, 62% were approved. In addition, of the adjudicated applications for derivative T status (i.e., family members of trafficking victims), 86% were approved.

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<sup>57</sup> The four year period of validity for T-visas was codified by The Violence Against Women and Department of Justice Reauthorization Act of 2006 (P.L. 109-162, §821). Prior to P.L. 109-162, the validity period was three years and was specified, not by statute, but by regulation (8 *C.F.R.* 214.11).

<sup>58</sup> Bona fide application means an application for T status which after initial review has been determined that the application is complete, there is no evidence of fraud, and presents prima facie evidence of eligibility for T status including admissibility.

<sup>59</sup> Refugees are generally eligible for federal, state and local public benefits. In addition, refugees are eligible for Food Stamps and Supplemental Security Income (SSI) for seven years after entry, and for Medicaid and Temporary Assistance for Needy Families for seven years after entrance and then at state option. CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>60</sup> Victims may also be repatriated to their home country if they desire with assistance from the Department of State, government of their country of origin, or nongovernmental organizations. The United States Conference of Catholic Bishops *et al.*, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, prepared with a grant from the Department of Health and Human Services, Office of Refugee Resettlement, November 2004, p. Appendix 1-3. (Hereafter cited as Catholic Bishops, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*.)

<sup>61</sup> 28 C.F.R. §1100.3-§1100.33.

**Table I. T-visas Issued: FY2002 through FY2007**

Fiscal Year	2002	2003	2004	2005	2006	2007	2008 <sup>a</sup>	Total
<b>Principle Aliens (Victims)</b>								
Applied	115	557	278	229	345	230	205	1,959
Approved	4	285	136	112	182	279	96	1,094
Denied	0	28	292	210	52	70	28	680
<b>Derivative Aliens (Family)</b>								
Applied	122	331	118	114	324	149	124	1,282
Approved	0	207	216	114	99	261	101	998
Denied	0	13	26	18	43	52	10	162

**Source:** Department of Homeland Security data provided to CRS.

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

a. Data for 2008 is through May 5, 2008.

### *Adjustment to Lawful Permanent Residence*

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

- be admissible (i.e., that the alien is not ineligible for a visa or status adjustment under the so-called “grounds for inadmissibility” of the INA, which include having a criminal history, being a terrorist, and being a security risk to the United States);
- have been physically present in the United States for at least three years since the granting of T status;
- during the three years of continued presence in the United States, been a person of good moral character; and
- establish that (1) they have complied with reasonable requests of assistance in the investigation or prosecution of acts of trafficking, or (2) that they would suffer extreme hardship upon removal from the United States.<sup>62</sup>

As of November 7, 2007, the regulations concerning adjustment to LPR status from T status have not yet been released.

<sup>62</sup> INA §245(l)



## Continued Presence

Federal law enforcement officials who encounter victims of severe forms of trafficking in persons and are potential witnesses to that trafficking may request that DHS grant the continued presence of the alien in the United States. Historically, the Attorney General has had the discretionary authority to use a variety of statutory and administrative mechanisms to ensure the alien's continued presence.<sup>63</sup> Most of the statutory and administrative mechanisms for continued presence required that the alien depart from the United States once her presence for the criminal investigation or prosecution is no longer required. In most cases, victims granted continued presence are eligible for work authorization.<sup>64</sup> Requests for continued presence are now handled by the Parole and Humanitarian Assistance Branch of DHS' Immigration and Customs Enforcement (ICE).

In some cases, law enforcement prefer giving the alien continued presence rather than T status to prevent the appearance during the prosecution of the traffickers that the alien's testimony was "bought." In FY2007, there were 125 requests for continued presence relating to human trafficking cases; 122 were approved while three were withdrawn by the law enforcement agency due to insufficient evidence. In addition, there were 5 requests for extensions of existing continued presence grants, all of which were approved.<sup>65</sup>

## U Nonimmigrant Status

Some victims of trafficking are eligible for U nonimmigrant status. The Violence Against Women Act of 2000, Division B of TVPA, created the U nonimmigrant status, often called the U-visa, for victims of physical or mental abuse.<sup>66</sup> To qualify for U status, the alien must file a petition and establish that

- he/she suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activities;<sup>67</sup>
- as certified by a law enforcement or immigration official, he/she (or if the alien is a child under age 16, the child's parent, guardian or friend) possesses information about the criminal activity involved;

<sup>63</sup> 28 C.F.R. Part 1000.35. The mechanisms for continued presence may include parole, voluntary departure, stay of final removal orders, or any other authorized form of continued presence in the United States, including adjustment to an applicable nonimmigrant status. Some of these authorities were transferred to the Secretary of DHS in the Homeland Security Act of 2002 (P.L. 107-296). Others remain with or are shared by the Attorney General.

<sup>64</sup> Viet D. Dinh, Department of Justice. Testimony before the Senate Subcommittee on Near Eastern and South Asian Affairs concerning Monitoring and Combating Trafficking in Persons: How Are We Doing?, March 7, 2002.

<sup>65</sup> In FY2007, aliens from 24 countries were granted continued presence due to human trafficking. Most victims were from Mexico, El Salvador, and China. In addition, Los Angeles, Newark, New York, and Houston and were the cities with the most requests for continued presence. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008: p. 20.

<sup>66</sup> INA 101(a)(15)(U).

<sup>67</sup> Certain criminal activity refers to one or more of the following or any similar activity in violation of federal or state criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnaping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter, murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

- he/she has been, is being or is likely to be helpful in the investigation and prosecution of the criminal activity by federal, state or local law enforcement authorities; and
- the criminal activity violated the laws of the United States or occurred in the United States.

The U category is limited to 10,000 principal aliens per fiscal year.<sup>68</sup> After three years, those in U status may apply for LPR status. Unlike aliens with T status, those with U status are not eligible for assistance through the Office of Refugee Resettlement or for federal public benefits. Those who receive U status may be eligible for programs to assist crime victims through the Department of Justice's Office for Victims of Crime.

## Aid Available to Victims of Trafficking in the United States

The Departments of Justice, Health and Human Services, and Labor have programs or administer grants to other entities to provide services to trafficking victims. In addition, the Legal Services Corporation<sup>69</sup> has instructed its lawyers to provide legal assistance to trafficking victims.<sup>70</sup> U.S. citizen and noncitizen victims of trafficking are eligible for all the programs discussed below, with one exception. Only noncitizen trafficking victims are eligible for refugee-specific programs.

### Health and Human Services Grants

The TVPA required HHS to expand benefits and services to victims of severe forms of trafficking in the United States, without regard to the immigration status of such victims.<sup>71</sup> Under the law, to receive these benefits and services, victims of severe forms of trafficking who are at least 18 years of age must be certified by the Secretary of Health and Human Services, after consultation with the Secretary of Homeland Security,<sup>72</sup> as willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking, having made a bona fide application for a T-visa that has not been denied, and being granted continued presence in the United States by the Secretary of Homeland Security to effectuate the prosecution of traffickers in persons.<sup>73</sup>

<sup>68</sup> Although the interim final regulations on U status were released in September 2007, prior to that aliens who met the criteria for U status were given immigration benefits similar to U status. In 2005, for example, 287 aliens were given "quasi-U" status. Unpublished data from DHS.

<sup>69</sup> The Legal Services Corporation (LSC), established by Congress, is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil (i.e., non-criminal) matters.

<sup>70</sup> DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons*, p.7.

<sup>71</sup> TVPA §107(b)(1)(B); 22 U.S.C. §7105(b)(1)(B). The act also created a grant program in DOJ for state, local, tribal governments, and nonprofit victims' service organizations to develop, strengthen, or expand service programs for trafficking victims. (22 U.S.C. §7105(b)(2))

<sup>72</sup> The Homeland Security Act of 2002 (HSA; P.L. 107-296) abolished the Immigration and Naturalization Service (INS) and transferred most of its functions to various bureaus in the new Department of Homeland Security (DHS) effective March 1, 2003. In addition, due to HSA, much of the Attorney General's authority in immigration law is currently vested in or shared with the Secretary of Homeland Security. For more information on the role of the Attorney General and Secretary of Homeland Security over immigration law, see CRS Report RL31997, *Authority to Enforce the Immigration and Nationality Act (INA) in the Wake of the Homeland Security Act: Legal Issues*, by Stephen R. Vina.

<sup>73</sup> TVPA §107(b)(1)(E); 22 U.S.C. §7105(b)(1)(E).

Under the law, trafficking victims under the age of 18 do not have to be certified to receive benefits and services, but it is HHS policy to issue eligibility letters to such victims. Although the law does not differentiate between U.S. Citizen and noncitizen trafficking victims, according to HHS, U.S. citizen trafficking victims also do not have to be certified to receive services.<sup>74</sup> HHS' Office of Refugee Resettlement (ORR) provides certification and eligibility letters for victims.

From FY2001 through FY2007, HHS certified 1,379 people; 131 (9%) of the victims were minors. In addition, in FY2007, 303 victims received certification letters. The certified victims represented more than 50 different countries; however, the countries with the largest percentage of certified victims were Thailand (16%) and Mexico (14%).<sup>75</sup>

ORR funds and facilitates a variety of programs to help refugees "economic and social self-sufficiency in their new homes in the United States," and noncitizen victims of severe forms of trafficking are eligible for these programs.<sup>76</sup> ORR-funded activities include cash and medical assistance, social services to help refugees become socially and economically self-sufficient, and targeted assistance for impacted areas. Special refugee cash assistance (RCA) and refugee medical assistance (RMA) are the heart of the refugee program. RCA and RMA, which are administered by the states, are intended to help needy refugees who are ineligible to receive benefits from mainstream federal assistance programs. In addition, minor noncitizen victims can participate in DHS's Unaccompanied Refugee Minor Program. TVPA and the subsequent reauthorization acts, authorize funds for ORR to provide similar assistance to trafficking victims. While both U.S. citizen and noncitizen trafficking victims are eligible for the general federal public benefits, only noncitizen trafficking victims are eligible for the benefits specifically designed for refugees.<sup>77</sup>

ORR also provides grants to organizations that render assistance specific to the needs of victims of trafficking, such as temporary housing, independent living skills, cultural orientation, transportation needs, access to appropriate educational programs, and legal assistance and referrals. These services are available to U.S. citizen and noncitizen trafficking victims. ORR may also supply trafficking victims with intensive case management programs to help the victim find housing and employment, and provide mental health counseling and specialized foster care programs for children. ORR performs outreach to inform victims of services and educate the public about trafficking.<sup>78</sup>

In addition, HHS conducts outreach to inform victims of services and to educate the public about trafficking. HHS has established the Rescue and Restore Victims of Human Trafficking public

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<sup>74</sup> Personal conversation with Scott Logan, Department of Health and Human Services, Administration for Children and Families, Congressional Affairs, April 2, 2007.

<sup>75</sup> Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008: pp. 4-5.

<sup>76</sup> P.L. 106-386, §107(b)(1)(A). The eligibility of noncitizens for public assistance programs is based on a complex set of rules that are determined largely by the type of noncitizen in question and the nature of services being offered. For example, refugees are eligible for Medicaid for five years after entry/grant of status, then made ineligible (unless they became citizens or qualified under another status). For a discussion of the eligibility of trafficking victims for state and federal means tested benefits see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>77</sup> For additional information on programs for refugees see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

<sup>78</sup> DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons*, p.10.

awareness campaign, which promotes public awareness about trafficking and the protections available for trafficking victims. The goal of the campaign is to help communities identify and serve victims of trafficking, supporting them in coming forward to receive services and aid law enforcement. In addition to promoting public awareness about trafficking, HHS through the Rescue and Restore campaign has established anti-trafficking coalitions in 16 cities and the state of Illinois. Another component of the campaign is the creation of a toll-free National Human Trafficking Resource Center available for advice 24-hours a day.<sup>79</sup> (For a discussion of authorizations and appropriations for the HHS grant program, see a.)

## **Department of Justice, Office for Victims of Crime**

The TVPA created a grant program administered by the Attorney General to provide grants to states, Indian tribes, local governments, and nonprofit victims services organizations to develop, expand or strengthen victims service programs for trafficking victims.<sup>80</sup> This grant program is administered through DOJ's Office for Victims of Crime (OVC) and provides emergency services, including temporary housing, medical care, crisis counseling and legal assistance, to victims as soon as they have been encountered, prior to certification by HHS (discussed above).<sup>81</sup> According to DOJ, OVC awards grants to non-governmental organizations to provide trafficking victims with comprehensive or specialized services, and training and technical assistance to grantees for program support and enhancement.<sup>82</sup> (For a discussion of authorizations and appropriations for this program, see a.)

## **Department of Labor**

DOL's Employment and Training Administration (ETA) One-Stop Career Centers provide job search assistance, career counseling, and occupational skills training to trafficking victims. In addition, victims between the ages of 16 and 24—both U.S. citizen victims and noncitizen victims who have work authorization—may be eligible to participate in Job Corps.<sup>83</sup> (For program authorizations, see a.)

## **Domestic Investigations of Trafficking Offenses**

Human trafficking investigations are often complicated by language and humanitarian issues (e.g., the victim has been traumatized and is unable to aid in the investigation), as well as logistical challenges and difficulties (e.g., transporting, housing, and processing the victims especially alien victims). In addition, certain types of investigative techniques, such as controlled delivery operations,<sup>84</sup> cannot be used. Moreover, unlike drug trafficking cases where the contraband itself is proof of the illegal activity, the successful prosecution of trafficking cases

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<sup>79</sup> Department of Health and Human Services, "About Human Trafficking," available at <http://www.acf.hhs.gov/trafficking/about/index.html#wwd>, visited March 22, 2007.

<sup>80</sup> P.L. 106-386, §107(b)(2).

<sup>81</sup> See <http://www.ojp.usdoj/ovc/help/tip.htm>.

<sup>82</sup> DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons*, p.6.

<sup>83</sup> Catholic Bishops, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, p. Appendix 1-6.

<sup>84</sup> Controlled delivery is an investigative technique in which law enforcement knowingly allows a shipment to travel to its destination so that law enforcement can learn more about a criminal enterprise and the people involved.

relies on the availability of witnesses who may refuse to testify because of fear of retribution against themselves or their families.<sup>85</sup>

Within the United States, the Departments of Justice (DOJ), Homeland Security (DHS), and Labor (DOL) have primary responsibility for investigating and prosecuting traffickers.<sup>86</sup> The majority of the cases are investigated by agents in DOJ's Federal Bureau of Investigation (FBI) and DHS's U.S. Immigration and Customs Enforcement (ICE), who coordinate as appropriate.<sup>87</sup> Agents in the FBI's Civil Rights Unit (CRU) investigate trafficking in the United States. In addition, under the FBI's Human Trafficking Initiative, FBI field offices use threat assessment to determine the existence and scope of trafficking in their region, participate in the anti-trafficking task force, conduct investigations and report significant case developments to the CRU. The CRU opened 655 trafficking cases between FY2001-FY2007.<sup>88</sup>

ICE uses a global enforcement strategy to disrupt and dismantle domestic and international criminal organizations that engage in human trafficking. Between FY2004 and FY2007, ICE opened 1,185 trafficking cases.<sup>89</sup> In addition, DOL is involved in cases of trafficking through enforcement of labor standards laws such as the Fair Labor Standards Act<sup>90</sup> and the Migrant and Seasonal Agricultural Worker Protection Act.<sup>91</sup>

## Human Smuggling and Trafficking Center

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

- serving as the focal point for interagency efforts to address terrorist travel;

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<sup>85</sup> U.S. Government Accountability Office, *Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response*, GAO-05-305, May 2005, p. 10. (Hereafter cited as GAO, *Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response*.)

<sup>86</sup> This section is based on the information in Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, September 2007.

<sup>87</sup> The division of responsibilities between these two agencies is not clearly delineated which may lead to a lack of coordination between the agencies as well as possibly some duplicative efforts.

<sup>88</sup> Department of Justice, Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007, May 2008: pp. 21-22.

<sup>89</sup> According to an ICE Office of Investigations (OI) official, the Border Patrol only has a minor role in alien smuggling and trafficking investigations and is required to coordinate with OI before initiating anti-smuggling investigations. GAO, *Immigration Enforcement: DHS Has Incorporated Immigration Enforcement Objectives and Is Addressing Future Planning Requirements (2004)*, p. 9. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008: p. 23.

<sup>90</sup> 29 U.S.C. §§201-219.

<sup>91</sup> 29 U.S.C. Chapter 20.

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

During its two-year existence, the HSTC has had issues with cooperation between the different agencies and departments, related to funding, staffing, and information sharing.<sup>92</sup> In The Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53, discussed below), Congress attempted to address these issues.

## Legislation in the 110<sup>th</sup> Congress

In the 110<sup>th</sup> Congress, both chambers are continuing to address human trafficking as part of their authorization, appropriations, and oversight activities. The Implementing the 9/11 Commission Recommendations Act of 2007, P.L. 110-53 (H.R. 1), signed into law on August 3, 2007, directs the Secretary of Homeland Security (Secretary of DHS) to provide specified funding and administrative support to strengthen the Human Smuggling and Trafficking Center (HSTC). The act directs the Secretary of DHS to nominate a U.S. government employee to direct the HSTC, and specifics that the HSTC be staffed by at least 40 full-time staff, including detailees.<sup>93</sup> In addition, the act mandates the hiring of not less than 40 full-time equivalent staff for the HSTC, and would specify the agencies and departments from which the personnel should be detailed (e.g., Transportation and Security Administration, United States Coast Guard, ICE, Central Intelligence Agency), and their areas of expertise (e.g., consular affairs, counter terrorism). It also directs the Secretary of DHS to provide the administrative support and funding for the HSTC.

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<sup>92</sup> U.S. Congress, House Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight, *9/11 Reform Act: Examining the Implementation of the Human Smuggling and Trafficking Center*, hearings, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 8, 2006.

<sup>93</sup> The act specifies a number of agencies from which, as appropriate, staff may be detailed to the HSTC, including but not limited to U.S Customs and Border Protection, Transportation Security Administration, Coast Guard, Central Intelligence Agency, National Security Agency, and the Departments of Defense, Justice, and State. The act also specifies that the detailees include an adequate number with specified expertise, and that agencies shall create policies and incentives for the detailees to serve terms of at least two years.

## The William Wilberforce Trafficking Victims Protection Reauthorization Act; H.R. 3887 (Lantos) and S. 3061 (Biden/Brownback)<sup>94</sup>

H.R. 3887, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007, was passed by the House under suspension of the rules on December 4, 2007. The vote was 405-2. S. 3061, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, was reported by the Senate Judiciary Committee on July 31, 2008.<sup>95</sup> H.R. 3887 and S. 3061 include many identical provisions, and most of the differences between the two bills come from provisions that exist in only one of the bills rather than substantial differences between similar provisions in both bills.<sup>96</sup> The discussion below refers to H.R. 3887 as passed by the House, and S. 3061 as reported by the Judiciary Committee.

H.R. 3887 and S. 3061, would both authorize appropriations for FY2008 through FY2011 for the TVPA as amended and would establish a system to monitor and evaluate all assistance under the act. The bills would require the establishment of an integrated database used by U.S. governmental departments and agencies to collect data for analysis on TIP. In addition, the bills would create a Presidential award for extraordinary efforts to combat trafficking in persons. However, only H.R. 3887 would also require the Departments of Justice and Labor to appoint Coordinators to Combat Human Trafficking.

### Measures to Address Human Trafficking in Foreign Countries

H.R. 3887 and S. 3061 would provide more technical assistance and other support to help foreign governments inspect locations where forced labor occurs, register vulnerable populations, and provide more protection to foreign migrant workers. The bills would require specific actions to be taken against governments of countries that have been on the Tier 2 Watch-List for two consecutive years. The bills would also require DOS to translate the Trafficking in Persons Report into the principal languages of as many countries as possible. In addition, among other measures to address the issue of child soldiers, S. 3061 and H.R. 3887 would prohibit military assistance to foreign governments that recruit and use child soldiers, but the bills accomplish this in slightly different manners. Finally, only S. 3061 would amend the U.S. criminal code (Title 18) to make it a crime under U.S. law to recruit or use child soldiers.

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<sup>94</sup> H.R. 3887 (Lantos) was co-sponsored by, among others, Rep. Chris Smith, who had previously submitted a separate bill, The Trafficking Victims Protection Reauthorization Act of 2007, H.R. 270. H.R. 270 was introduced on January 5, 2007, but saw no committee action. It would have authorized funds for anti-trafficking programs for FY2008 through FY2010.

<sup>95</sup> The reported version of the bill has not been published. According to CQ, the bill is the same as S. 3061 as introduced with one amendment from Senator Chuck Grassley which would restrict the passport eligibility of individuals convicted of sex tourism and set guidelines for the removal of unauthorized aliens convicted of sex offenses. CQ Committee Coverage, *Panel Approves Juvenile Justice, Anti-Human Trafficking Bills*, CQ.Com, July 31, 2008.

<sup>96</sup> For a more detailed discussion of the differences between the two bills, see CRS Congressional Distribution Memorandum, *Select Differences Between S. 3061 as Reported, and H.R. 3887 as Passed by the House*, by Alison Siskin and Clare Ribando Seelke, available from the authors.

## Preventing Trafficking to the United States

While both the House bill and S. 3061 would require pamphlets on the rights and responsibilities of the employee to be produced and given to employment-based nonimmigrants, only H.R. 3887 would specify that aliens applying for student visas should also receive the pamphlet. H.R. 3887 and S. 3061 would require consular officers to provide certain aliens interviewing for nonimmigrant visas with information concerning U.S. laws against TIP and assistance for TIP victims in the United States. The bills would also direct the Secretary of State to deny certain temporary employment visas (A-3 and G-5 visas)<sup>97</sup> to aliens who would be working at a diplomatic mission or international institution where an alien had been subject to trafficking or exploitation at the mission or institution. Under both bills, the Secretary of State would also have to submit to Congress a feasibility study on maintaining records on the presence of A-3 and G-5 visa<sup>98</sup> holders in the United States, including information regarding any allegations of abuse. Furthermore, H.R. 3887 would create protections for foreign workers recruited abroad to work in the United States, including creating a registration process with the Department of Labor for persons abroad who engage in any foreign labor contracting activity (i.e., recruit, hiring or employing an alien outside the United States to perform work in the country).

## Measures to Address Trafficking in the United States

Both H.R. 3887 and S. 3061 would amend the requirements for the T visa, so that any request from law enforcement would be deemed unreasonable if it is determined by the Attorney General that such a request would cause the trafficking victim physical or psychological trauma. The bills would also require when determining whether the alien meets the extreme hardship requirement for T status that the Secretary of DHS consider whether the country to which the alien would be removed can adequately address the alien's security and mental and physical health needs. In addition, H.R. 3887 and S. 3061 would amend the requirements for the T visa so that an alien would be eligible if she was present in the United States after being allowed entry to aid in the prosecution of traffickers. The bills would also broaden the requirements for an alien to receive continued presence in the United States, and would make it easier for families of trafficking victims to be paroled into the United States. In addition, H.R. 3887 and S. 3061 would amend the law to allow the Secretary of DHS to waive the good moral character requirement for those adjusting from T to LPR status, and allow the Secretary of DHS to provide a stay of removal for aliens with pending T applications (with a prima facie case for approval), until the application has been adjudicated. Furthermore, under the bills, the Secretary of DHS would be required no later than 120 days after enactment to promulgate the regulations concerning the adjustment from T to LPR status. H.R. 3887 and S. 3061 would also make aliens with pending applications for T status

<sup>97</sup> Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). A-3 visa holders refer to workers admitted under INA §101(a)(15)(A)(iii), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers. G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations.

<sup>98</sup> Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). A-3 visa holders refer to workers admitted under INA §101(a)(15)(A)(iii), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers. G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations.



eligible for public benefits, and would require the Secretary of HHS to make a prompt determination of eligibility for assistance for child trafficking victims.

S. 3061 and H.R. 3887 have similar provisions relating to enhancing protections for child victims of trafficking. Both bills would require the United States to enter into agreements with contiguous countries regarding the return of unaccompanied minors designed to protect children from severe forms of TIP,<sup>99</sup> and would specify screening procedures for children suspected of being trafficking victims. In addition, the bills would direct the Secretary of HHS to the extent possible to provide legal counsel and appoint child advocates to child trafficking victims and other vulnerable unaccompanied alien children.

Moreover, both bills would create new grant programs for U.S. citizen victims of severe forms of trafficking and authorize appropriations for such programs. S. 3061 and H.R. 4337 would also require the Secretary of HHS and the Attorney General, within one year after enactment, to submit a report to Congress identifying any gaps between services provided to U.S. citizen and noncitizen victims of trafficking. Nonetheless, only H.R. 3887 would amend the Victims of Crime Act<sup>100</sup> to allow compensation for anyone who is a victim of an offense in Chapter 117 of Title 18, dealing with transportation for illegal sexual activities and related crimes (often referred to as the Mann Act), or of the Immigration and Nationality Act (INA) §1328, the importation of aliens for immoral purposes.<sup>101</sup>

Furthermore, while H.R. 3887 would create new criminal offenses related to human trafficking, including relating to unlawful compelled service and retaliation in foreign labor contracting, S. 3061 would amend the current trafficking offenses and make it a criminal offense to conspire to violate any law against slavery, peonage, and trafficking in persons.<sup>102</sup> Both bills, similar to S. 1703, would create additional jurisdiction in U.S. courts for trafficking offenses occurring in other countries if the alleged offender is present in the United States. In addition, H.R. 3887 would create new offenses under the Immigration and Nationality Act (INA) for persons who smuggle aliens into the United States for prostitution, and would require the Attorney General to prepare model anti-trafficking legislation for use by states. (This provision is similar to one in H.R. 270.)

## Select Other Legislation in the 110<sup>th</sup> Congress

Another bill that has seen committee action is **The Trafficking in Persons Accountability Act of 2007, S. 1703 (Durbin)**, which was ordered reported out of the Senate Judiciary Committee on September 20, 2007. S. 1703 would amend the federal criminal code (U.S.C. Title 18) to grant U.S. courts jurisdiction over cases involving peonage, slavery, and trafficking in persons, even if

<sup>99</sup> Unaccompanied minors are aliens who are in the United States without a parent or guardian.

<sup>100</sup> For more on the Victims of Crime Act and the Crime Victims Compensation Fund, see CRS Report RL32579, *Victims of Crime Compensation and Assistance: Background and Funding*, by Celinda Franco.

<sup>101</sup> This provision has been controversial. The National Association of Attorneys General, the Fraternal Order of Police, and the National District Attorneys Association, among others, have expressed their dissatisfaction with this provision, claiming that this provision could make limited crime victims compensation funds available to people charged with simple prostitution at the state or local levels who are not trafficking victims.

<sup>102</sup> For more information on the criminal law provisions in H.R. 3887, see CRS Report RL34323, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887 as Passed by the House): Criminal Law Provisions*, by Charles Doyle.

the offense occurred outside the United States, in which the alleged offender is brought into, or found in the United States, not more than 10 years after such offense.

Another bill, the **Congressional Commission on the Abolition of Modern-Day Slavery Act, H.R. 2522 (Lewis)**, introduced on May 24, 2007, would establish a Commission to study modern-day slavery in all its forms (including trafficking in persons) and why it still exists, review and evaluate U.S. and international efforts to prevent or combat modern-day slavery, and make legislative and administrative recommendations necessary for the most effective ways to combat modern-day slavery to be put in place.

## Policy Issues

A broad consensus appears to be shared in Congress and the policy community on the need for decisive action to curb human trafficking. However, there are some fundamental questions related to how broadly human trafficking should be defined. In addition, questions have been raised about the effective implementation of anti-trafficking programs.

### How to Collect Data and Measure Success

It is often difficult to measure success in the fight against human trafficking. So far, few reliable indicators have been identified. For example, the new estimates of numbers of trafficking victims in the United States seem considerably lower than some of the previous high-end estimates. Whether these figures reflect the success of U.S. policies and programs or more accurate data gathering is unclear. Hard evidence with regard to the results of the more vigorous international campaign against trafficking is also lacking. Information is often anecdotal. Worldwide estimates of the numbers of victims seemingly have not changed much, when cross-border trafficking and trafficking within countries are taken together. A 2006 GAO study seriously questions the adequacy of any of the estimates.<sup>103</sup>

### Credibility of TIP Rankings

Many analysts have asserted that the overall impact of the Trafficking report and sanctions process depends upon the credibility of the State Department's annual country TIP rankings. Some would argue that, although the TIP reports have improved with each year, "inconsistent application of the minimum standards [mandated by TVPA] and superficial country assessments have compromised their credibility."<sup>104</sup> Some argue that it is difficult to determine what standards make a country eligible for Tier 1. They assert that the Tier 2 and Tier 2 "Watch List" have become "catch-all" categories that include countries which should really be placed on Tier 3. According to the GAO, in addition to a lack of clarity in the tier ranking process, the TIP report's "incomplete narratives reduce the report's utility..." The State Department, while acknowledging the need to continue to increase the comprehensiveness of the report, believes that "keeping the report concise is paramount."<sup>105</sup>

<sup>103</sup> GAO, July 2006, p. 3. (GAO-06-825).

<sup>104</sup> Chuang, 2006.

<sup>105</sup> GAO, July 2006, p. 3. (GAO-06-825).

## Sanctions: A Useful Tool?

Most agree that extensive international cooperation is required in order to stop international trafficking and that both “carrots” and “sticks” may be needed to influence the policies of other governments, including financial and technical assistance, as well as the threat of sanctions. Some assert that unilateral sanctions, when designed in accordance with international norms, can incite countries to internalize those norms.<sup>106</sup> Sanctions seem to be most effective when they are clearly defined and evenly applied, criteria which some say U.S. trafficking sanctions have not yet met.<sup>107</sup> For example, since 2003, no governments in Latin America except Cuba and Venezuela have been subject to partial or full sanctions for failing to meet the minimum standards of TVPA. Some argue that sanctions will probably only be applied to countries already subject to other sanctions—such as Burma, Cuba, or North Korea—and that threatening other countries with sanctions may actually encourage them to become less open to working with the United States. Others argue that while that may be true in a few cases, most countries depend on good political and economic relations with the United States and fear the public humiliation that comes with a Tier 3 designation as much as actual sanctions.

## Equal Focus on all Types of Trafficking?

The TVPA defines trafficking broadly to include problems such as forced labor, sex slavery, and domestic servitude. Although the U.S. government funds programs to combat all types of trafficking in persons, some observers believe that the government focuses too much on sex slavery as opposed to non-sexual labor exploitation. They argue that too large a percentage of the U.S. anti-trafficking budget has been directed to NGOs focused on rescuing women and children from the commercial sex industry. However, inventories of U.S. anti-trafficking programs since 2004 appear to counter these claims as they show U.S. support for a wide variety of NGOs that strive to protect victims and prosecute traffickers engaged in all types of human trafficking.<sup>108</sup> TIP reports since 2005 have placed an added emphasis on evaluating country efforts to combat trafficking for forced labor.

## Debates Regarding Prostitution and Trafficking

Several groups in the United States have sought to broaden the definition of trafficking in persons to include all forms of prostitution, but many countries have thus far rejected those attempts. Proponents of this broader definition of trafficking in persons argue that prostitution is “not ‘sex work;’ it is violence against women [that] exists because ... men are given social, moral and legal permission to buy women on demand.”<sup>109</sup> Opponents, including many European and Latin American countries, have legal and regulated prostitution and argue that this broadened definition would impede the capacity of the international community to achieve consensus and work together to combat trafficking.

<sup>106</sup> Sarah H. Cleveland, “Norm Internationalization and U.S. Economic Sanctions,” *Yale Journal of International Law*, 2001, 1, 31.

<sup>107</sup> Chuang, 2006.

<sup>108</sup> Jennifer Block, “Sex Trafficking: Why the Faith Trade is Interested in the Sex Trade,” *Conscience*, Summer/Autumn 2004; Debbie Nathan, “Oversexed,” *The Nation*, August 29 - September 5, 2005, vol. 281; Janie Chuang, Winter 2006, 13, 1, G-TIP Fact Sheets, Available at: <http://www.state.gov/g/tip/rls/fs/index.htm>.

<sup>109</sup> Janice G. Raymond, “Sex Trafficking is Not ‘Sex Work,’” *Conscience*, Spring 2005.

The U.S. State Department has repeatedly asserted that prostitution and trafficking in persons are inextricably linked. U.S. officials argue that “where prostitution is legalized or tolerated, there is greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.” The Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193) restricts anti-trafficking funds to groups that oppose prostitution. Critics have argued that this policy excludes the people who are most able to report and combat abuses within the sex industry, prostitutes themselves and may hinder the success of well-established anti-TIP programs. They believe that giving prostitutes some measure of legitimacy short of legalization reduces the risk that they will be exposed to the dangers of trafficking.<sup>110</sup>

## Issues Concerning Immigration Relief for Trafficking Victims

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

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

As discussed above, between FY2002 and June 14, 2007, DHS approved 929 applications for T-1 status, while it is estimated that at least 14,500 aliens are trafficked into the United States each year. The comparatively small number of T visas issued relative to the estimates of trafficking into the United States raises some questions. Is the number of noncitizen trafficking victims in the United States overestimated? Is the United States government doing a poor job locating and identifying victims?<sup>111</sup>

## Stringency of T Determination

The regulations state that “In view of the annual limit imposed by Congress for T-1 status, and the standard of extreme hardship involving unusual and severe harm, [DHS] acknowledges that the T-1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of trafficking....”<sup>112</sup> Some contend that the extreme hardship threshold makes it difficult for victims to receive T status.<sup>113</sup> Nonetheless, some in law enforcement have

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<sup>110</sup> U.S. State Department web-site, <http://www.state.gov/g/tip/>; Feingold, September/October 2005.

<sup>111</sup> These issues are discussed in detail in: Jerry Markon, “Human Trafficking Evokes Outrage, Little Evidence; U.S. Estimates Thousands of Victims, But Efforts to Find Them Fall Short,” *Washington Post*, September 23, 2007.

<sup>112</sup> *Federal Register* vol. 67, no. 21: p. 4785. January 31, 2002.

<sup>113</sup> Testimony of Derek J. Marsh, Co-Director Orange County Human Trafficking Task Force, in U.S. Congress, House (continued...)

raised concerns that advocacy organizations are able to ask ICE headquarters without the input of the local ICE agents to have an alien certified as a trafficking victim, contending that some of these aliens are not truly trafficking victims.<sup>114</sup>

## Tool of Law Enforcement or Aid to Victims

According to the policy memorandum on T status, “the T classification provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and prosecutions and provide humanitarian protection to the victims.” Some are concerned that the emphasis on aiding law enforcement is more important than aiding the victims, and note that a controversial aspect of the continued presence provision is that federal agents may supersede a victim’s wishes and require the victim to remain in the United States, if the victim’s “departure is deemed prejudicial to the interests of the United States.”<sup>115</sup> Others argue, however, that the only mechanism for ending trafficking is by encouraging the victims’ cooperation in the prosecution and investigation.

## Victims’ Safety

Some victims’ service providers who aid trafficking victims have also expressed concerns that outside of federal protective custody, there are few safe housing options for victims of trafficking. Shelters in many areas are full or inaccessible, and domestic violence shelters are ill-equipped to meet the safety needs of trafficking victims.<sup>116</sup> Other advocacy groups such as the Coalition to Abolish Slavery and Trafficking (CAST) contend that forcing victims to aid in the investigation and prosecution of traffickers may endanger the victims’ families who remain in the home country especially when the trafficker is deported back to the country. They argue that there needs to be some mechanism to either ensure the victims’ families’ safety in their home country or reunite the families with the victims in the United States.<sup>117</sup> Dianne Post, an attorney for the Arizona Coalition Against Domestic Violence argues that the TVPA may create problems for victims, because victims can not receive services and benefits until they apply for T status, and if they do not speak English, they can not fill out the application without help. Often they will need to turn to the local immigrant community, and the traffickers may have ties in the same community.<sup>118</sup>

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(...continued)

Committee on Homeland Security, *Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part II*, 110<sup>th</sup> Cong., 1 sess., March 20, 2007.

<sup>114</sup> Personal communication with ICE special agents in Los Angeles, California, August 16, 2005.

<sup>115</sup> Raffonelli, “INS Final Rule to Assist Victims of Trafficking.” p.4.

<sup>116</sup> Lisa Raffonelli. “INS Final Rule to Assist Victims of Trafficking.” *Refugee Reports*, vol. 23, no. 3 (April 2002): p.9. Hereafter referred to as Raffonelli, “INS Final Rule to Assist Victims of Trafficking.”

<sup>117</sup> Testimony of Cho. Testimony of Wendy Patten, U.S. Advocacy Director, Human Rights Watch, in U.S. Congress, Senate Committee on Judiciary, Subcommittee on Constitution, Civil Rights and Property Rights, *Examining U.S. Efforts to Combat Human Trafficking and Slavery*, hearings, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., (July 7, 2004). (Hereafter, Testimony Wendy Patten.)

<sup>118</sup> Raffonelli, “INS Final Rule to Assist Victims of Trafficking.” p.9.

## Appendix A. Anti-Trafficking Administrative Directive and Legislation

The human trafficking problem gained attention in the United States and worldwide in the late 1990s. It has been addressed as a priority by Congress, as well as the Clinton and Bush Administrations. As part of former President Clinton's announced International Crime Control Strategy, an interagency working group was set up to address international crime implications of trafficking. On March 11, 1998, President Clinton issued a directive establishing a U.S. government-wide anti-trafficking strategy of (1) prevention, (2) protection and support for victims, and (3) prosecution of traffickers.<sup>119</sup> The strategy, as announced, had strong domestic and international policy components:

- In the area of prevention, the Administration outlined the need for programs to increase economic opportunities for potential victims and dissemination of information in other countries to increase public awareness of trafficking dangers and funding for more research on trafficking.
- In terms of victim protection and assistance, the Administration argued for legislation to provide shelter and support services to victims who are in the country unlawfully and therefore presently ineligible for assistance. It pressed for the creation of a humanitarian, non-immigrant visa classification to allow victims to receive temporary resident status so they could receive assistance and help to prosecute traffickers. Also, support was sought for developing countries to protect and reintegrate trafficking victims once they were returned.
- As far as prosecution and enforcement, the Administration pressed for laws to more effectively go after traffickers and increase the penalties they can face. In addition, restitution for trafficked victims was sought in part by creating the possibility of bringing private civil lawsuits against traffickers. The Department of Justice (DOJ) called for laws that would expand the definition of involuntary servitude, criminalize a broader range of actions constituting involuntary servitude, and increase the penalties for placing people in involuntary servitude. Justice Department spokesmen also urged that prosecutors be give the capability to go after those who profit from trafficking, not just those directly involved in trafficking.<sup>120</sup> They also called for amending immigration statutes to punish traffickers who entrap victims by taking their passports and identification from them.

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

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<sup>119</sup> For a discussion of this directive, see Department of State, Office of the Historian, *History of the Department of State During the Clinton Presidency (1993-2001)*, available at <http://www.state.gov/r/pa/ho/pubs/8523.htm>.

<sup>120</sup> Testimony of William R. Yeomans, Chief of Staff of the Civil Rights Division, Department of Justice, before the Subcommittee on Near Eastern and South Asian Affairs, Senate Foreign Relations Committee, April 4, 2000.

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

## Victims of Trafficking and Violence Protection Act of 2000

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

- Directed the Secretary of State to provide an annual report by June 1, listing countries that do and do not comply with minimum standards for the elimination of trafficking, and to provide information on the nature and extent of severe forms of trafficking in persons in each country and an assessment of the efforts by each government to combat trafficking in the State Department's annual human rights report;
- Called for establishing an Interagency Task Force to Monitor and Combat Trafficking, chaired by the Secretary of State, and authorized the Secretary to establish within the Department of State an Office to Monitor and Combat Trafficking to assist the Task Force;
- Called for measures to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking, to increase public awareness, particularly among potential victims, of the dangers of trafficking and the protections that are available for victims, and for the government to work with NGOs to combat trafficking;
- Established programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement of victims of trafficking and their children, as well as programs to provide assistance to victims of severe forms of trafficking in persons within the United States, without regard to such victims' immigration status and to make such victims eligible for any benefits that are otherwise available under the Crime Victims Fund;<sup>121</sup>
- Provided protection and assistance for victims of severe forms of trafficking while in the United States;
- Amended the Federal Criminal code to make funds derived from the sale of assets seized from and forfeited by traffickers available for victims assistance programs under this act;
- Amended the Immigration and Nationality Act (INA) to allow the Attorney General to grant up to 5,000 nonimmigrant visas (T visas) per year to certain

<sup>121</sup> For more information on the Crime Victims Fund, see CRS Report RL32579, *Victims of Crime Compensation and Assistance: Background and Funding*, by Celinda Franco.

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

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

The Bush Administration, as well as Congress, continued the anti-trafficking effort. Then-Attorney General John Ashcroft announced in March 2001 that the fight against trafficking would be a top priority for the Administration and that U.S. law enforcement agencies, including the FBI, the former Immigration and Naturalization Service, and the Justice Department's Civil Rights Division would cooperate closely to upgrade their efforts to combat trafficking. The Justice Department also announced new guidelines for federal prosecutors to pursue trafficking cases.<sup>122</sup> The State Department issued its first congressionally mandated report on worldwide trafficking in July 2001.

On January 24, 2002, Ashcroft announced the implementation of a special "T" visa, as called for in P.L. 106-386, for victims of trafficking in the United States who cooperate with law enforcement officials. Under the statute, victims who cooperate with law enforcement against

<sup>122</sup> Attorney General John Ashcroft's news conference on March 27, 2001. See <http://www.usdoj.gov/archive/ag/speeches/2001/032701workerexploitation.htm>.



their traffickers and would be likely to suffer severe harm if returned to their home countries may be granted permission to stay in the United States. After three years in T status, the victims are eligible to apply for permanent residency and for non-immigrant status for their spouses and children.<sup>123</sup>

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

## **The Foreign Relations Authorization Act of 2003**

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

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

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

## **Trafficking Victims Protection Reauthorization Act of 2003**

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

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<sup>123</sup> U.S. Department of State, Washington File, January 24, 2002. <http://usinfo.state.gov>.

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

## **Intelligence Reform and Terrorism Protection Act of 2004**

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

## **Trafficking Victims Protection Reauthorization Act of 2005**

On February 17, 2005, Representative Christopher Smith and nine co-sponsors introduced the Trafficking Victims Protection Reauthorization Act of 2005 to authorize appropriations for FY2006 and FY2007 and close loopholes in previous anti-trafficking legislation. The bill was signed into law by the President on January 10, 2006 (P.L. 109-162). Among other things, the legislation had provisions to increase U.S. assistance to foreign trafficking victims in the United States, including access to legal counsel and better information on programs to aid victims. It attempted to address the special needs of child victims, as well as the plight of Americans trafficked within the United States. It directed relevant U.S. government agencies to develop anti-trafficking strategies for post-conflict situations and humanitarian emergencies abroad. It sought to extend U.S. criminal jurisdiction over government personnel and contractors who are involved in acts of trafficking abroad while doing work for the government. It addressed the problem of peacekeepers and aid workers who are complicit in trafficking.

## Appendix B. Trafficking Funding Issues

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

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

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

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

Due to the methodological difficulties involved in calculating TIP appropriations and the fact that a large portion of TIP programs are supported by Economic Support Funds, which are appropriated to remain available for two years, the State Department calculates TIP obligations by agency per fiscal year. According to G-TIP, this generates the best estimate of the amount of funding spent on TIP programs by agency for each fiscal year. In FY2007, the U.S. government obligated an estimated \$79.4 million in anti-trafficking assistance to foreign governments, up from \$74.0 million in FY2006. International anti-TIP program totals are compared to roughly \$22.9 million obligated in FY2007 and \$28.6 million obligated in FY2006 for domestic anti-TIP programs. They do not include the costs of TIP operations or law enforcement investigations.<sup>124</sup>

<sup>124</sup> "U.S. Government Anti-Trafficking in Persons Obligated Project Funding (FY2006)," G-TIP Fact Sheet, April 23, 2007, (continued...)

See **Table C-1 in a** for authorizations and appropriations for grant programs to assist trafficking victims in the United States for FY2001-FY2007.

<http://wikileaks.org/wiki/CRS-RL34317>

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(...continued)

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

**Table B-1. Current Authorizations to Implement Victims of Trafficking Act**  
(in millions)

Authorizations to and Purpose	Original Authorization	P.L. 109-164 (current)	
		FY2006	FY2007
<b>International Programs</b>			
<b>Department of State (DOS) and United States Agency for International Development (USAID)</b>			
USAID: Pilot Program Residential Treatment Facilities	P.L. 109-164, §102(b)(2)	\$2.5	\$2.5
DOS: trafficking in human rights report, interagency taskforce, senior policy operating group, Annual country reports	P.L. 106-386, §§104, 105(e), 105(f), 110	\$5.5	\$5.5
DOS: Official receptions Office to Combat Trafficking	P.L. 109-164, §301	\$0.03	\$0.03
DOS: Prevention of trafficking	P.L. 106-386 §106	\$10.0	\$10.0
DOS: Assistance to victims in other countries	P.L. 106-386 §107(a)	\$10.0	\$10.0
DOS: TIP report and aid to countries to meet min standards, including law enforcement training	P.L. 106-386 §§108-109	\$10.25	\$10.25
DOS: Voluntary Contribution to Organization for Security and Cooperation in Europe (OSCE)	P.L. 106-386, §109	\$0	\$0
<b>President</b>			
President through Attorney General and DOS: foreign law enforcement training	P.L. 106-386, §109	\$0.25	\$0.25
President:	P.L. 106-386, §106		
Foreign Victims Assistance		\$15.0	\$15.0
President: To help countries meet min. standards	PL. 106-386, §109	\$15.0	\$15.0
President: Research on human trafficking	P.L. 108-193, §6(g)(1)	\$0.3	\$0.3
<b>Domestic Programs</b>			
<b>Department of Health and Human Services (HHS)</b>			
HHS: Victims' assistance	P.L. 106-386, §107(b)(1)	\$15.0	\$15.0
HHS: Grants to U.S. citizen and LPR victims of trafficking within U.S.	P.L. 109-164, §202	\$10.0	\$10.0
HHS: Pilot program residential treatment facilities juvenile victims in U.S.	P.L. 109-164, §203	\$5.0	\$5.0
<b>Department of Homeland Security (DHS)</b>			
DHS' Immigration and Customs Enforcement: trafficking investigations	P.L. 109-164, §301 (h)	\$18.0	\$18.0

Authorizations to and Purpose	Original Authorization	P.L. 109-164 (current)	
		FY2006	FY2007
<b>Department of Justice (DOJ)</b>			
DOJ: Grants to strengthen victims services	P.L. 106-386, §107(b)(2)	\$15.0	\$15.0
DOJ: Study on severe forms of trafficking in persons in U.S.	P.L. 109-164, §201(a)(1)(B)(i)	\$2.5	\$2.5
DOJ: Study on sex trafficking in U.S.	P.L. 109-164, §201(a)(1)(B)(ii)	\$2.5	\$2.5
DOJ: Annual trafficking conference	P.L. 109-164, §201(a)(2)	\$1.0	\$1.0
DOJ: grants to state and local law enforcement for anti-trafficking programs	P.L. 109-164, §204	\$25.0	\$25.0
DOJ Federal Bureau of Investigation: trafficking investigations	P.L. 109-164, §301(h)	\$15.0	\$0
<b>Department of Labor (DOL)</b>			
DOL: Expand services to trafficking victims	P.L. 106-386, §107(b)(1)(B)	\$10.0	\$10.0
DOL: Activities to monitor and combat international forced and child labor	P.L. 109-164, §105(b)	\$0	\$0
<b>New Programs in H.R. 3887 and S. 3061</b>			
HHS: Victims assistance for U.S. citizens and Legal Permanent Residents (LPRs)	H.R. 3887, §214; S. 3061, §213	N.A.	N.A.
DOJ: Victims assistance for U.S. citizens and Legal Permanent Residents (LPRs)	H.R. 3887, §214; S. 3061, §213	N.A.	N.A.
DOS: Assistance and protection of refugees and displaced persons from traffickers	H.R. 3887, §104; S. 3061, §103	N.A.	N.A.
DOS: Additional Personnel for the Office to Combat Trafficking	H.R. 3887 §301(1)(b), S. 3061 §301(1)(b)	N.A.	N.A.

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

**Table B-2. Trafficking Victims Protection Act (TVPA) of 2000, as Amended  
Authorizations and Appropriations, FY2001-2007**  
(\$ in millions)

Fiscal Year	Authorizing Public Law	Title	Authorizations (Millions \$)	Appropriations (Millions \$)
2001	106-386 (Part A)	Victims of Trafficking and Violence Protection Act of 2000	\$31.8	N/A
2002	106-386 (Part A)	Victims of Trafficking and Violence Protection Act of 2000	\$63.3	N/A
2003	106-386 (Part A) <sup>a</sup>	Victims of Trafficking and Violence Protection Act of 2000	\$48.3	N/A
2004	108-193	Trafficking Victims Protection Reauthorization Act of 2003	\$105.6	\$101.4
2005			\$105.6	\$114.6
2006	109-164	Trafficking Victims Protection Reauthorization Act of 2005	\$177.3	\$151.9
2007			\$162.3	\$153.1

**Source:** Estimated appropriations levels as calculated by the Office of Management and Budget. FY2007 figures are not yet available. Estimates not collected prior to FY2004.

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

http://wikileaks.org/wiki/CRS-RL34317

## Appendix C. Information on Domestic Grant Programs for TIP Victims

**Table C-1. Authorizations and Appropriations for Grant Programs to Assist Victims of Trafficking in the United States: FY2001-FY2008**

(\$ in millions)

Fiscal Year	Victims Services—DOJ		Office of Refugee Resettlement		DOL
	Authorized	Appropriated	Authorized	Appropriated	Authorized
FY2001	\$5	\$0	\$5	\$5	\$5
FY2002	\$10	\$10	\$10	\$10	\$10
FY2003	N.A.	\$10	N.A.	\$9.9	N.A.
FY2004	\$15	\$10	\$15	\$9.9	\$10
FY2005	\$15	\$10	\$15	\$9.9	\$10
FY2006	\$15	\$9.9	\$15	\$9.8	\$10
FY2007	\$15	\$9.9	\$15	\$9.8	\$10
FY2008	None	\$9.4 <sup>a</sup>	None	\$10	None

**Sources:** P.L. 106-386, P.L. 108-193, P.L. 109-162, P.L. 107-77, P.L. 107-116, P.L. 108-7, P.L. 108-90, P.L. 108-199, P.L. 108-334, P.L. 108-447, P.L. 109-90, P.L. 109-149, P.L. 109-195, P.L. 110-5, P.L. 110-161.

- a. This includes funding for victims services programs under The Victims of Trafficking Act of 2000 P.L. (106-386) and DOJ programs authorized under Trafficking Victims Protection Reauthorization Act of 2005 (P.L. 109-164).

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