

THE TRAFFICKING IN VICTIMS PROTECTION ACT: A Feasibility Assessment

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Summary

The effectiveness of any given public policy is a valid concern. In response to the growing problem of human rights violations, the United States passed the Trafficking in Victims Protection Act of 2000 (TVPA). At that time, trafficking in persons (TIP) for various purposes was gaining attention worldwide. Since the passage of the TVPA, the United States and other countries have been constantly battling this breach of human rights. In 2003 and 2005, the United States Congress reauthorized the TVPA. The purpose of this paper is to evaluate the TVPA using Wayne N. Welsh and Philip W. Harris's guidelines for effective policymaking and to assess the progress that has been made with each subsequent reauthorization. The author concludes that although progress continues to be made in anti-trafficking efforts, significant gains are not likely to result until the TVPA is further refined.

Introduction

Human rights issues are an increasing concern of international human rights policy. In particular, there has been a rise in the number of policies and programs that target human trafficking, despite its being an age-old trade. The increased attention is in part due to its economic implications: it is the fastest growing type of global organized crime.¹ According to the Federal Bureau of Investigation's statistics, approximately 9.5 billion dollars is generated annually from trafficking in persons.² Various policy responses have been aimed at combating the international and domestic problem of trafficking in persons ("TIP"), especially with regards to the sexual exploitation of women and children. One example of a domestic policy enacted to address trafficking is *Public Law*

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¹Heather J. Clawson et al., Needs Assessment for Service Providers and Trafficking Victims (October 2003) (unpublished report, on file with the U.S. Department of Justice).

² U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2006 Report, <http://www.state.gov/g/tip/rls/tiprpt/2006/> (last visited Nov. 17, 2007) [hereinafter Trafficking in Persons Report 2006].

106-386, the Trafficking Victims Protection Act of 2000 (TVPA).³ This important piece of legislation was reauthorized in both 2003 and 2005, and is also known as the Trafficking Victims Protection Reauthorization Act (TVPRA).⁴

The effectiveness and implementation of policies are of widespread concern, both in this country and internationally. According to William P. Hojnacki, “the public policy process in the United States is one of the more confusing aspects of American government and politics.”⁵ In an attempt to elucidate this process, Welsh⁶ and Harris⁷ have proposed seven criteria that they believe aid in effective policymaking: (1) problem analysis, (2) goals and objectives, (3) policy design, (4) action planning, (5) monitoring, (6) evaluation, and (7) reassessment and review.⁸

How well does the Trafficking Victims Protection Act reflect Welsh and Harris’s proposed stages of policy development and analysis? The purpose of this paper is to assess whether this particular policy can effectively be implemented, and whether the TVPA is actually doing what it purports to do, which is to reduce the occurrence of this horrendous phenomenon. This assessment is partially based on the seven criteria outlined by Welsh and Harris in the previous paragraph. The primary focus will be on individuals trafficked for sexual purposes, especially women and children. First, a look at the scope of the problem and a review of the contemporary literature on this subject is provided. Second, some of the international responses to trafficking are briefly outlined. Third, the TVPA is analyzed using Welsh and Harris’s idealized criteria for effective policymaking. Particularly close attention is paid to addressing the various goals and objectives that have been identified in the TVPA. In addition, the author attempts to ascertain whether the implementation of the TVPA is feasible given its policy design. In this section, any evaluations of the TVPA will be addressed. Fourth, particular critiques of the TVPA will be addressed.

³ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103, 114 Stat. 1464, 1469 [hereinafter TVPA of 2000].

⁴ H.R. 2620, 108th Cong., 1st Sess. § 2 (2003); H.R. 972, 109th Cong., 1st Sess. § 2 (2005) (reviewing the progress of the TVPA of 2000 and providing recommendations for additional research and future funding).

⁵ W.P. Hojnacki, *The Public Policy Process in the United States*, in PUBLIC POLICY, CRIME, AND CRIMINAL JUSTICE 5 (B. Hancock & P. Sharp eds., 2000).

⁶ W.N. WELSH & P.W. HARRIS, CRIMINAL JUSTICE POLICY AND PLANNING (Anderson Publishing Company, 1999). Wayne Welsh is a Professor in the Criminal Justice department of Temple University in Philadelphia, Pennsylvania. Philip Harris is an Associate Professor in the same department at Temple University.

⁷ *Id.*

⁸ *Id.*

Finally, any modifications made to the TVPA in its subsequent reauthorizations will be noted.⁹ The author concludes that the TVPA has improved with each subsequent reauthorization. Despite improvements, the overall policy design remains flawed which directly contributes to reducing its effectiveness. The author endeavors to highlight some of the limitations in terms of methodology and will suggest some ways in which a response to trafficking in women and children could possibly be strengthened.

Scope of the Phenomenon

Following the steps outlined by Welsh and Harris, problem analysis—or step one—is essential to effective policymaking. The International Labour Organization approximates that there are 12.3 million people enslaved in some type of involuntary servitude at any given time.¹⁰ Men, women, and children are trafficked for various reasons: domestic work, sweatshop labor, field labor, commercial sexual exploitation, et cetera.¹¹ Sadly, trafficking in some way impacts the overwhelming majority of countries.¹² It is important to correct any misguided notions that this barbaric practice only affects underdeveloped countries; quite to the contrary, developed countries such as the United States, Canada, Great Britain, Italy, Norway, and others are also plagued by this practice.¹³ For instance, according to a study published by Caliber Associates and conducted by Dr. Heather J. Clawson, Kevonne M. Small, Ellen S. Go and Bradley W. Myles, North America was documented as the region of origin for thirty percent of trafficked persons in their sample.¹⁴

One aspect of problem analysis involves creating a suitable definition.¹⁵ With regards to the TVPA of 2000, two definitions of sexual trafficking are at play. First, the term sexual trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial

⁹ The author does not feel it is necessary to analyze the TVPRA of 2003 and TVPRA of 2005 to the same extent as the TVPA 2000, because the basic nature and wording of the TVPA remain unchanged; only significant modifications will be addressed using Welsh and Harris’s criteria.

¹⁰ Trafficking in Persons Report 2006, *supra* note 2.

¹¹ *Id.*

¹² Central Intelligence Agency, CIA World Factbook, <https://www.cia.gov/cia/publications/factbook/> (last visited Nov. 17, 2007).

¹³ Trafficking in Persons Report 2006, *supra* note 2.

¹⁴ Clawson et al., *supra* note 1. (Caliber Associates is a subsidiary of ICF International, which provides consulting services to the private sector and governments around the world on a variety of public policy issues.)

¹⁵ WELSH & HARRIS, *supra* note 6.

sex act.”¹⁶ Second, later in this Act, trafficking in its “severe” form(s) is defined as one “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.”¹⁷

Estimates on how many women and children are trafficked annually remain elusive and the figures fluctuate as data collection methods are refined. In 2000, the U.S. government estimated that between 45,000 and 50,000 women and children are trafficked annually into the United States from various countries around the world.¹⁸ In 2002, the U.S. Government estimated that between 700,000 and four million men, women and children are trafficked each year worldwide; the majority of those trafficked are women and girls.¹⁹ More recent figures provide tighter estimates: approximately 600,000 to 800,000 persons are trafficked internationally each year, with eighty percent suspected of being women and girls and possibly fifty percent being minors.²⁰ However, if domestic trafficking figures were factored into the initial estimate, then the range of trafficking victims would increase; approximately 2,000,000 to 4,000,000 persons are trafficked each year.²¹

The precise number of women and children trafficked domestically and internationally is slowly becoming a more popular topic of research. UNICEF estimates that approximately 1.2 million children are trafficked across international borders each year for various purposes.²² Moreover, the 2006 *Trafficking in Persons Report* claims that 1,000,000 children are exploited by child sex tourism each year.²³ According to studies conducted by researchers at the University of Pennsylvania School of Social Work, one-third of the approximately 45,000 to 50,000 females entering the United States each year are seventeen or younger.²⁴ Once in the United States, women and girls are often

¹⁶ TVPA of 2000, *supra* note 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2002 Report, <http://www.state.gov/g/tip/rls/tiprpt/2002/> (last visited Nov. 17, 2007).

²⁰ U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2004 Report, <http://www.state.gov/g/tip/rls/tiprpt/2004/> (last visited Nov. 17, 2007) [hereinafter Trafficking in Persons Report 2004].

²¹ *Id.*

²² UNICEF: Child Trafficking: Child Protection from Violence, Exploitation and Abuse, at http://www.unicef.org/protection/index_exploitation.html (last visited Nov. 17, 2007).

²³ Trafficking in Persons Report 2006, *supra* note 2.

²⁴ Richard J. Estes & Neil Alan Weiner, The Commercial Sexual Exploitation of Children In the U. S., Canada and Mexico: Full Report (of the U.S. National Study),

forced to work in prostitution, strip clubs/bars, and pornography, or forced to marry.²⁵ The three scenarios that follow are not atypical, and illustrate what awaits many unsuspecting victims upon their arrival to the United States:

- A fourteen-year-old girl was enticed into the United States from Cameroon. She was promised the chance to go to school. Once in the U.S., she was held prisoner in a Maryland residence, subjected to sexual abuse, and made to work as a servant for three years.²⁶
- Several women were brought into the United States from Uzbekistan under the impression there would be legitimate work awaiting them. On their arrival, they were transported to Texas and forced to work in strip clubs.²⁷
- Between 1991 and 2004, members of the Carreto family sex trafficking ring smuggled young women into the United States from Mexico. These women were emotionally and physically abused, and forced to work in brothels in the New York City area.²⁸

In addition to those trafficked into this country, researchers at the University of Pennsylvania have estimated that 100,000 to 300,000 children within the United States are at risk of victimization.²⁹ It is clear that a huge hurdle exists in quantifying the scope of human trafficking for sexual purposes. According to Welsh and Harris, not knowing the scope of the problem decreases the overall effectiveness of public policies enacted to address the issue.³⁰

Literature Review

Another aspect of problem analysis involves collecting and examining the existing research on the topic of interest.³¹ Despite the ambiguous statistics on trafficking rates, the extant research on sexual trafficking has greatly advanced our knowledge of the issue. Academic and government publications highlight

http://www.sp2.upenn.edu/~restes/CSEC_Files/Complete_CSEC_020220.pdf (last visited Nov. 17, 2007).

²⁵ Andrew Cockburn, *21st Century Slaves*, NAT'L GEOGRAPHIC, Sept. 2003, at 16.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *United States v. Carreto* (2005) (The three defendants plead guilty). To read a summary of the case, see

http://www.centerwomenpolicy.org/programs/trafficking/map/map_display.cfm?state=NY (last visited Dec. 4, 2007).

²⁹ Estes & Weiner, *supra* note 24.

³⁰ WELSH & HARRIS, *supra* note 6.

³¹ *Id.*

economic, political, and sociocultural factors that promote trafficking.³² According to the annual *Trafficking in Persons Report* (2003), there are several ways in which women become victims.³³ For example, advertisements in magazines and newspapers target young women who wish to become models or entertainers.³⁴ However, when the women meet with the person or agency listed in the advertisement, they often instead encounter kidnappers who are designated to transport the women to their destinations.³⁵ Also, women often voluntarily travel to foreign countries based on fabricated stories by friends with expectations of finding legitimate work or pursuing an education.³⁶ Once these women reach their destination country, their travel documentation is seized and they are forced to work in brothels or strip clubs in order to repay their debts.³⁷ Finally, in extreme cases, their impoverished families often sell girls or young women to traffickers.³⁸

In a comparative study of trafficking,³⁹ it was found that six background factors linked the majority of the women: (1) poverty; (2) lack of education and/or lack of information about recruitment processes; (3) a history of sexual abuse; (4) pressure from families; (5) aspirations of the women; and (6) alleged

³² See, e.g., JYOTI SANGERA, *IN THE BELLY OF THE BEAST: SEX TRADE, PROSTITUTION, AND GLOBALIZATION* (1997), Discussion paper for the Asia-Pacific Regional Consultation on Prostitution, Bangkok, Thailand; the International Organization for Migration, http://iom.ramdisk.net/iom/artikel.php?menu_id=5; European Commission, http://ec.europa.eu/index_en.htm#; Janice G. Raymond & Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends* (Coalition Against Trafficking in Women, 2001), http://action.web.ca/home/catw/attach/sex_traff_us.pdf (last visited Dec. 4, 2007).

³³ U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2003 Report, <http://www.state.gov/g/tip/rls/tiprpt/2003/> (last visited Nov. 17, 2007) [hereinafter Trafficking in Persons Report 2003].

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ The comparative study, entitled “A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela, and the United States),” was conducted by Janice Raymond, Jean D’Cunha, Patricia Hynes, Zoriada Ramirez Rodriguez, and Aida Santos. Janice Raymond is the Co-Executive Director of the Coalition Against Trafficking in Women. According to the UNIFEM website, <http://www.unifem-eseasia.org/staff/staff.htm>, Jean D’Cunha is the Regional Programme Director of UNIFEM East and Southeast Asia. Patricia Hynes is a Professor in Environmental Health at Boston University. Zoriada Ramirez Rodriguez was the founder of CATW in Latin America and passed away in 2002. Aida Santos is the Project Director of the Philippine Network Against Trafficking in Women.

success stories of other women who had traveled abroad.⁴⁰ It is important to note that “for all women interviewed, poverty was an overriding factor in their background.”⁴¹

Although poverty promotes sexual trafficking, it is often economic factors that directly contribute to increasing rates. In the same study, Raymond cites Russia and Venezuela as prime examples.⁴² For instance, the depression in Russia that began in the 1990s directly influenced trafficking rates.⁴³ Similarly, the fluctuating oil economy accompanied by numerous natural disasters have been cited as reasons for the increased trafficking of women both in and out of Venezuela in 1999.⁴⁴ A recent example of this would be opportunities in trafficking that arose from the 2004 tsunami in affected countries surrounding the Indian Ocean.⁴⁵ Therefore, in all three of the aforementioned cases, the countries were already plagued by extreme poverty and gender inequality; trafficking was exacerbated by economic and political destabilization.⁴⁶

Other research on sexual trafficking focuses on the various coping mechanisms that victims adopt in order to survive. For example, many women turn to drugs and alcohol.⁴⁷ In an ethnographic study of prostitutes one interviewee stated, “I couldn’t cope with doing [prostitution] without a drink...all I look forward to is night, when I can drink.”⁴⁸ Not only is drug addiction a common coping mechanism that victims employ, but drugs are also used as a way to control the women.⁴⁹ One of the interviewees in the study conducted by Raymond reported, “our regular supply [of drugs] came from the mama-san and

⁴⁰ Janice Raymond et al., *A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela, and the United States)*, <http://action.web.ca/home/catw/attach/CATW%20Comparative%20Study%202002.pdf> (Coalition against Trafficking in Women, Jan. 2002).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2005 Report, <http://www.state.gov/g/tip/rls/tiprpt/2005/> (last visited Nov. 17, 2007) [hereinafter Trafficking in Persons Report 2005].

⁴⁶ Raymond, *supra* note 40.

⁴⁷ JULIA O’CONNELL DAVIDSON, *PROSTITUTION, POWER AND FREEDOM* 70 (University of Michigan Press 1999).

⁴⁸ *Id.*

⁴⁹ *Id.*

was added to our debts.”⁵⁰ In addition to the aforementioned techniques, victims of trafficking also rely heavily on one another to cope.⁵¹

However, despite various coping mechanisms employed by women, Raymond and Hughes note that compliance was the most commonly used survival technique.⁵² Traffic victims often live in confinement, and physical and emotional abuse are both common tactics used to control them.⁵³ For instance, one Russian woman who had been trafficked to New York said, “I don’t resist because I saw others mutilated.”⁵⁴ Therefore, in most cases, trafficked women comply with demands out of fear of further emotional and physical abuse.

Although trafficked women rely on one another for emotional support, the literature notes that the traffickers, brothel owners and pimps often force women to participate in violence against other women as a control mechanism.⁵⁵ For instance, in Raymond and Hughes’s survey, one respondent trafficked from Asia reported that she was forced to hold down other women as their trafficker raped them.⁵⁶ Furthermore, exploited women are oftentimes used as watch guards. One interviewee stated that the pimps “kept surveillance over ‘their’ women, using other women to monitor their movements and behavior.”⁵⁷

Not only are some women enlisted for control and surveillance purposes, but they are also involved in the recruiting, transporting, and managing of traffic victims on a daily basis.⁵⁸ For example, Julia O’Connell Davidson, a distinguished researcher who has conducted sociological and policy-related studies in several countries since 1988, reports that in Nigeria the women play a central role in trafficking.⁵⁹ Davidson quotes, “trafficking in Nigeria...centers around a female figure called ‘Mama’ who plays a key role in persuading young women to leave their homes.”⁶⁰ Similarly, in looking at the recruitment of Filipinas, Raymond’s study notes that older women play a key role in the recruitment process.⁶¹ These women return home from abroad and claim to have

⁵⁰ Raymond, *supra* note 40.

⁵¹ DAVIDSON, *supra* note 47, at 70.

⁵² Raymond & Hughes, *supra* note 32.

⁵³ *Id.*

⁵⁴ *Id.* at 87.

⁵⁵ *Id.*

⁵⁶ *Id.* at 63.

⁵⁷ *Id.* at 59.

⁵⁸ *Id.* at 48.

⁵⁹ *Id.*

⁶⁰ DAVIDSON, *supra* note 47, at 59.

⁶¹ Raymond, *supra* note 40.

well-paying jobs.⁶² Alleged success stories are very influential in convincing women to leave their homes.⁶³ However, the recruiters rarely mention that their “work” is prostitution.⁶⁴ For example, one survey respondent said, “How could she lie? She [is] already an old woman.”⁶⁵ Thus, recruitment syndicates often use other women, especially older women, to gain the trust of the victims.

Based on the existing literature, it appears that female traffickers are either former sex workers or victims of trafficking who are trying to get money in order to pay off their “debts.”⁶⁶ For instance, one Ukrainian woman who had been trafficked to the former Yugoslavia was told she would “be paid a lot of money” if she recruited more women.⁶⁷ According to Human Rights Watch of Asia, in Nepal and India female traffickers are called *didis* or *phupu didis* (“paternal aunts”) whereas madams or *mama-sans*, the equivalent of what we call pimps, are referred to as *gharwalis*.⁶⁸ Local activists claim that “the majority of *didis* are returned prostitutes” who are trying to work off their debt bondage.⁶⁹ Occasionally, those who have progressed from prostitutes to brothel keepers or owners will also return home to recruit women.⁷⁰ For example, “Padma,” who operates a brothel in Bombay told Human Rights Watch of Asia that she was a prostitute for twenty years before becoming a *gharwali*.⁷¹

International Policy and Program Responses to Trafficking

The review of the literature highlights that trafficking in persons for commercial sexual exploitation is truly an international problem and additional research is clearly warranted. Despite the shortcomings in the research on trafficking, several countries and international bodies have addressed this issue from a policy standpoint. However, policy responses to human trafficking have been fairly complex for several reasons. Some of the complexities are as follows: (1) The global nature of this issue makes it only that much more difficult to

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 102.

⁶⁶ Minnesota Advocates for Human Rights, *Trafficking in Women: Moldova and Ukraine* (Dec. 2000), <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/TraffickingReport.pdf> (last visited Dec. 4, 2007).

⁶⁷ *Id.* at 20.

⁶⁸ Human Rights Watch/Asia, *Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels* (June 1995), <http://www.hrw.org/reports/1995/India.htm> (last visited Dec. 4, 2007).

⁶⁹ *Id.* at 20.

⁷⁰ *Id.*

⁷¹ *Id.* at 24.

combat; (2) debate arises as to whether women voluntarily subject themselves to commercial sexual exploitation, and how much that should impact policy responses; (3) since trade in humans is linked to organized crime, it is often difficult for law enforcement to locate victims or perpetrators; (4) once victims are located, many do not feel safe enough to cooperate with law enforcement or prosecutors; and (5) because of inherent structural sexism in most countries, this issue has only become an action agenda item in the last few years.

In 1998, the Office of the High Commissioner for Human Rights (OHCHR) took a stand on trafficking in persons.⁷² The primary goal specified by this agency was to prevent trafficking.⁷³ In order to do so, the OHCHR allocated “human and financial resources” to combat trafficking.⁷⁴ In 1999, the Council of Europe Trafficking Prevention Programme for Eastern and Central Europe was established.⁷⁵ The same year, non-governmental organizations (NGOs) and inter-governmental organizations (IGOs) met to discuss policy responses to trafficking at the Consultation on Trafficking and the Global Sex Industry Convention in Geneva.⁷⁶

In 2000, the United Nations held its annual Transnational Organized Crime Convention. In regards to trafficking, the primary goals established at this Convention were to “punish, prevent, [and] suppress trafficking.”⁷⁷ A supplement to this Convention was the Protocol in Trafficking in Persons; this Protocol enacted several provisions: (1) criminalizing trafficking in persons, (2) allocating resources to protect victims of trafficking, (3) establishing programs designed to educate various government and law enforcement agencies on the issue, and (4) stricter border control measures.⁷⁸ The United States signed the Protocol in 2000, but has yet to ratify its most recent update.⁷⁹

⁷² See Office of the United Nations High Commissioner for Human Rights, at <http://www.ohchr.org/english/> (last visited Nov. 17, 2007).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ The European Commission, Trafficking In Women: *The Misery Behind The Fantasy: From Poverty To Sex Slavery*, http://ec.europa.eu/justice_home/news/8mars_en.htm (last visited Dec. 4, 2007).

⁷⁶ See Asia Pacific Forum on Women, Law and Development, <http://www.apwld.org/mainnews.htm> (last visited Nov. 17, 2007).

⁷⁷ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (2000), http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (last visited Dec. 1, 2007).

⁷⁸ *Id.*

⁷⁹ *Id.*

Countries around the world have responded in a multitude of ways to combat trafficking in persons. Between 2003 and 2004, twenty-four countries enacted new laws to fight trafficking in human persons; approximately 8,000 traffickers around the world were prosecuted with a conviction rate of thirty-five percent.⁸⁰ Several examples of international responses to the phenomenon of trafficking are cited in the most recent *Trafficking in Persons Report*, published in 2006.⁸¹ The following is a list of examples from that report:

- The Government of Malawi launched an educational campaign to help those in rural areas identify victims of trafficking and to create a more safe and sensitive environment for victims who come forward.⁸²
- Indonesia established the Scout Movement in West Java. This program endeavored to educate 25,000 students in 116 schools by mid-2006 on the potential dangers that threaten the safety of many young women and girls in the country.⁸³
- In 2005, the first conviction under the 2003 anti-trafficking law was handed down in a Philippines court.⁸⁴
- Volunteers from the National Institute for Children and Family disseminated anti-trafficking information to approximately 24,000 concertgoers in Ecuador.⁸⁵

Increasingly, programs are targeting the demand for services that lead to the exploitation of women and children. In a review of the 2006 *TIP Report* by the Protection Project, the authors state that twenty-two countries have demand reduction programs, and thirty-two countries have extraterritorial laws “that allow the prosecution of their citizens for child sex tourism.”⁸⁶

Trafficking Victims Protection Act of 2000

One outgrowth of the increased focus on trafficking that occurred in the late 1990s was the enactment of the Victims of Trafficking and Violence Protection Act of 2000, or the TVPA for short, which was signed by President

⁸⁰ Trafficking in Persons Report 2006, *supra* note 2.

⁸¹ *Id.*

⁸² *Id.* at 37.

⁸³ *Id.* at 36.

⁸⁴ *Id.* at 37.

⁸⁵ *Id.* at 35.

⁸⁶ The Protection Project, *The Protection Project's Review of the US Department of State Office to Monitor and Combat Trafficking in Persons 2006 Trafficking in Persons Report* 35 (2006), http://www.protectionproject.org/docs/Final_collection.pdf (last visited Nov. 17, 2007).

Bill Clinton on October 28, 2000.⁸⁷ Division A of the TVPA deals specifically with trafficking in persons. According to the Former Secretary of State, Colin Powell, the main goals of the TVPA are “to prevent trafficking in persons, prosecute those who traffic in human misery, and protect those most vulnerable to this transnational crime.”⁸⁸ Therefore, the goals of the TVPA can be separated into two categories: those that target the offenders and those that target the victims. Provisions of this Act targeting perpetrators are designed to prosecute individuals who traffic in persons.⁸⁹ Under this Act, offenders may also be required to pay retribution to their victims.⁹⁰ Provisions that focus on victims call for the allocation of social and financial services and increased protective measures.⁹¹

Unfortunately, the TVPA has many shortcomings. Specifically, this policy fails to meet many of Welsh and Harris’s proposed seven stages of policy development and analysis. For instance, the first stage proposed by these authors involves problem analysis; however, the analysis of this issue provides an unclear and incomplete picture. Although trafficking in persons for sexual exploitation has been identified as a viable social and criminal problem, the review of the literature illustrates that the true magnitude of trafficking remains ambiguous. More research is needed in order to determine the extent of trafficking and to better understand the various roles both victims and offenders play in its complex process. For example, how important are other women in facilitating trafficking? What services are currently available to victims and what services are needed? Most importantly, what can be done to eradicate the root causes of trafficking?

Stakeholder identification is another component of problem analysis.⁹² Several stakeholders can be identified through an examination of the TVPA, such as various government officials and agencies, victim organizations, and communities-at-large. Unfortunately, it appears that certain stakeholders hold contradictory interests. For example, victim service organizations will likely advocate for provisions of policies to be designed in ways that benefit those who have been exploited, whereas government officials will likely push for more punitive provisions. One remedy for this would be to designate victims with a

⁸⁷ Trafficking in Persons Report 2003, *supra* note 33.

⁸⁸ *Id.*

⁸⁹ TVPA of 2000, *supra* note 3.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² According to Welsh and Harris, stakeholders are those with a vested interest in the policy or program.

more active role in future policymaking on this subject matter; this most likely did not occur in the planning stages of the TVPA.

As mentioned above, the TVPA aims to deter potential traffickers with the threat of increased incarceration and the possibility of having to pay restitution to their victims.⁹³ In addition, the TVPA calls for social and financial services to be designated for victims of trafficking.⁹⁴ The aforementioned are what Welsh and Harris refer to as “goals”; they are the “broad aims” of the policy.⁹⁵ For the most part, the goals of this policy are easily identified. However, each of the goals identified in the TVPA should have specific outcome objectives. According to Welsh and Harris, objectives have four inherent components: (1) a time frame, (2) a target population, (3) a result, and (4) a criterion.⁹⁶ In other words, objectives “must always be measurable and specific.”⁹⁷

If one were to stick strictly to Welsh and Harris’s criteria for objectives then it does not appear that any can be located within the body of this policy or in related documents. First, concrete time frames were never established in regards to any of the goals the TVPA aims to achieve.⁹⁸ Second, the target population is not easily identifiable. In fact, depending on the goal in question, the target population could be either the traffickers or the victims. In addition, one of the provisions in this policy mandates economic sanctions against countries that fail to take an active role in combating trafficking.⁹⁹ This is a separate goal and would therefore require separate objectives. Third, no specific change in the problem, to be measured over time, is readily outlined in the TVPA.¹⁰⁰ Finally, because the first three components are not met, the final component—a criterion—or a “standard for measuring successful achievement of the result” cannot be identified.¹⁰¹

The TVPA poorly reflects the first two stages of Welsh and Harris’s guidelines for effective policymaking. For this reason, other weaknesses in the TVPA logically follow and can be directly attributed to the policy design. Due to this policy’s design, its implementation is compromised. The authors argue that for a policy to be well designed it should identify the target population, which was

⁹³ TVPA of 2000, *supra* note 3.

⁹⁴ *Id.*

⁹⁵ WELSH & HARRIS, *supra* note 6.

⁹⁶ *Id.* at 83.

⁹⁷ *Id.*

⁹⁸ Based on the author’s evaluation of the TVPA.

⁹⁹ TVPA of 2000, *supra* note 3.

¹⁰⁰ Based on the author’s evaluation of the TVPA.

¹⁰¹ WELSH & HARRIS, *supra* note 6, at 83.

discussed in the prior paragraph, and the decision authority.¹⁰² In addition, the provisions and procedures must be clearly laid out.¹⁰³ The logic behind this argument is that if there is confusion surrounding the outlined provisions and procedures then it will be nearly impossible for the policy to be appropriately implemented.¹⁰⁴ For example, according to a report in *New York Newsday*, there is a “gap between the federal law against human trafficking and the state court system.”¹⁰⁵ As a result, many foreign victims do not receive adequate financial support.¹⁰⁶ In some cases, this compromises their ability to stay in the United States.¹⁰⁷ In turn, this weakens the State’s case against the traffickers.¹⁰⁸ This illustrates how the ambiguously outlined provisions in the TVPA directly impact its implementation.

Other provisions outlined in the TVPA are similarly ambiguous. For instance, the policy calls for harsher penalties for traffickers. Specifically, the TVPA of 2000 amends the sentencing guidelines by “striking ‘10 years’ and inserting ‘20 years’”¹⁰⁹ In addition, the policy states “If death results from the violation...or if the violation includes kidnapping...aggravated sexual abuse...or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.”¹¹⁰ Finally, the maximum sentence for the sexual trafficking of children is 40 years.¹¹¹ Prior to the enactment of the TVPRA of 2003, consistent data reporting on the number of individuals prosecuted under this Act was not required.¹¹² Below are some examples from the years 2003 and 2004:

- In New Jersey, two Mexican women each received 17-year sentences for forcing Mexican teens to work in brothels.¹¹³
- In Texas, two men each received 5-year sentences for trafficking women from Uzbekistan and forcing them to work in strip clubs and bars.¹¹⁴

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Anthony M. DeStefano, *Confronting Human Trade: Conference to focus on laws, victims*, N.Y. NEWSDAY, Dec. 1, 2003, at A6.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ TVPA of 2000, *supra* note 3.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Trafficking Victims Protection Reauthorization Act of 2003, H.R. 2620 (Jan. 7, 2003), <http://www.state.gov/documents/organization/28225.pdf> (last visited Dec. 4, 2007).

¹¹³ M. Clancy, *Sex Slaves: Victims and law enforcement meet in NY to discuss the problem*, AM NEW YORK, Dec. 2, 2003, at 1.

¹¹⁴ Cockburn, *supra* note 25, at 16.

- In New York, David Perez faces up to 15 years in prison for trafficking women from Mexico to New York, and forcing them to work in Chinatown brothels; however, Perez was acquitted of kidnapping and rape charges.¹¹⁵
- In Maryland, two individuals received sentences of 9 years each for trafficking an adolescent girl from Cameroon, and enslaving her in their home, repeatedly raping her, and forcing her to work as a servant for three years.¹¹⁶
- In Georgia, three men were indicted on charges ranging from sex trafficking to conspiracy. The men used false promises of legitimate employment and personal relationships to entice Mexican women into the United States. Two of the men pleaded guilty; one received a 57-month prison sentence with an additional three years of supervised release, and the other received a 71-month prison sentence with three additional years of supervised release. The third man remains a fugitive.¹¹⁷

These examples illustrate that many traffickers are not being prosecuted to the fullest extent under the TVPA. One reason for this is that the provisions outlined in the TVPA are not specific enough.¹¹⁸ Also, as mentioned previously, many victims fail to receive adequate financial support in order to stay in the country to aid the prosecution of their perpetrators.¹¹⁹

Another provision of the TVPA that is rather ambiguous, and has been highly criticized, is the section that allows the courts to order offenders to pay restitution to their victims.¹²⁰ In some previous cases, where restitution was ordered to the victims, the total amount fails to reflect the debt the women incurred in the process of civilly pursuing the traffickers.¹²¹ In general, the overwhelming majority of the TVPA's provisions appear to be poorly constructed and appear to result in a policy that is not designed to allow for its effective implementation.

Each year, a report is published by the Department of State, the primary function of which is to evaluate the anti-trafficking efforts of other countries. Six

¹¹⁵ DeStefano, *supra* note 105.

¹¹⁶ Cockburn, *supra* note 25, at 16.

¹¹⁷ *United States v. Rojas* (2004) (The two defendants plead guilty). To read a summary of the case, see http://www.usdoj.gov/opa/pr/2004/November/04_crt_763.htm (last visited Dec. 4, 2007).

¹¹⁸ Based on the author's evaluation of the TVPA.

¹¹⁹ DeStefano, *supra* note 105.

¹²⁰ Clawson et al., *supra* note 1.

¹²¹ *Id.* at 5.

annual *Trafficking in Persons Reports* have been published since this policy was enacted in 2000.¹²² Initially, countries were placed on one of three tiers, based on their role in combating trafficking over the previous fiscal year. Tier 1 includes countries that fully comply with the minimum standards outlined in the TVPA.¹²³ Tier 2 includes countries whose governments do not fully comply, but are making a significant effort to comply, with the minimum standards.¹²⁴ Tier 3 includes countries whose governments are making no significant attempt to comply with the minimum standards of the TVPA.¹²⁵ The 2003 reauthorization restructured the tier system and is discussed in the following section.

The minimum standards to reduce the prevalence of this crime are comprised of four components: punishing acts of trafficking, prescribing severe punishments for trafficking that involves “grave crimes,” prescribing punishments that adequately fit the crimes in order to effectively deter traffickers, and “making serious and sustained efforts to eliminate trafficking.”¹²⁶ Each of the four components seems simple in theory; however, each remains much more difficult to put into actual practice. The annual *Trafficking in Persons Reports* indicate that the TVPA is not being implemented in an effective manner.¹²⁷ Additionally, a U.S. Government Accountability Office (GAO) report states that “the explanations for ranking decisions [in the annual trafficking report] are incomplete...and [the] State does not comprehensively describe compliance with the standards, lessening the report’s credibility and usefulness as a diplomatic tool.”¹²⁸

Systematic evaluations, or step six as outlined by Welsh and Harris, are an important part of the policymaking process.¹²⁹ Conducting such an evaluation of the TVPA is a difficult process to undertake, mainly because the first three stages for effective policymaking—problem analysis, defining goals and objectives, and policy design—are so flawed.¹³⁰ The main source of information regarding the

¹²² U.S. Department of State, *Trafficking in Persons Report*, <http://www.state.gov/g/tip/rls/tiprpt/> (last visited Nov. 17, 2007) [hereinafter *Trafficking in Persons Report*].

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ TVPA of 2000, *supra* note 3.

¹²⁷ *Trafficking in Persons Report*, *supra* note 122.

¹²⁸ United States Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad* (July 2006), <http://www.gao.gov/new.items/d06825.pdf> (last visited Nov. 17, 2007) [hereinafter *GAO Human Trafficking*].

¹²⁹ WELSH & HARRIS, *supra* note 6, at 83.

¹³⁰ Based on the author’s evaluation of the TVPA using Welsh and Harris’s guidelines.

TVPA is found in the annual *Trafficking in Persons Reports*.¹³¹ Anti-trafficking efforts on a country-specific basis are obtained from official law enforcement reports, U.S. embassies and consulates, NGOs, the press, and other various sources.¹³² Two additional publications that address the TVPA's effectiveness are the 2006 *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* and *The Protection Project's Review of the US Department of State Office to Monitor and Combat Trafficking in Persons 2006 Trafficking in Persons Report*. All three reports note the limitations involved in implementing the TVPA. These assessments are useful to an extent, but it is clear that a systematic evaluation that addresses each and every component outlined by the TVPA must be conducted, preferably by an independent organization or institution, to address the prospective success or failure of this policy.

The TVPA Reauthorized

The continued response of the United States to the barbaric practice of human trafficking is encouraging, despite some of the inherent flaws in the country's public policies. In 2003, the United States Congress passed the PROTECT Act, which toughened particular laws that endeavor to protect minors.¹³³ "PROTECT" is an acronym for Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today.¹³⁴ Also, as of 2006, twenty-two of the fifty states have passed legislation that seeks to reduce the prevalence of trafficking in humans.¹³⁵ Finally, in 2003 and in 2005, Congress reauthorized the Trafficking Victims Protection Act.¹³⁶ Both of the reauthorizations sought to remedy some of the shortcomings of the original TVPA.

The 2003 reauthorization strengthened the TVPA in several ways. First, it established the Senior Policy Operating Group ("SPOG"), which "shall coordinate activities of Federal departments and agencies regarding policies (including grants

¹³¹ *Trafficking in Persons Report*, *supra* note 122.

¹³² See, e.g., The CIA World Fact Book 2007, <https://www.cia.gov/library/publications/the-world-factbook/index.html>; FBI, <http://www.fbi.gov/>; Human Rights Watch, <http://www.hrw.org/>; New York Newsday, <http://www.newsday.com/>; The New York Times, <http://www.nytimes.com/>.

¹³³ *Trafficking in Persons Report*, *supra* note 122.

¹³⁴ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 [PROTECT Act of 2003], Pub. L. No. 108-21, §151, 117 Stat. 650 (2003), <http://judiciary.senate.gov/special/S151CONF.pdf> (last visited Dec. 4, 2007).

¹³⁵ *Trafficking in Persons Report 2006*, *supra* note 2.

¹³⁶ See ArriveNet Staff, *Bush signs law to continue funding fight against human trafficking* (Dec. 23, 2003), <http://press.arrivenet.com/notforprofit/article.php/113526.html> (last visited Jan. 4, 2008); and Office of the Press Secretary, *President Signs H.R. 972, Trafficking Victims Protection Reauthorization Act* (Jan. 10, 2006), <http://www.whitehouse.gov/news/releases/2006/01/20060110-3.html> (last visited Jan. 4, 2008).

and grant policies) involving the international trafficking in persons.”¹³⁷ The Director of the Office to Monitor and Combat Trafficking is designated chairperson of this group. Second, the TVPRA of 2003 introduces campaigns that target sex tourism.¹³⁸ Third, it includes language that allegedly makes it easier for victims to sue their traffickers in federal district court.¹³⁹ Fourth, it requires additional monitoring of the United States government’s efforts to reduce trafficking.¹⁴⁰ Fifth, it prompts the establishment of indicators that will assist officials and advocates in the identification of trafficking victims.¹⁴¹ Sixth, in order to be considered eligible for Tier 1 status foreign governments must provide the Department of State with data that includes investigation, prosecution, conviction and sentencing figures.¹⁴² This information is reported for the first time in the *2004 Trafficking in Persons Report*.¹⁴³

Finally, a “Special Watch List” was formed.¹⁴⁴ This list includes countries that were promoted to Tier 1 placement over the previous year, countries that transitioned to Tier 2 and, countries currently listed on the Tier 2 level, but with an overall questionable status (termed “Tier 2 Watch List”).¹⁴⁵ Countries placed on the “Watch Lists” will be scrutinized in an interim report that will be submitted to the United States Congress on by February 2007.¹⁴⁶ When the first *Trafficking in Persons Report* was published in 2001, a total of 82 countries were categorized by tier-level: Twelve countries were placed on Tier 1, forty-seven countries were on Tier 2, and twenty-three countries were on Tier 3.¹⁴⁷ In 2006, 149 countries were categorized by tier-level: Twenty-six countries are on Tier 1, seventy-nine are on Tier 2, thirty-two are on the “Tier 2 Watch List,” and twelve are on Tier 3.¹⁴⁸

¹³⁷ Trafficking Victims Protection Reauthorization Act of 2003, H.R. 2620(6)(c)(1) (2003), <http://www.state.gov/documents/organization/28225.pdf> (last visited Dec. 4, 2007) [hereinafter Trafficking Victims Protection Reauthorization Act of 2003].

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Trafficking in Persons Report 2004, *supra* note 20.

¹⁴⁴ See Trafficking Victims Protection Reauthorization Act of 2003, *supra* note 137, at H.R. 2620(6)(e).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2001 Report, <http://www.state.gov/g/tip/rls/tiprpt/2001/> (last visited Nov. 17, 2007).

¹⁴⁸ Trafficking in Persons Report 2006, *supra* note 2.

The TVPRA of 2005 sought to further combat the phenomenon of trafficking in persons.¹⁴⁹ For the first time, the Act appropriates resources for quantifying and targeting domestic cases of trafficking.¹⁵⁰ Previously, domestic trafficking victims were penalized as prostitutes and juvenile delinquents. In addition, the TVPRA of 2005 allocates more funding for state and local governments in order to strengthen victim assistance programs.¹⁵¹ For example, the Department of Health and Human Services is required to open various residential treatment centers for minor victims of domestic trafficking.¹⁵² Also, a guardian *ad litem* program strives to place child victims in safe and caring environments.¹⁵³ Abroad, two pilot programs will offer rehabilitative services to victims, both adult and juvenile.¹⁵⁴

The TVPRA of 2005 notes that women and children are particularly vulnerable in post-conflict situations, and plans to establish post-conflict and humanitarian emergency relief programs.¹⁵⁵ Ideally, this would assist in reducing the supply of victims. In addition, this reauthorization aims to further curb the demand for services that lead to trafficking, such as child sex tourism.¹⁵⁶ For example, it seeks to deter individuals employed by the U.S. federal government who travel abroad to engage in illicit sexual acts by threatening tougher penalties.¹⁵⁷ Moreover, individuals convicted in foreign courts of sexual offense will be listed on local sex offender registries.¹⁵⁸ Finally, investigatory power is granted to the Federal Bureau of Investigation.¹⁵⁹

Controversies and Criticisms

Despite the gains made in anti-trafficking efforts with each of the reauthorizations, several criticisms and controversies surrounding the TVPA's implementation continue to arise. Various critiques have already been discussed in the previous sections. In addition, scholars note that many in the global

¹⁴⁹ Trafficking Victims Protection Reauthorization Act of 2005, H.R. 972 (2005), <http://www.vitalvoices.org/files/docs/TVPRA%202005.pdf> (last visited Dec. 1, 2007) [hereinafter Trafficking Victims Protection Reauthorization Act of 2005].

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

community feel that “with regard to the international standards and minimum thresholds that it sets for other countries, the TVPA [is] culturally imperialistic.”¹⁶⁰ In other words, the United States is accused of placing its cultural and social values on other countries. Furthermore, it is possible that racial or ethnic biases might influence which cases are heavily prosecuted. For instance, some might speculate that the government is more apt to pursue a case against those who have victimized Caucasian women or children.

Another critique is that the TVPA currently lacks an actual “enforcement arm” to execute the three P’s—prevention, prosecution, and protection—that are outlined in the provisions of the policy.¹⁶¹ This shortcoming directly compromises the policy’s implementation.¹⁶² Some initial steps have been taken to remedy this. For example, in 2003, the Department of Homeland Security established the U.S. Immigration and Customs Enforcement (ICE) unit, which was designated to be the primary investigating agency of trafficking violations.¹⁶³ In fiscal year 2005, the ICE opened 188 investigations allegedly involving commercial sexual exploitation and made 146 arrests for trafficking in persons for sexual purposes.¹⁶⁴ In addition, as noted in the previous section, the Federal Bureau of Investigation has been granted investigatory powers where trafficking is concerned.¹⁶⁵ The United States Department of Immigration and Naturalization Services assists in identifying trafficking victims and perpetrators, both domestically and internationally.¹⁶⁶ Currently, the Civil Rights Division and the United States Attorneys’ Offices are responsible for prosecuting violators.¹⁶⁷ The process of enforcing the TVPA is complex and requires the cooperation of various agencies and organizations on multiple levels around the world.

¹⁶⁰ Clawson et al., *supra* note 1.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ See US Immigration and Customs Enforcement: *About Us*, <http://www.ice.gov/about/index.htm> (last visited Jan. 4, 2008); US Immigration and Customs Enforcement: *Public Information: Human Trafficking and Human Smuggling*, <http://www.ice.gov/pi/investigations/publicsafety/humantrafficking.htm#trafficking> (last visited Jan. 4, 2008).

¹⁶⁴ United States Department of Justice, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons Fiscal Year 2005* (Sept. 2006), http://www.usdoj.gov/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf (last visited Dec. 4, 2007) [hereinafter *Assessment of U.S. Government Efforts 2005*].

¹⁶⁵ Trafficking Victims Protection Reauthorization Act of 2005, *supra* note 149.

¹⁶⁶ Please visit the following Website to search for additional information:

<http://www.uscis.gov/portal/site/uscis> (last visited Dec. 4, 2007).

¹⁶⁷ See Annual TIP Reports published by the Department of State.

Another major complaint lodged against the TVPA is that its goals conflict.¹⁶⁸ According to Clawson, the TVPA fails to “balance the human rights of trafficking victims with law enforcement obligations.”¹⁶⁹ In other words, the needs of victims and the desire of the state to prosecute often come into direct conflict. This is particularly apparent with regards to T visas, which were created by the TVPA and may allow a victim to remain in the country.¹⁷⁰ Victims of severe forms of trafficking may apply for the T visa, but one is only issued if the individual is willing to aid in the prosecution of her or his traffickers.¹⁷¹ Due to the psychologically devastating nature of trafficking, many women do not feel comfortable doing this.¹⁷² In addition, many victim services, such as protection from perceived or actual retaliation and mental health care, are inadequate.¹⁷³ As a result, many victims are either deported or not granted other necessary social or financial services.¹⁷⁴ In the 2005 fiscal year, 213 applicants for social or financial service were denied while 112 were approved.¹⁷⁵

International organizations and agencies that combat trafficking have expressed disappointment in the TVPA.¹⁷⁶ Gary Haughen, President of the International Justice Mission, claims that this policy fails to adequately address trafficking due to the “State Department’s willingness to publicly grant passing grades to countries that are the very worst offenders.”¹⁷⁷ Based on Mr. Haughen’s statement, it appears that not only is the United States not rated or assessed on its anti-trafficking efforts by an independent entity, but it also overlooks many countries’ violations of the minimum standards as outlined in the Act. The 2003 *Trafficking in Persons Report* claims to have addressed this issue by threatening to impose harsh economic sanctions against violating countries.¹⁷⁸ However, it remains unclear whether the U.S. Government actually followed through with this threat, or if it was simply useless rhetoric.

¹⁶⁸ Clawson et al., *supra* note 1.

¹⁶⁹ *Id.*

¹⁷⁰ TVPA of 2000, *supra* note 3.

¹⁷¹ Clawson et al., *supra* note 1.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Assessment of U.S. Government Efforts 2005*, *supra* note 164.

¹⁷⁶ *Sex Trafficking Legislation Rendered Useless by State Department Report, Says International Justice Mission*, PR Newswire (June 6, 2002), http://goliath.ecnext.com/coms2/gi_0199-1763020/Sex-Trafficking-Legislation-Rendered-Useless.html#abstract (last visited Jan. 4, 2008).

¹⁷⁷ *Id.*

¹⁷⁸ *Trafficking in Persons Report 2003*, *supra* note 33.

In a 2006 assessment, the authors claim that the following four areas need additional improvement: victim identification and rescue; refined methodology in order to achieve more accurate data on the scope of human trafficking; measurement of the policies and programs instituted to combat trafficking, both domestically and abroad in order to determine their respective success or failure; and efforts to introduce state-level anti-trafficking legislation.¹⁷⁹

In response to this assessment the United States government has taken steps to address each of the aforementioned issues.¹⁸⁰ The Department of Health and Human Services has created a rough screening guide for victim identification.¹⁸¹ The following is a list of indicators that officials and advocates can use to screen for victims of trafficking:

- Inability to move or leave a job
- Signs of being controlled
- Exhibits depression, anxiety, or fear
- Refusal to speak on one's own behalf, or inability to speak the local language
- Lack of personal identification or documentation¹⁸²

If the individual is flagged as a potential victim of trafficking, the Department of Health and Human Services recommends that officials and service workers then engage the person in additional questioning in order to ascertain her situation.¹⁸³

Due to the nature of this type of crime, it is unlikely that the actual number of trafficking victims will ever be totally precise. However, the following example illustrates that the U.S. government is attempting to better determine the scope of trafficking in persons. The National Institute of Justice has started conducting research that “focuses on developing an empirically credible method which, given available data, may be used to generate transparent and reproducible estimates of the prevalence of human trafficking” in this country.¹⁸⁴ Also, the Department of Justice created a subcommittee within SPOG whose sole responsibility is to improve the accuracy and reliability of baseline estimates on the prevalence of trafficking in persons.¹⁸⁵

¹⁷⁹ *Assessment of U.S. Government Efforts 2005*, *supra* note 164.

¹⁸⁰ *Trafficking in Persons Report 2005*, *supra* note 45.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Assessment of U.S. Government Efforts 2005*, *supra* note 164.

¹⁸⁵ *See Trafficking Victims Protection Reauthorization Act of 2003*, *supra* note 137.

Measuring the relative success or failure of any given anti-trafficking program or policy is especially difficult, primarily because of the incongruity between the estimated prevalence of trafficking and the actual number of identified victims. One recommendation was for officials and service workers to provide self-assessments of their programs and projects.¹⁸⁶ This has obvious limitations. Examining data on services rendered and the number of victims served is another way in which anti-trafficking programs and projects are to be evaluated.¹⁸⁷ Again, this could pose problems in terms of reliability since most of the data will be self-reported. Finally, funding has been allocated for the development of “performance indicators” that would gauge the relative success or failure of a given program.¹⁸⁸ Based on the knowledge about policy planning that is provided by Welsh and Harris, it is clear that much more “actionable research” is needed in this area.

Within the United States, twenty-two states have passed legislation that seeks to reduce trafficking in persons, and seven additional states are considering such legislation.¹⁸⁹ States that have enacted such statutes are Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, South Carolina, Texas, and Washington.¹⁹⁰ Overall, many scholars, service workers, victim advocates, and officials have severely critiqued the TVPA.¹⁹¹ Various controversies and debates about how to properly implement the policy continue to arise as a result of its poor design.¹⁹²

¹⁸⁶ See *Assessment of U.S. Government Efforts 2005*, *supra* note 164.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Amy Farrell, *State Human Trafficking Legislation* (Dec. 2006), http://www.princeton.edu/prior/events/conferences/past_events/conference_39.html_1/pub_2_43.pdf (last visited Dec. 4, 2007).

¹⁹⁰ *Id.*

¹⁹¹ See, e.g., Clawson et al., *supra* note 1 (“culturally imperialistic”); GAO *Human Trafficking*, *supra* note 128 (“the explanations for ranking decisions [in the annual trafficking report] are incomplete...and [the] State does not comprehensively describe compliance with the standards, lessening the report’s credibility and usefulness as a diplomatic tool”); Raymond et al., *supra* note 40 (Not enough focus on root causes or factors that lead to victimization in the first place); Whitney Shinkle, *Protecting Trafficking Victims: Inadequate Measures?*, 5 (Aug. 2007), at <http://isim.georgetown.edu/Publications/TVPRA.pdf> (last visited Jan. 4, 2008) (“... there remain a number of victims whose experiences are not clearly accounted for by the laws. These victims might include those who remain ineligible because their cases fall into grey areas...”).

¹⁹² See, e.g., Clawson et al., *supra* note 1 (The problem of lack of enforcement limits the implementation of the TVPA/TVPRA.); Françoise Girard, *Sexuality Policy Watch: Global Implications of U.S. Domestic and International Policies on Sexuality* 29-31 (June 2004), http://www.sxpolitics.org/mambo452/index.php?option=com_docman&task=doc_view&gid=14 (last visited Jan. 4, 2008) (Definitions of sex trafficking are ambiguous and this, in turn, has led to

Future Implications and Suggestions

The feasibility assessment of the TVPA that is provided in this article, albeit rudimentary, illustrates a handful of the many shortcomings that plague this policy. None of the seven steps outlined by Welsh and Harris are adequately met. Primarily, it is clear that the issue of methodology needs to be addressed, and that proper steps need to be taken in order to systematically evaluate the content, design, and effectiveness of the TVPA. However, due to the existing limitations of this policy it is difficult to establish what would constitute a more refined data collection technique. Moreover, due to the covert nature of trafficking itself certain limitations on any evaluation will result. In other words, standard types of methodology used to assess the effectiveness of other policies may not be useful with regards to the TVPA.

To reiterate, in order to improve the feasibility of the TVPA the extent of the problem first needs to be addressed. For this, one might use cross-sectional nonprobability sampling.¹⁹³ This allows researchers to look specifically at a particular group in the population. Obtaining a random sample, or even a systematic random sample, is not possible in a study such as this because databases with contact information for trafficked women and women who operate brothels do not exist. For this reason, among others, trafficked women and active brothels can be extremely difficult to locate. Additionally, even if located many

moralistic and political debates about whether women who voluntarily work in the sex industry are victims in need of rescuing.); Donna M. Hughes, *Looking Beneath the Surface: A response to Washington Post's attack on the anti-trafficking movement in the U.S.*, National Review Online (Oct. 1, 2007), at <http://article.nationalreview.com/?q=ZTk0OTFjYzQ1MmFjNTA1YmU0YjkxZDYxMTZkMjBjY2Y=> (last visited Jan. 4, 2008) (The validity of the estimates of the number of foreign victims of trafficking is under fire, as are the methods used to calculate those very estimates.); Jennifer Friedlin, *Debate Roars Over Anti-Trafficking Funds*, Women's E-news (Apr. 16, 2004), at <http://www.womensenews.org/article.cfm/dyn/aid/1792> (last visited Jan. 4, 2008) (The Director of the Initiative Against Trafficking in Persons at the International Human Rights Laws Group in the District of Columbia, Ann Jordan, argues that not enough is being done to combat the "core issues that are really tough...such as the socio-economic status of women, particularly in countries where the economies are collapsed and governments support the migration of their people to support the domestic economy..."); Lisa Katayama, *Sex Trafficking: Zero Tolerance*, MOTHER JONES (May 4, 2005), http://www.motherjones.com/news/dailymojo/2005/05/sex_trafficking.html (last visited Jan. 4, 2008) (The battle over which groups are worthy of receiving monetary assistance is laden with the political, moralistic, and religious views of conservatives. USAID has taken the stand that "organizations which advocate or support the legalization of prostitution are not appropriate partners for USAID anti-trafficking grants or contracts.").

¹⁹³ A cross-sectional study includes data gathered from one point in time. A nonprobability sample is one for which not everyone from the population has a chance at being selected.

women might not be able or willing to participate.¹⁹⁴ Ideally, by using a method of sampling such as cross-sectional nonprobability sampling, there will be a snowball effect in which more subjects are located. In order to increase the probability of success with this endeavor, it is paramount that law enforcement officials from both the federal *and* local levels participate. However, even using this type of methodology, there will be questions regarding the data in terms of reliability and validity.

Another key step in analyzing the problem involves adequately assessing the environment in which it occurs.¹⁹⁵ Welsh and Harris refer to this as conducting a “systems analysis.”¹⁹⁶ In the case of TIP, or trafficking in persons, this would involve looking at each locale independently and assessing how each country “may create, contribute to or maintain the problem.”¹⁹⁷ A few of the steps in this process include, but are not limited to, the following: Determining the roles of the government agencies in relation to trafficking, determining the role of the private sector, assessing the offender population, and evaluating the accessibility of information on the subject matter. The next step would be to see what changes could then be made in order to effectively ameliorate the problem.

Hopefully, by conducting a more thorough problem analysis, this would allow for the provisions (“what is to be done”) and the procedures (“the steps that must be taken”) of the TVPA to be adequately strengthened.¹⁹⁸ In other words, the provisions must be more clearly outlined and the procedures necessary to carry out these provisions must be explicitly stated. For instance, the interventions and/or services that are to be provided to the victims of trafficking, or in response to the offenders, must be explicated to the point that they are almost literally spelled out. Logically, this obsession to detail is in part intended to remove as much ambiguity from the policy as is humanly possible. Following from this, the less ambiguous a policy is then the more effective it stands to be. Unfortunately, until these steps are taken the overarching shortcomings that exist in this policy cannot be remedied.

Conclusion

¹⁹⁴ Kari Lydersen, *Women and Children First: The Economics of Sex Trafficking* (Apr. 15, 2002), LIP MAGAZINE, at http://www.lipmagazine.org/articles/featlydersen_170.shtml (last visited Jan. 4, 2008).

¹⁹⁵ WELSH & HARRIS, *supra* note 6, at 83.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 235. (For a thorough set of guidelines on how to conduct a systems analysis please refer to Chapter 2 of this source).

¹⁹⁸ *Id.* at 119.

In conclusion, this and other evaluations of the TVPA expose its many inherent flaws. This policy fails to meet the majority of the seven criteria that Welsh and Harris established as necessary for effective policy development. The developmental shortcomings are glaringly apparent in the early stages of problem analysis. Moreover, no clear or concise outcome objectives can be identified. Also, the provisions are poorly outlined, thus directly compromising the implementation of the TVPA. Finally, many controversies continue to surround the implementation of this policy, despite its reauthorizations. For all of these reasons, an evaluation of the TVPA will be difficult to conduct, and many results will only serve to highlight the limitations already mentioned in this paper.

Despite the slow progress the United States is making in terms of actively combating trafficking in persons, especially with regards to persons trafficked for sexually exploitative purposes, we are headed in the right direction and should continue to have hope. The critiques of the TVPA serve as a useful tool to guide future policies on trafficking. Although it will take time, and this type of crime will never be entirely eradicated, the shortcomings of the TVPA can be sufficiently improved.