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INCONSISTENT TRAFFICKING OBLIGATIONS AND HOW GUYANA GOT CAUGHT IN THE MIDDLE

INTRODUCTION

Human trafficking is one of the greatest human rights issues facing the world today.¹ Trafficking refers to the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having the control over another person, for the purpose of exploitation.”² Coined “present-day slavery,” human trafficking presents a severe problem globally.³ By comparing today’s practices of trafficking to the atrocities of the Trans-Atlantic Slave Trade, advocates hope to bring this human rights issue to the forefront.⁴

1 See *Top 10 Business & Human Rights Issues*, INST. FOR HUMAN RIGHTS AND BUS., <https://www.ihrb.org/library/top-10/top-ten-issues-in-2015> (last visited Dec. 26, 2017); see also Michelle A. Clark, *Human Trafficking Casts Shadow on Globalization*, YALE GLOB. ONLINE (Apr. 23, 2013), <http://yaleglobal.yale.edu/content/human-trafficking-casts-shadow-globalization> (“The problem is so extensive that every country in the world can be considered to be a country of origin, transit or destination”) [hereinafter “Clark”]; and see CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., RL3320, *TRAFFICKING IN PERSONS IN LATIN AMERICA AND THE CARIBBEAN 1* (2016), <https://fas.org/sgp/crs/row/RL33200.pdf> [hereinafter “SEELKE”].

2 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter “Palermo Protocol (2000)”], <http://www.osce.org/odihr/19223?download=true>. Put more simply, trafficking is a pervasive modality of servitude that operates to transfer persons internationally and domestically for the purposes of forced labor such as, sexual exploitation, forced marriage, domestic servitude, and many other activities. U.N. OFFICE ON DRUGS & CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 60* (2009), http://www.unodc.org/documents/Global_Report_on_TIP.pdf [hereinafter UNODC GLOBAL REPORT (2009)]. In the United States, men, women and children are trafficked into the country from all over the world. Trafficking occurs not only internationally and trans-continently or cross-border, but it also presents domestically within the country. *Id.* See also Devin Brewer, *Globalization and Human Trafficking*, TOPICAL RES. DIGEST: HUM. RTS. AND HUM. TRAFFICKING, at 46, <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/Globalization.pdf> (last visited Dec. 26, 2017) [hereinafter “Brewer”]. In the United States, men, women and children are trafficked into the country from all over the world. Trafficking occurs not only internationally and trans-continently or cross-border, but it also presents domestically within the country.

3 UNODC GLOBAL REPORT (2009), *supra* note 2, at 6; see also Brewer, *supra* note 2.

4 The Trans-Atlantic Slave Trade, occurring between the 15th century until the end of the 19th

The globalization seen through colonization and the Trans-Atlantic Slave Trade has enabled human trafficking to exist at the level at which it does today.⁵ It is estimated that approximately 20.9 million people have been involved or victimized by forced labor or trafficking practices.⁶ The phenomenon of human trafficking, as we understand it today was first brought to the attention of the world in the 1990s, at a time when traffickers were able to take advantage of “transparent borders,” increased modes of communication, and “political and economic upheaval.”⁷ These conditions lead to the displacement and migration of large groups of people.⁸ As the world increasingly models itself around a “global community” and a “global economy,” the voluntary movement of peoples has increased and so too has the involuntary and coerced movements of people.⁹

The economic incentives of trafficking also contribute to its persistence. Today, human trafficking occurs virtually everywhere in the world.¹⁰ It crosses borders when victims move between source,¹¹ transit¹² and

century, was responsible for the forced migration of anywhere between twelve to fifteen million people from Africa to the Western Hemisphere. *UN Marks Day of Remembrance with Calls to end Modern Slavery*, UNITED NATIONS NEWS CTR. (Mar. 25, 2015), <http://www.un.org/apps/news/story.asp?NewsID=50420>. The slave trade not only led to the violent overseas transportation of millions of Africans, but also contributed to the deaths of many more. *Id.* Both practices are truly atrocious examples of the forcible use of human capital, and both can be broken down beyond their most abhorrent features to the fundamental issue of supply and demand. Brewer, *supra* note 2. See Kamala Kempadoo, *The War on Human Trafficking in the Caribbean*, RACE & CLASS, Mar. 31, 2006, at 79 (referring to the effect of the Trans-Atlantic slave trade in the Caribbean and relating it to human trafficking in the region) [hereinafter “Kempadoo”].

⁵ See generally Brewer, *supra* note 2.

⁶ See *The Facts*, THE POLARIS PROJECT, <https://polarisproject.org/human-trafficking/facts> (last visited Feb. 10, 2017) (stating that International Labor Organization estimates “20.9 million victims of human trafficking globally”). But see Brewer, *supra* note 2 (stating that the number submitted by the International Labor Organization was 2.4 billion in 2008).

The discrepancy in trafficking numbers is, in part, because the practice of trafficking in humans continues to operate unchecked throughout the world. UNODC GLOBAL REPORT (2009), *supra* note 2, at 40.

⁷ Clark, *supra* note 1.

⁸ Clark, *supra* note 1.

⁹ See generally Brewer, *supra* note 2; see also Elizabeth Thomas-Hope *infra* notes 98 and 107 (describing migration versus trafficking).

¹⁰ Clark, *supra* note 1.

¹¹ “[A] source or origin country is a country where traffickers commonly find and recruit women and girls for their operations.” *Trafficking Routes*, THE ADVOCATES FOR HUMAN RIGHTS, http://www.stopvaw.org/trafficking_routes (last visited Dec. 26, 2017).

¹² Transit refers to countries that are “intermediary.” *Id.* “Transit countries are chosen for the geographical location and are usually characterized by weak border controls, proximity to destination countries, corruption of immigration officials, or affiliation with organized crime groups that are involved in trafficking.” *Id.*

destination¹³ countries.¹⁴ Human trafficking operates on a system of supply and demand, made possible by the inequalities and vulnerabilities which exist between successful and unsuccessful countries in the world market.¹⁵ As there are high profits (150-billion-dollars annually),¹⁶ and relatively few arrests and convictions,¹⁷ traffickers have little incentive to leave this business. Trafficking is a clear example of how globalization, which is inextricably linked to the world economy, has served to increase the prevalence of systems of subjugation and exploitation through slavery.¹⁸

Source countries and destination countries are equally culpable for the

13 “Destination countries are the last link in the human trafficking chain. These countries receive trafficking victims and are generally more economically prosperous than origin countries. Destination countries can support a large commercial sex industry or a forced labor industry . . .” *Id.*

14 Clark, *supra* note 1 (“Primary countries of demand include Western Europe, North America and parts of the Middle East and Southeast Asia.”).

15 Brewer, *supra* note 2, at 46-47. It is necessary to acknowledge that not all trafficking is due to economic inequality between countries, as there is a large number of vulnerable people who are trafficked and exploited domestically. However, there is a prevailing ideology that many victims who fall prey to traffickers are those who are of vulnerable populations who attempt to leave their home countries for the promise of upward economic mobility in destination countries. The isolation and vulnerability of these victims helps contribute to them being targeted for trafficking. *See* Clark, *supra* note 1 (discussing the profile of some female victims of trafficking); *see also* Comparison, *infra* note 186 (detailing how source and destination countries map onto Tier 1-3 country designations); *see also* TIP Report (2016), *infra* note 18 (discussing vulnerable populations).

16 Charles Graeber, *The Man Who Lit the Dark Web: Data-mining tools are helping cops bust open online human trafficking*, POPULAR SCIENCE (Aug. 30, 2016), <http://www.popsoci.com/man-who-lit-dark-web#page-8>. *Cf.* Stevie J. Swanson, *Slavery Then and Now: The Trans-Atlantic Slave Trade and Modern Day Human Trafficking: What Can We Learn from Our Past?*, 11 FL. A&M U. L. REV. 127, 129 (2015) (stating that the human trafficking industry generates thirty-two billion dollars each year).

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Due to the criminal, secretive nature of human trafficking, victims are often hidden in brothels, homes, and businesses. Moreover, law enforcement, social workers, healthcare professionals, and other authorities rarely encounter victims of human trafficking, both because they are frequently unaware of how to identify potential victims and because victims are intentionally kept out of sight. Even if victims do come into contact with law enforcement or social services, they are usually reluctant to ask of help, partly as a result of psychological coercion but also because they fear retribution from the trafficker.

Loring Jones et al., *Globalization and Human Trafficking*, 34 J. OF SOC. & SOC. WELFARE 107, 109 (2007), <http://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=3252&context=jssw>.

18 *See* Brewer *supra* note 2; *see also* Jones et al., *supra* note 17, at 108 (describing human trafficking as the “dark sides of globalization”); *and see* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 8 (2016), <https://www.state.gov/documents/organization/258876.pdf> [hereinafter, “TIP Report (2016)”].

[A] common factor across all forms of modern slavery is the victims’ vulnerability to exploitation. Systemic social, cultural, and economic policies or practices may marginalize or discriminate against individuals and groups because they are poor, are intellectually or physically disabled, or because of their gender or ethnicity . . . Traffickers exploit these disadvantages. They prey on those who lack security and opportunity, coerce or deceive them to gain control, and then profit from their compelled service.

Id.

persistence of trafficking.¹⁹ If the demand for vulnerable populations disappears in destination countries, traffickers in supply countries will no longer be incentivized to continue trafficking practices; similarly, if suppliers are impeded from providing victims, traffickers in destination countries will have to look elsewhere or will become obsolete. A recognition of this transactional relationship seems to be absent from the main anti-trafficking legislative and enforcement schemes promulgated by both the U.N. and the United States.²⁰ This Note will first analyze the mechanisms behind the enforcement of international trafficking laws and agreements which have, to a large extent, been disseminated by the United Nations and the United States. Specifically, this Note seeks to demonstrate how the use of sanctions by the United States, enacted in an effort to make adherence to international anti-trafficking norms compulsory, creates unpredictable standards for compliance and simultaneously disadvantages source countries.²¹ This Note will then look to anti-trafficking compliance in the Caribbean and specifically Guyana, to show why source and transition countries continue to struggle to meet international anti-trafficking goals. It will further demonstrate why the current legal framework, the enforcement of the Palermo Protocol through the Trafficking in Victims Protection Act, is not effective, and in fact undermines the goal of international collaboration.

II. HUMAN TRAFFICKING LAWS AND COMPLIANCE

Both the United Nations and the United States of America have codified clear regulations for the criminalization and suppression of human trafficking.²² Although many countries have been working towards

19 See Clark, *supra* note 1; see also Majeed A. Rahman, *Human Trafficking in the era of Globalization: The case of Trafficking in the Global Market Economy*, 2 *TRANSCIENCE J.*, no. 1, 2011, at 54, 58 (2011), https://www2.hu-berlin.de/transcience/Vol2_Issue1_2011_54_71_Glossary.pdf (“The 2005 US Department of State Report projected that human trafficking is one the fastest growing organized crimes after arms and drug trade.”). “On the supply side . . . social, economic as well as political realities in source countries make the trafficking in persons easy . . . both ‘structural’ and proximal’ factors in the home countries have contributed in fostering the movement of people from the source, to the destination countries.” *Id.* at 61. See Brewer, *supra* note 2, at 47 (suggesting that “the lesser developed countries of the world have become the factories and workshops for the developed countries,” providing the conditions necessary for trafficking to flourish in these countries); see also Jones et al., *supra* note 17, at 113 (“Countries that are prone to political unrest, or have weak or corrupt infrastructures combined with widespread poverty, are breeding grounds for international criminal networks.”).

20 The United States, a self-labeled, Tier 1 country is a destination country to which 15,000 to 50,000 victims are trafficked each year. Jones et al., *supra* note 17.

21 See generally Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 *MICH. J. INT’L L.* 437 (2006) [hereinafter “Chuang”].

22 See generally Lindsey King, *International Law and Human Trafficking*, *TOPICAL RES. DIGEST:*

compliance with these regulations, more needs to be done to eradicate human trafficking.²³ The following protocols, though a step toward the goal of ending human trafficking, are incomplete in their application.

A. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons*

The Protocol to Prevent, Suppress and Punish Trafficking in Persons,²⁴ (“Palermo Protocol” or simply “Protocol”), was adopted in 2000 by the United Nations and became effective in 2003.²⁵ At its adoption, the Protocol was commended for providing the international community with the tools and language necessary to finally combat and hopefully end human trafficking.²⁶ Perhaps the greatest achievement of the Palermo Protocol is that it provided nations²⁷ with a definition for human trafficking.²⁸ This definition helps nations to better recognize human trafficking, but the Palermo Protocol is not without flaws.²⁹

The Protocol instructs state parties³⁰ to create procedures to criminalize persons who participate in human trafficking.³¹ The Protocol “requires a

HUM. RTS. AND HUM. TRAFFICKING, at 88, <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf> (last visited Dec. 26, 2017); see also Palermo Protocol (2000), *supra* note 2.

23 See generally Laura L. Shoaps, Comment, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 LEWIS & CLARK L. REV. 931 (2013) [hereinafter “Shoaps”]; see also Chuang, *supra* note 21.

24 PALERMO PROTOCOL (2000), *supra* note 2.

25 Shoaps, *supra* note 23, at 932-33. The Palermo Protocol was brought to action in conjunction with the United Nations Office on Drugs and Crime, United Nations Convention Against Transnational Organized Crime. The Protocol works in cooperation with two other protocols from the convention. Each was intended to target a specific aspect of transnational crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, all of which fall under the Palermo Protocol. For the purposes of this Note, the Palermo Protocol shall only refer to the Protocol to Prevent, Suppress and Punish Trafficking in Persons. *Id.*

26 *Id.* at 932.

27 There are 154 nation-state parties to the Palermo Protocol, yet a third of the member states to the United Nations did not ratify the Protocol until 2009. Shoaps, *supra* note 23, at 935. See also G.A. Res. ¶ 319, U.N. Doc. A/RES/55/25 (Nov. 15, 2000), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en [hereinafter “Treaty Series”].

28 See Palermo Protocol (2000), *supra* note 2. For a definition of human trafficking, see Brewer, *supra* note 2.

29 In this Note I will argue that the Palermo Protocol’s failure to address proper enforcement mechanisms and the resulting reliance on United States sanctions negatively and disproportionately impacts Caribbean States that must address source country vulnerabilities or the vulnerabilities associated with being a combination (source-transit or source-destination country).

30 State Parties refers to Nations that have adopted the Palermo Protocol.

31 Palermo Protocol (2000), *supra* note 2, at art. 5.

comprehensive international approach in countries of origin, transit and destination” and calls for the implementation of “measures to prevent such trafficking.”³² The Protocol further requires that “[e]ach State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences [actions of human trafficking], when committed internationally.”³³ These offences are to include, the perpetration of human trafficking,³⁴ aiding in the commission of human trafficking,³⁵ and inducing others to participate in human trafficking.³⁶

The Palermo Protocol emphasizes holding accountable those perpetrating, participating, and directing others to perpetrate or participate in human trafficking.³⁷ Yet the actual mechanics of how state parties should implement its directives in their respective states remains unclear. In relevant parts, Article 9 of the Palermo Protocol gives extensive yet vague prevention and cooperation guidelines for party states to follow. The Protocol calls for “comprehensive policies, programmes and other measures”³⁸ to “prevent and combat trafficking in persons; and [t]o protect victims . . . from re-victimization.”³⁹ The United Nations intended this to be achieved through various platforms including coordination between research institutions, the media, and Non-Governmental Organizations.⁴⁰ Most specifically, in Article 9(3) and (4), the Protocol calls for States parties to “take or strengthen measures through *bilateral or multilateral cooperation*”⁴¹ in an attempt to protect vulnerable populations and

32 Palermo Protocol (2000), *supra* note 2, at Preamble.

33 Palermo Protocol (2000), *supra* note 2, at art. 5, ¶ 1.

34 *Id.* at art. 5, ¶ 2(a) (“Subject to basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article.”).

35 *Id.* at art. 5, ¶ 2(b) (“Participating as an accomplice in an offence established in accordance with paragraph 1 of this article.”).

36 *Id.* at art. 5, ¶ 2(c) (“Organizing or directing other persons to commit an offense established in accordance with paragraph 1 of this article.”).

37 The Protocol, like the TVPA, focuses predominately on what is called “the three P’s” to punish traffickers, prevent trafficking, and provide restorative services to trafficking victims. Jennifer A.L. Sheldon-Sherman, *The Missing “P”: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 PENN ST. L. REV. 443, 445 (2012).

38 Palermo Protocol (2000), *supra* note 2, at art. 9, ¶ 1.

39 *Id.* at art. 9, ¶ 1(a)-(b).

40 “States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.” *Id.* at art. 9, ¶ 2. “Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.” *Id.* at art. 9, ¶ 3.

41 *Id.* at art. 9, ¶ 4 (“States Parties shall take or strengthen measures, including through *bilateral or multilateral cooperation*, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”) (emphasis added).

“discourage the demand that fosters all forms of exploitation of persons.”⁴²

The Palermo Protocol, while expansive in its approach, lacks specific, strategic steps for countries to take, providing only a generalized framework for the multilateralism or international cooperation that the United Nations desires.⁴³ While recognizing that the problem of trafficking needs to be addressed in both source⁴⁴ and destination countries⁴⁵ simultaneously, the Palermo Protocol fails to provide guidelines for the specific trafficking problems facing individual countries as sources or destinations for trafficking.⁴⁶ The absence of concrete guidelines contributes to the difficulty countries face when attempting to adequately comply with the aims of the Palermo Protocol.⁴⁷

B. Compliance With The Palermo Protocol.

At its inception, the Palermo Protocol was seen as an overwhelming success in its ability to bring concerns about human trafficking to the forefront of international law.⁴⁸ Early in the process, however, the Palermo Protocol was only seen as a stepping stone toward the universal adoption and implementation of anti-human trafficking laws.⁴⁹ As previously discussed, the Protocol successfully established a widely accepted and sufficiently broad definition of trafficking.⁵⁰ Nevertheless, that definition has been critiqued as “unworkable when applied to nation state legislation” for its lack of uniformity in prosecutorial systems throughout the world.⁵¹

42 *Id.* at art. 9, ¶ 5 (“States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”) (emphasis added).

43 *See generally id.* at art. 9.

44 While not directly mentioned in the text of the treaty, source countries are represented in the policy in its acknowledgement that the international community needs to protect the vulnerable. *Id.* at art. 9, ¶ 4.

45 Destination countries are implicated in the policy framework as it expresses that there is a need to disincentivize demand. *Id.* at art. 9, ¶ 5.

46 Shoaps, *supra* note 23, at 935 (“International agreements can only go so far, and ultimately nation-state legislation plays an integral role in the battle against human trafficking.”).

47 A 2009 United Nations Office on Drugs and Crime (UNODC) report suggested that as of 2007 and 2008, 40% of countries in the report had not recorded a single conviction in human trafficking. UNODC GLOBAL REPORT (2009), *supra* note 2, at 40.

48 Shoaps, *supra* note 23, at 946.

49 A European Union delegate was quoted saying that “[h]aving arrived at satisfactory texts is one thing, but it is quite another to ensure their entry into force and implementation. In this respect, we shall still have several important bridges to cross.” *Id.* at 946-47. This indicates that the implementation phase of the protocol is incredibly important to its overall success.

50 Palermo Protocol (2000), *supra* note 2 (defining human trafficking).

51 Shoaps, *supra* note 23, at 950.

One critique of the Palermo Protocol's applicability to individual nation-states comes from its failure to recognize that the efforts, which had been made to combat human trafficking in the time predating the Protocol, were state-centered in their approach. Because the Protocol focused on international norms, and did not adequately address how preexisting enforcement systems directed at domestic trafficking ought to be included within the international framework, it did not act as a complete enough measure to eradicate trafficking.⁵² The Protocol reflects the belief that "globalization has largely facilitated human trafficking while accordingly serving to impede counter-trafficking efforts" and therefore, "[s]tate-centered approaches to combat trafficking are proving obsolete and futile since human trafficking knows no state boundaries."⁵³

Those who support a global response believe the ineffectiveness of human trafficking efforts following the enactment of the Palermo Protocol persist because of its slow ratification in nation states, and because the Protocol was not given the "teeth" necessary for an easy or effective implementation.⁵⁴ The Trafficking Victims Prevention Act's⁵⁵ system of sanctions is believed to be the necessary encouragement required for nation states to enact and enforce laws addressing human trafficking.⁵⁶ Yet, there are understandable concerns about situating the United States as the sole authority for the enforcement of international trafficking law.⁵⁷

C. *Trafficking in Victims Protection Act and the Sanctions System*

In 2000, just before the UN General Assembly adopted the Palermo Protocol, the United States adopted the Trafficking Victims Protection Act (TVPA).⁵⁸ TVPA is the United States' distinct contribution to the

52 *Id.* ("The Protocol succeeded in creating a definition of trafficking that was broad enough to address most international trafficking and some domestic trafficking, although the implementation of this definition in various nation states required a more narrow domestic definition of trafficking than what the Protocol offered.")

53 Brewer, *supra* note 2, at 47.

54 See Shoaps, *supra* note 23, at 960.

55 See TVPA (2000), *infra* note 58.

56 Shoaps, *supra* note 23, at 959 ("While the TVPA is by no means a flawless mechanism for handling the problem of human trafficking, its sanctions regime has the potential to encourage nation states throughout the world to enact their own domestic laws addressing human trafficking.")

57

In assuming such extraterritorial reach, the United States has proclaimed itself global sheriff on trafficking. This raises grave concerns both as a matter of international law and as a matter of global anti-trafficking strategy. A powerful but blunt weapon for influencing the behavior of other states, unilateral sanctions have long been criticized as inconsistent with international law and ineffective in practice. The TVPA sanctions regime invites more of the same criticism.

Chuang, *supra* note 21, at 439.

58 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464

international attempt to combat human trafficking⁵⁹ by criminalizing trafficking in the United States and serving as a mechanism to curb trafficking internationally.⁶⁰ TVPA sets the minimum standards for the elimination of trafficking and imposes a sanctions system to hold nations accountable to these standards.⁶¹

Similarly to the Palermo Protocol, the TVPA minimum standards provide that nations ought to punish severe forms of trafficking.⁶² The TVPA specifically states that “the knowing commission of any act of sex trafficking”⁶³ needs to be met in a sufficiently severe manner that “adequately reflects the heinous nature of the offense,”⁶⁴ and calls for “[t]he government of the country [to] make serious and sustained efforts to eliminate severe forms of trafficking in persons.”⁶⁵ The TVPA creates a tiered system, ranking the effectiveness of countries that receive economic assistance through the Foreign Assistance Act of 1961⁶⁶ on their efforts to comply with these minimum standards.⁶⁷ The tier system, as set out by the TVPA and expanded upon in the annual Trafficking in Persons Report (“TIP Report”),⁶⁸ ranks nations in one of four tiers which indicate the extent

(codified as amended at 22 U.S.C. §§ 7101-7110), <https://www.state.gov/documents/organization/10492.pdf> [hereinafter “TVPA (2000)”. See *supra* note 57 and accompanying text.

59 Shoaps, *supra* note 23.

60 Shoaps, *supra* note 23, at 968.

61 See TVPA (2000), *supra* note 58, §111; see also Shoaps, *supra* note 23, at 935.

62 TVPA (2000), *supra* note 58, §108(a)(1) (“The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.”).

63 This includes sex trafficking by “force, fraud, coercion, or in which the victim of sex trafficking is a child . . . or of trafficking which includes rape or kidnapping or which causes a death” *Id.* §108(a)(2).

64 *Id.* §108(a)(3) (“For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.”).

65 *Id.* §108(a)(4).

66 Act for International Development of 1961 (Foreign Assistance Act of 1961), Pub. L. No. 87-195, 75 Stat. 424, 435 (codified as amended at 22 U.S.C. § 2311) [hereinafter “FAA”]. See TVPA (2000), *supra* note 58, §109 (calling for the FAA to be amended in TVPA §134).

AUTHORIZATION. – The President is authorized to provide assistance to foreign countries directly, or through nongovernmental and multilateral organizations, for programs, projects, and activities designed to meet the minimum standards for the elimination of trafficking (as defined in section 103 of the Trafficking Victims Protection Act of 2000), including – (1) the drafting of laws to prohibit and punish acts of trafficking; (2) the investigation and prosecution of traffickers; (3) the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and (4) the expansion of exchange programs and international visitor programs for governmental and nongovernmental personnel to combat trafficking.

Id. §134(a).

67 See TIP Report (2016), *supra* note 18, at 36; see also, TVPA (2000), *supra* note 58, at §108.

68 The annual Trafficking in Persons report is a publication of the results of the United States’ inquiries into how well member nations are complying with the minimum standards of the TVPA. See

of that nation's government action or inaction toward eliminating trafficking.⁶⁹ Rather than basing the results “on the size of the country's problem, . . . [the TVPA looks to] the extent of the governments' efforts measured against the TVPA's minimum standards for the elimination of human trafficking.”⁷⁰

The TVPA's sanction system operates through the United States' policy of refusing to give foreign assistance funds that are not based on humanitarian or trade-related needs to governments of certain nations that fail to meet minimum standards to combat human trafficking.⁷¹ The United States' State Department assesses “any country with 100 or more trafficked persons per year,” compiling its findings into a report.⁷² These countries are categorized into four different tiers and the results of these inquiries are then published in the TIP Report.⁷³

- (1) Tier 1 “indicates that a government has acknowledged the existence of human trafficking, has made efforts to address the

TIP Report (2016), *supra* note 18, at 2-3.

69 TIP Report (2016), *supra* note 18, at 36.

70 *Id.* (describing these minimum standards as “generally consistent with the Palermo Protocol”).

71 TVPA (2000), *supra* note 58, §110 (“It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that - (1) does not comply with minimum standards for the elimination of trafficking; and (2) is not making significant efforts to bring itself into compliance with such standards.”). The Tier system, which is implemented by the Office to Monitor and Combat Trafficking in Persons (OMCTP), looks to the following factors to make determinations:

[E]nactment of laws prohibiting severe forms of trafficking . . . and provision of criminal punishments for trafficking offenses; criminal penalties prescribed for human trafficking offenses with a maximum of at least four years' deprivation of liberty, or a more severe penalty; implementation of human trafficking laws through vigorous prosecution . . . and sentencing of offenders; proactive victim identification measures . . . government funding and partnerships with NGOs to provide victims [services] . . . victim protection efforts . . . the extent to which a government ensures victims are provided with legal and other assistance . . . voluntary repatriation and reintegration of victims; government measures to prevent trafficking . . . [and] government efforts to reduce the demand for commercial sex acts and international sex tourism.

TIP Report (2016), *supra* note 18, at 36-37.

72 Chuang, *supra* note 21, at 452.

73 *Id.* (“The State Department bases its country assessments on data compiled from a wide range of sources, including U.S. embassies, foreign government officials, international organizations, nongovernmental organizations (NGOs), individuals, and published reports.”). Countries are assessed by the U.S. minimum standards as follows:

- (1) The government should prohibit and punish acts of severe forms of trafficking in persons.
- (2) For sex trafficking involving force, fraud, coercion, or in which the victim is a child, or of trafficking which involves rape, kidnapping or death, the government should prescribe punishment commensurate with that for grave crimes.
- (3) For the knowing commission of any act of a severe form of trafficking, the government should prescribe punishment that is stringent enough to deter and that reflects the heinous nature of the offense.
- (4) The government should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

Id. at 453.

problem, and meets the TVPA's minimum standards."⁷⁴

- (2) Tier 2 indicates the "governments of countries that do not fully meet the TVPA's minimum standards."⁷⁵
- (3) The Tier 2 Watch-List is reserved for governments who would ordinarily be given a Tier 2 designation but "the *absolute number* of victims of severe forms of trafficking is very significant or is significantly increasing."⁷⁶ The watch-list is often reserved for those countries in which there is a failure by the government to show new or renewed efforts to combat trafficking from previous years.⁷⁷
- (4) Tier 3 is reserved for the "governments of countries that do not fully meet the TVPA's minimum standards and are not making significant efforts to do so."⁷⁸ In addition, countries that receive a Tier 3 ranking must become compliant, with the help of TIP, within 90 days or else they risk being sanctioned.⁷⁹ Sanctions in this case mean that in addition to the withholding of aid from the United States, "the U.S. President reserves the authority to direct the heads of international financial institutions. . . to deny nonhumanitarian, non-trade-related and non-human rights-related assistance."⁸⁰

According to the 2016 TIP Report, 149 states fell into the Tier 2 category or below, and twenty-seven of those were Tier 3 status.⁸¹ Only thirty-six

74 TIP Report (2016), *supra* note 18, at 36.

75 TIP Report (2016), *supra* note 18, at 39.

76 *Id.* The Reauthorization of the TVPA in 2008 resulted in a Congressional requirement that those countries which received Tier 2 Watch-list status for more than two consecutive years without improvement would be downgraded to Tier 3. In practice, however, this has not necessarily been the case. Shoaps, *supra* note 23, at 962.

77 TIP Report (2016), *supra* note 18, at 39. A government can demonstrate their commitment to combat trafficking and desire to extricate themselves from the Watch List by increasing the number of investigations they conduct, increasing the number of prosecutions brought, increasing convictions in trafficking crimes, and lowering the rates of complicity by government officials in facilitating trafficking (less corruption). *Id.*

78 TIP Report (2016), *supra* note 18, at 39. The analysis for determining Tier 3 status often takes into consideration whether the country is a source, transit, or destination country and the level of government corruption that has allowed trafficking to continue. *Id.*

79 Chuang, *supra* note 21, at 454.

80 Shoaps, *supra* note 23, at 962. These funding restrictions also include funding for government employees and citizens to participate in education and cultural exchange programs. *Id.* The TVPA allows for sanctions to be waived if necessary to avoid adverse effects on vulnerable populations. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 14 (2011).

81 TIP Report (2016), *supra* note 18, at 56. Thirty-six countries were ranked at Tier 1. Seventy-eight countries were given a Tier 2 ranking. *Id.* Forty-four countries were put on the Tier 2 Watch List.

countries met the Tier 1 standards, representing approximately twenty-percent of all member nations.⁸² This suggests that only twenty-percent of participating nations have made sufficient progress toward Tier 1 status.⁸³

Tier 1 status does not indicate the eradication of the problem of human trafficking, only that there has been a continuous demonstration of “progress.”⁸⁴ Progress is a fluid term and the tier system is continually evolving, making the standard flexible. Countries are required to show a certain level of improvement in their efforts to combat trafficking each year to maintain their pre-existing tier ranking.⁸⁵ A higher level of improvement would be necessary for upward mobility.⁸⁶

Despite the necessary function that the TVPA’s sanction and tier system serves, its application is not entirely effective or consistent with the Palermo Protocol.⁸⁷ Many of TVPA’s standards are vague and fluid in that they do not set out clear goals for nation states to attain a certain Tier Status.⁸⁸ This lack of predictability has been further compounded by the fact that the TVPA’s definition of sex trafficking conflicts with that of the Palermo Protocol by broadly including all prostitution as involuntary sex work.⁸⁹ Additionally, the fluidity and vagueness of the Tier System’s standards has disproportionately benefited economically rich destination countries by granting them Tier 1 status, while the gap between Tier 1 and lower tier countries only appears to widen, placing the sole responsibility for human

Id. Twenty-seven countries remain at the Tier 3 ranking, and 3 countries were deemed special cases. *Id.* The TIP report contains state parties that are not parties to the Palermo Protocol, these are, Bangladesh, Bhutan, Brunei, Comoros, Republic of Congo, Fiji, Iran, Japan, Korea, Maldives, Marshall Islands, Nepal, Pakistan, Palau, Papua New Guinea, the Solomon Islands, Somalia, South Sudan, Tonga, Uganda, and Yemen. *Id.* at 19.

⁸² TIP Report (2016), *supra* note 18, at 56.

⁸³ *Id.*

⁸⁴ TIP Report (2016), *supra* note 18, at 36.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Chuang, *supra* note 21, at 439-40.

⁸⁸ See *supra* notes 73-86 and accompanying text (discussing the TVPA Tier system).

⁸⁹ See generally Kempadoo, *supra* note 4, at 80-82.

The TVPA ‘war on human trafficking’ gathers strength from the UN Trafficking Protocol that supplements the 2000 Convention on Transnational Organised Crime. However, it differs from the UN Protocol in that it views ‘prostitution and any related activities, including pimping, pandering, and/or maintaining brothels as contributing to the phenomenon of trafficking in persons.’

Kempadoo, *supra* note 4, at 82; In 2008 the TVPA was amended through the adoption of the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA 2008) Pub. L. No: 110-457. In Section 106 of the amendment, the TVPRA 2008 adds a requirement that a government “has made serious and sustained efforts to reduce the demand for commercial sex acts; and participation in international sex tourism by nationals of the country.” See Pub. L. 110-457 §106(2)(D).

See also Chuang, *supra* note 21, at 442-43 (discussing how the Palermo Protocol drafting sessions became a battle ground surrounding multiple issues, one of which was “whether trafficking should encompass ‘voluntary’ prostitution”).

trafficking on Tier 3 nation states rather than addressing it through a collaborative framework.⁹⁰

III. TRAFFICKING IN THE CARIBBEAN AND GUYANA

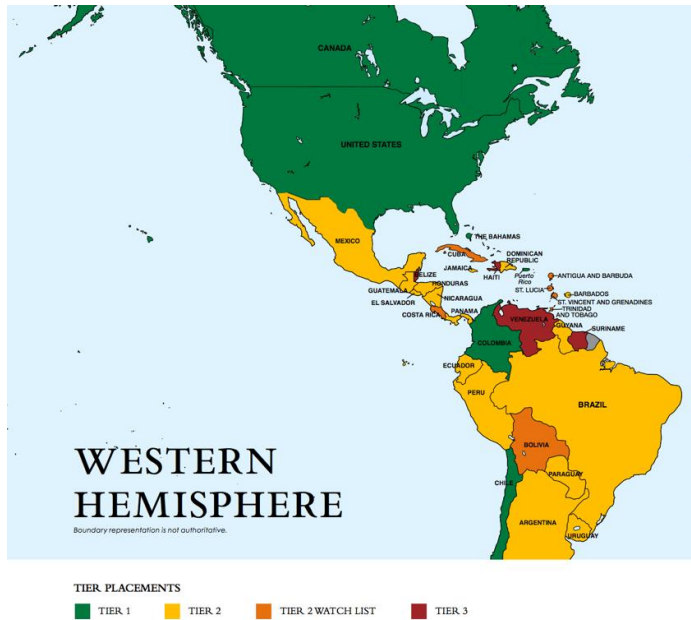


Figure 1 TIP Report (2016), *supra* note 18, at 62.

Following the implementation of the TVPA, the Caribbean's efforts to combat human trafficking have been brought into new focus.⁹¹ With support from international organizations such as the International Organization of Migration ("IOM") and regional organizations such as Organization of American States, the Association of Caribbean States and the Caribbean Community ("CARICOM"), there have been efforts to make combating human trafficking in the area a priority.⁹² This initiative is particularly important because Caribbean countries, including Guyana,⁹³ have struggled

⁹⁰ See *infra* note 186 and accompanying text and images; see also Chuang, *supra* note 21, at 446-47, 482-88 (suggesting that tier rank can be politically motivated rather than solely based on anti-trafficking initiatives taken by member states). Chuang suggests that the use of unilateral sanctions would undermine international cooperation. Chuang, *supra* note 21, at 456-57.

⁹¹ See SEELKE, *supra* note 1, at 8-13 (stating that NGO efforts to combat human trafficking in the region date back to 1994).

⁹² Kempadoo, *supra* note 4, at 80-81. "(IOM's) efforts to combat TIP began in 1994 . . . [and] include efforts to increase public awareness of human trafficking through education and information campaigns, build government capabilities to identify and assist victims." SEELKE, *supra* note 1, at 12.

⁹³ Guyana is considered to be part of the "Greater Caribbean." See John Packer & Richard Scott,

to comply with the TVPA given their vulnerability to trafficking.⁹⁴

Focusing on the application of international human trafficking law in the Caribbean and Guyana is enlightening for two reasons. Firstly, the region's history and memory of the illegal transportation of peoples through the Trans-Atlantic Slave Trade continues to be a salient backdrop for human trafficking in the Caribbean and has produced uniquely vulnerable groups susceptible to trafficking in the region.⁹⁵ Secondly, because countries in the Caribbean are typically source, transit, and destination countries, the region faces a unique challenge in reaching TVPA compliance.⁹⁶ Although the response to trafficking sanctions have been varied in Caribbean countries, Guyana has been one of the most compliant countries with the guidelines given by the United States.⁹⁷

A. *The Caribbean*

Introduction, in INTRA-CARIBBEAN MIGRATION AND THE CONFLICT NEXUS XIX, XIX-XX (Taryn Lesser et al. eds., 2006).

⁹⁴ TIP Report (2016), *supra* note 18, at 74. Most Caribbean countries are ranked Tier 2 or below. SEELKE, *supra* note 1, at 17-18.

⁹⁵ "What is likened to the Atlantic slave trade turns out, in the Caribbean region, to be akin to the conditions that followed slavery. It is the similarities with contracted and bonded labour in the nineteenth-century Caribbean that are pertinent for discussions today." Kempadoo, *supra* note 4, at 83.

⁹⁶ Caribbean countries are often labeled as source and transit countries but are also destination countries for many victims as well. *See* TIP Report (2016), *supra* note 18, at 85-86, 90-92, 156-58, 189-92, 216-17, 320-25, 372-73 (discussing the Bahamas, Barbados, the Dominican Republic, Guyana, Haiti, Jamaica, St. Lucia, St. Maarten, St. Vincent and the Grenadines, and Trinidad and Tobago).

Cuba has been consistently placed in Tier 3 and is therefore continuously on the list of sanctioned countries. The Cuban authorities, it is claimed in the annual US Trafficking in Persons (TIP) reports, 'do not admit to the existence of a problem of human trafficking'.

Guyana, Suriname, Haiti, the Dominican Republic, Belize and Jamaica have also all been ranked negatively at various times.

Kempadoo, *supra* note 4, at 80.

Cuba, however, has been moved to the Tier 2 Watch List in 2015 and 2016. TIP Report (2016), *supra* note 18, at 56.

⁹⁷ Kempadoo, *supra* note 4, at 80 ("Responses to such rankings [tier 2 watch-list and tier 3] have varied from defiance to full complicity . . . [with] [t]he Guyanese government [proving] to be one of the most compliant with the US's demands.").

“Human smuggling,⁹⁸ especially the trafficking of women and children, is one of the most sordid features of population movements in the contemporary Caribbean.”⁹⁹ The Caribbean is uniquely impacted by trafficking for many reasons. Factors contributing to trafficking in this region include its dependence on tourism,¹⁰⁰ the geography of the region,¹⁰¹ as well as social and economic factors such as poverty, unemployment, and membership in an indigenous group.¹⁰² Specifically, its isolated location, tourism, and sex tourism have contributed to trafficking problems in the area.¹⁰³

The Caribbean’s “culture of migration”¹⁰⁴ has also contributed to the trafficking problems in the region.¹⁰⁵ This mobile mentality has permeated the area since “the emancipation of slaves in the Caribbean,”¹⁰⁶ leading to an unintended consequence – the creation of a population of migrants.¹⁰⁷

98 Sometimes also referred to as voluntary trafficking. Elizabeth Thomas-Hope, *Human Trafficking in the Context of Caribbean Labor Migration*, in INTRA-CARIBBEAN MIGRATION AND THE CONFLICT NEXUS 130, 131 (Taryn Lesser et al. eds., 2006) (“Persons who are voluntarily trafficked include those motivated by a desire to migrate at almost any cost, as well as those motivated by a desire to engage in a particular type of activity or employment for which recruitment by traffickers provides such an opportunity.”) [hereinafter “Thomas-Hope”]. The TVPA typically does not address this type of trafficking but may in some instances equate voluntary trafficking with human trafficking. It is certainly possible for someone who was initially voluntarily trafficked to become a victim of involuntary trafficking. *Id.* at 133.

99 Tom Durbin & Jill St. George, *Human Trafficking in Barbados: Achievements and Continuing Hurdles*, 38 J. OF EASTERN CARIBBEAN STUD. 126, 128 (2013), http://crimeobservatory.bz/docstation/com_docstation/24/human_trafficking_in_barbados.pdf. Many of the statistics on how much human trafficking has impacted the Caribbean also include Latin America due to the small size of the areas in question, which is often due to the overall interconnectivity of trafficking routes in the area. *Id.* The NGO, “Free the Slaves” estimated that over 1.3 million people have been victims of trafficking or enslaved in Latin America and the Caribbean. *Id.* In 2009, the International Labor Organization (ILO) estimated that a minimum of 250,000 people were engaged in forced labor or sexual exploitation in the area due to human trafficking. *Id.*

100 *Id.* at 129. “In general, states tend to have a high dependence on one or two income sources, with the predominant source of income being tourism. In the Caribbean . . . one quarter of all employment . . . is held in the tourism sector.” *Id.* “[U]nemployment leads to a potentially higher number of victims. In addition, it is reported that a growing amount of tourism in the Caribbean is sex tourism. The Dutch Antilles and the Dominican Republic are widely reported as being ‘sex tourism’ destinations, along with Brazil and Colombia in Latin America.” *Id.*

101 *Id.* at 129-30.

102 *Id.* at 130-31.

103 *Id.* at 129-31.

104 Thomas-Hope, *supra* note 98, at 131.

105 *Id.* “[T]he Caribbean demonstrates the particular ways in which globalization and international capital impacts human movement.” *Id.* at 134.

106 *Id.* at 131.

107 *Id.* Migration, for many in the region, is seen as a social good and a means of upward mobility. Many participate in legal and productive migration programs in job sectors such as agriculture, nursing, and education, where source and destination countries have maintained open communication with one another. *Id.* at 134-36.

“[G]enerations of people [have come] to rely on migration as the means of circumventing the constraints of a deeply stratified societal system [due, in part, to the slave trade] and the limitations of small size and poor economies.”¹⁰⁸ Movement in the Caribbean is synonymous with escaping entrenched social norms, resulting in an eagerness of people within the Caribbean to move to a new location that is offering opportunity.¹⁰⁹ This eagerness can also exploit those in the most vulnerable situations, exposing them to the risk of trafficking,¹¹⁰ with the most vulnerable populations in the Caribbean being women and girls.¹¹¹

One problem with the application of United States TVPA standards to trafficking in the Caribbean, specifically sex trafficking, stems from the fact that the TVPA does not map directly onto the Palermo Protocol.¹¹² The TVPA “views ‘prostitution and any related activities, including pimping, pandering, and/or maintaining brothels as contributing to the phenomenon of trafficking in persons.’”¹¹³ The U.N. definition, in contrast, recognizes two types of prostitution.¹¹⁴ One is a result of free choice and the other is a result of coercion.¹¹⁵ The distinction between these policies is incredibly meaningful in the Caribbean because it demonstrates how the definitional difference put forth by the United States is overbroad in its application to countries with legalized sex work, equating those countries with others that are complicit with human trafficking¹¹⁶ instead of acknowledging the

¹⁰⁸ *Id.* at 131.

¹⁰⁹ *Id.* at 131-32.

¹¹⁰ *Id.*

¹¹¹ See Kempadoo, *supra* note 4, at 81. “Individual risk factors include poverty, unemployment, membership in an indigenous group, illiteracy, a history of physical or sexual abuse, homelessness, drug use, and gang membership.” SEELKE, *supra* note 1, at 4. “While trafficking for forced labor is a serious problem in Latin America and the Caribbean, trafficking for sexual exploitation has, until recently, been perceived as a more widespread and pressing regional problem. Most victims are trafficked for prostitution, but others are used for pornography and stripping.” *Id.* at 5.

¹¹² Kempadoo, *supra* note 4, at 82.

¹¹³ *Id.*

¹¹⁴ SEELKE, *supra* note 1, at 14.

¹¹⁵ *Id.*

The current U.N. definition of TIP assumes that there are at least two different types of prostitution, one of which is the result of free choice to participate in the prostitution business and one that is the result of coercion, vulnerability, deception, or other pressures. Of these, only the latter type is considered TIP. . . Several groups in the United States have sought to redefine TIP to include all prostitution, but many countries have rejected those attempts.

SEELKE, *supra* note 1, at 14-15.

Prostitution or other forms of sex work have been legalized in Aruba, Costa Rica, Curacao, and the Dominican Republic. Matt Meltzer, *A World Map of Countries That Have Legal Prostitution*, THRILLIST (Oct. 20, 2014), <https://www.thrillist.com/travel/nation/legal-prostitution-world-map-of-every-country-that-has-legal-prostitution>.

¹¹⁶ “[T]he equation of trafficking with prostitution in the trafficking discourse renders sexual labour as coerced labour and, as such, misrepresents sexual agency.” Kempadoo, *supra* note 4, at 83.

existence of consensual sexual markets.¹¹⁷

B. Guyana's Trafficking Landscape: Success and Failures

Guyana is no exception to the TIP Report conclusion for the Caribbean's treatment of human trafficking. More needs to be done in the Caribbean to comply with the TVPA.¹¹⁸ While Guyana has been one of the most compliant countries in its attempt to conform to the guidelines set forth by the TVPA,¹¹⁹ its history has not been without marked failure.¹²⁰

Guyana is a unique locale for human trafficking in the Caribbean as it is both "a source and destination country for men, women, and children subjected to sex trafficking and forced labor."¹²¹ The trafficking that occurs within Guyana involves not only domestic trafficking routes but also cross-border routes.¹²² "Women and children from Guyana,"¹²³ Panama,¹²⁴ Peru,¹²⁵ Bolivia,¹²⁶ Suriname,¹²⁷ and Venezuela¹²⁸ are trafficked to mining areas in the urban and interior areas of Guyana,¹²⁹ while people from

117 *Id.* at 83-84.

118 See TIP Report (2016), *supra* note 18, at 189.

119 Kempadoo, *supra* note 4, at 80; see also TIP Report (2016), *supra* note 18, at 85-86, 90-92, 156-58, 189-92, 216-17, 320-25, 372-73 (discussing the Bahamas, Barbados, the Dominican Republic, Guyana, Haiti, Jamaica, St. Lucia, St. Maarten, St. Vincent and the Grenadines, and Trinidad and Tobago).

120 See TIP Report (2016), *supra* note 18, at 189-90; *US Condemns Guyana Again on Human Trafficking*, KAIETEUR NEWS (June 21, 2014), <https://www.kaieteurnews.com/2014/06/21/us-condemns-guyana-again-on-human-trafficking/> [hereinafter "KAIETEUR"]; *Guyana Government Going After Human Traffickers With A Vengeance*, CARIBBEAN 360 (Jan. 20, 2017), <http://www.caribbean360.com/news/guyana-government-going-human-traffickers-vengeance> [hereinafter "CARIBBEAN 360"]; *Guyana Launches New Initiative to Deal With Trafficking in Persons*, THE DAILY OBSERVER (Jan. 18, 2017), <https://antiguaobserver.com/guyana-launches-new-initive-to-deal-with-trafficking-in-persons/> [hereinafter "THE DAILY OBSERVER"].

121 TIP Report (2016), *supra* note 18, at 189.

122 *Id.* "Whether about Cuba, Jamaica, Belize, Suriname or Guyana, the US Department of State claims that the main problem is either internal or cross-border movements of women and girls for the 'purpose of sexual exploitation.'" Kempadoo, *supra* note 4, at 81.

123 See TIP Report (2016), *supra* note 18, at 189; see also SafeTV2 Headline News, *Trafficking in Person Reported Cases are High in Guyana*, YOUTUBE (July 22, 2016), <https://www.youtube.com/watch?v=2ZgHgnYhqJk> [hereinafter "Reported Cases are High in Guyana (2016)"].

124 TIP Report (2016), *supra* note 18, at 298 ("Panamanian women are vulnerable to sex trafficking in other countries, including The Bahamas and Guyana.").

125 *Id.* at 35 ("Peruvian girls are subjected to sex trafficking in mining and logging areas in Peru, and women and girls are subjected to sex trafficking near gold mines in Suriname and Guyana.").

126 *Id.*

127 *Id.* at 189; see also Reported Cases are High in Guyana (2016), *supra* note 123.

128 TIP Report (2016), *supra* note 18, at 189.

129 *Id.*

Guyana are trafficked to Antigua and Barbuda,¹³⁰ Barbados,¹³¹ Jamaica,¹³² Suriname,¹³³ and Trinidad and Tobago.^{134,135}

Like the Caribbean, Guyana is attractive to traffickers due to its isolating landscape and intense social stratification.¹³⁶ Through the memory of the Trans-Atlantic Slave Trade, Guyana has suffered from a long history of slavery followed by indentured servitude,¹³⁷ which has created many ethnic and economically disadvantaged minorities who are vulnerable to trafficking.¹³⁸ Additionally, Guyana's location as a bridge between South America and Caribbean countries makes it a location of increased migration, with Guyana predominately sending its migrant populations to other Caribbean countries.¹³⁹ Its landscape of urban areas on the coast, sparsely inhabited forest, and mining inlands create zones of minimal government oversight.¹⁴⁰ When viewed together, these conditions make

130 *Id.* at 74 (“Antigua and Barbuda is a destination and transit country for men, women, and children subjected to sex trafficking and forced labor. Legal and undocumented immigrants from the Caribbean region, notably from Jamaica, Guyana, Haiti, and the Dominican Republic, as well as from Southeast Asia, are most vulnerable to trafficking.”).

131 *Id.* at 90 (“Barbados is a source and destination country for men, women, and children subjected to sex trafficking and forced labor. Authorities and NGOs report foreign women have been forced into prostitution in Barbados. Foreigners are subjected to forced labor in Barbados, most notably in domestic service, agriculture, and construction.”).

132 *Id.* at 189. “Legal and undocumented immigrants from Jamaica and Guyana are especially vulnerable to trafficking.” *Id.* at 90.

133 *Id.* 189.

134

Trinidad and Tobago is a destination, transit, and source country for adults and children subjected to sex trafficking and forced labor. Women and girls from the Dominican Republic, Guyana, Venezuela, and Colombia are subjected to sex trafficking in brothels and clubs, often lured by offers of legitimate employment . . . [e]conomic migrants from the Caribbean region, especially Guyana, and from Asia, in particular those lacking legal status, are vulnerable to forced labor in domestic service and the retail sector.

Id. at 372.

135 “‘Traffickers are attracted to Guyana’s interior mining communities where there is limited government control, but Guyanese and foreign nationals are also vulnerable to trafficking in urban centers and elsewhere in the country’. . . Guyanese nationals are also subjected to human trafficking in other countries in the Caribbean region.” KAIETEUR, *supra* note 120.

136 “The opportunistic use of Guyana’s indigenous hinterland communities in the debate on human trafficking deepens the distance between the peoples of the coast and the hinterland, further entrenching the geo-racialised relations of dominance within the country.” Kempadoo, *supra* note 4, at 83.

137 For more information, see *The Arrival of East Indians in Guyana*, HORIZONS (Feb. 8, 2017), <http://www.horizonsguyana.com/the-arrival-of-east-indians-in-guyana/>.

138 “[I]ndividuals around the world suffer extreme hardship or violence, experience discrimination, or face social marginalization . . . [and] human traffickers take advantage of such circumstances. Indeed, exploitation appears even more likely when a confluence of such circumstances besets particular communities. The cumulative effects can make certain populations . . . especially vulnerable to human trafficking.” TIP Report (2016), *supra* note 18, at 20.

139 Berta Fernández-Alfaro & Gerard Pascua, *Migration Management Challenges in the Caribbean*, in INTRA-CARIBBEAN MIGRATION AND THE CONFLICT NEXUS 70, 70 (Taryn Lesser et al. eds., 2006).

140 See Ashley Garrett & Amy Mahoney, *Scope and Nature of the Trafficking Phenomenon: A*

Guyana particularly vulnerable to trafficking.

In 2003, “[y]oung Amerindian women found working in sex trade far from their home communities were held up as victims and a national effort to save them was designed,”¹⁴¹ demonstrating that the government of Guyana had begun taking steps to combat human trafficking.¹⁴² Following this effort, Guyana became one of the first countries in the region to follow the United States’ example by enacting domestic laws against trafficking in persons,¹⁴³ and on September 14, 2004, Guyana acceded to the Palermo Protocol.¹⁴⁴ These efforts to conform to international norms moved Guyana up from its Tier 3 status, and Guyana became a “deserving nation” in the eyes of the State Department.¹⁴⁵

However, in the years since 2003, Guyana has had a relationship fraught with success and failure in regards to the TVPA tier system,¹⁴⁶ fluctuating between Tier 2 and the Tier 2 Watch List, but never achieving Tier 1 status.¹⁴⁷ Guyana has not always represented the desired progress in the eyes

Regional Perspective, in INTRA-CARIBBEAN MIGRATION AND THE CONFLICT NEXUS 147, 154 (Taryn Lesser et al. eds., 2006) (discussing how Guyana’s internal movement from rural hinterlands to urban coastal areas, and from urban to rural movements to work in mining, can impede the identification of trafficking); *see also* TIP Report (2016), *supra* note 18, at 35, 189. Even when government oversight is available, some Guyanese police officers are complicit in trafficking crimes, making efforts to minimize trafficking in the country even more difficult to execute. *Id.*

¹⁴¹ Kempadoo, *supra* note 4, at 80. Kempadoo, makes many arguments that challenge the way in which we conceptualize the sexual labor of Caribbean women in the context of human trafficking, human rights, and international feminism agendas. “Ideologies about the traffic of persons today are couched in various feminist and human rights discourses, yet continue to rest on moral indignation about violations of womanhood and support ‘migration-management’ policies and tighter border controls, greater policing of (im)migrant and Third World populations and rescue missions in sex industries.” *Id.* at 82. It is my hope is that this Note does not replicate this common treatment of human trafficking issues.

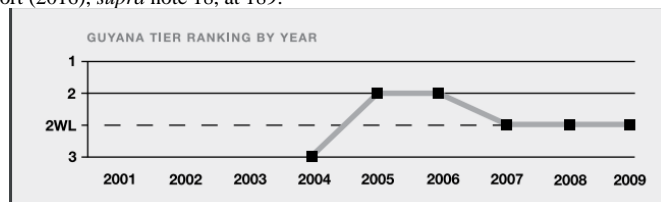
¹⁴² *Id.* at 80.

¹⁴³ *Id.*

¹⁴⁴ Treaty Series, *supra* note 27.

¹⁴⁵ Kempadoo, *supra* note 4, at 80. Guyana enacted the Trafficking in Persons Act of 2005, which prohibits all forms of trafficking and imposes stringent penalties ranging from short term imprisonment to life imprisonment. TIP Report (2016), *supra* note 18, at 189.

¹⁴⁶ *See* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 150 (2009), <https://www.state.gov/documents/organization/123362.pdf> [hereinafter “TIP Report (2009)”]; *see also* TIP Report (2016), *supra* note 18, at 189.

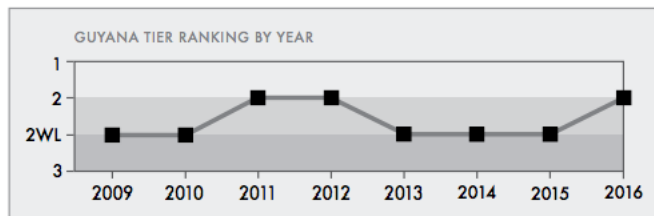


147

TIP Report (2009), *supra* note 146.

of the State Department.¹⁴⁸ In recent years, 2013 through 2015 in particular, marked some of the worst rankings for Guyana's compliance as Guyana consistently was ranked "Tier 2 Watch List."¹⁴⁹ The criticism found in 2013 TIP Report¹⁵⁰ soured the relationship between countries, despite Guyana's history of attempted compliance.¹⁵¹ This led to Guyana's Ministerial Task Force on Trafficking in Persons (MTFTIP) to state that "the Government of Guyana wishes to make it clear that in the future it will not be completing and returning questionnaires on trafficking in persons to the US authorities,"¹⁵² further stating that the report was not only inaccurate but misrepresented human trafficking in Guyana.¹⁵³

Regardless of whether the United States overstated the problem and did not give enough deference to the efforts made by Guyana or only sought to highlight a growing and unacknowledged problem within Guyana, this breakdown of constructive coordination between the two countries



TIP Report (2016), *supra* note 18, at 189.

The 2014 TIP report stated that the government had done little to prevent trafficking - its task-force had not reported any results and was "critical of a delay by the taskforce to allow the Guyana Women Miners Organisation (GWMO) . . . to be part of it." KAIETEUR, *supra* note 120. Guyana's task force's inaction here was deemed particularly problematic because of the prevalence of trafficking in mining, agricultural, and forestry communities in the interior of the country as well as in domestic service and in shops. KAIETEUR, *supra* note 120. *See also* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 194-95 (2014), <https://www.state.gov/documents/organization/226846.pdf> [Hereinafter "TIP Report (2014)"].

148 KAIETEUR, *supra* note 120 ("The Ministerial Task Force on Trafficking in Persons (MTFTIP) had expressed deep concern that the 2013 US State Department's Report on TIP in Guyana has not reviewed Guyana fairly.").

149 *See* figures in *supra* note 147.

150 THE DAILY OBSERVER, *supra* note 120 (stating the United States has been critical of Guyana's attempts at combatting its trafficking problem). *See also* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 186-87 (2013), <https://www.state.gov/documents/organization/210739.pdf> [Hereinafter "TIP Report (2013)"].

151 Kempadoo, *supra* note 4, at 80 (describing the Guyanese government as "one of the most compliant with the US's demands").

152 KAIETEUR, *supra* note 120.

153 *Id.*; *cf.* Iana Seales, *Human Trafficking and Official Neglect*, STABROEK NEWS (Apr. 5, 2014), <https://www.stabroeknews.com/2014/features/04/05/human-trafficking-official-neglect/> (claiming that the Guyanese government is willfully ignoring the problem of human trafficking when it is presented to them).

demonstrates just one way in which the TVPA system is failing.¹⁵⁴ Overall, reported trafficking numbers in Guyana are relatively low as compared with its total population of 775,675.¹⁵⁵ Yet, as evidenced through the TIP Reports (2013-2016), the United States has predominately focused its critiques around perceived government inactivity, specifically in trafficking prosecutions, prevention, and victims support, not on the size of the trafficking problem at hand.¹⁵⁶

In the time since these failures, the landscape has changed dramatically, as the TIP Reports continue to be handed down from the Department of State. In May of 2015, Simonna Broomes, an advocate against human trafficking who was honored as a TIP Hero by the United States Government in June of 2013, was named as a Minister in the Ministry of Social Protection to further Guyana's efforts to comply with TIP.¹⁵⁷ During 2015, the Guyanese government investigated "15 trafficking cases involving 56 victims, including 16 children, which resulted in seven prosecutions and one sex trafficking conviction."¹⁵⁸ In its conviction of a trafficker, Guyana imposed a three-year prison sentence and required the payment of restitution to the victim.¹⁵⁹ In addition to the strides Guyana has made in prosecution over the last decade, the Guyanese government has sought to improve its victim support efforts by giving "600,000 Guyanese dollars(GYD)(\$2,970)¹⁶⁰ to an NGO-run shelter dedicated to trafficking

154 "The basis for claims about human trafficking, however, remains dubious. Research, including that commissioned by the IOM, has produced little data and identified very few 'trafficked victims.'" Kempadoo, *supra* note 4, at 83. See generally CLARE R. SEELKE & ALISON SISKIN, CONG. RESEARCH SERV., RL34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 35 (2008), http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1484&context=key_workplace [hereinafter "SEELKE & SISKIN"].

155 *Guyana Population 2017*, WORLD POPULATION REVIEW, <http://worldpopulationreview.com/countries/guyana-population/> (last visited Feb. 2, 2017).

156 From 2013-2015, Guyana was on the Trafficking In Persons Report Tier 2 Watch List. See, TIP REPORT (2013), *supra* note 150, at 186 (stating that the government failed to prosecute high profile cases of trafficking, which "creates an enabling environment for continued human trafficking"); see also TIP REPORT (2014), *supra* note 147, at 153 ("[T]he government did not demonstrate evidence of overall increasing efforts to address human trafficking since the previous reporting period" and "failed to punish most traffickers with incarceration"); and see U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 175 (2015), <https://www.state.gov/documents/organization/243559.pdf> ("The government released its anti-trafficking action plan in June 2014; however, the government made uneven efforts to implement it during the reporting period. The government convicted only one trafficker – a police officer.").

157 *Honourable Simona Broomes*, MINISTRY OF NAT. RES.: CO-OPERATIVE REPUBLIC OF GUY., <https://www.nre.gov.gy/hon-simona-broomes-biographical-profile/> (last visited Dec. 26, 2017).

158 TIP Report (2016), *supra* note 18, at 189.

159 *Id.* (marking "the first time restitution ha[d] been ordered for a trafficking offender in Guyana").

160 Approximately, \$2947.53 (USD). *Guyana Dollar to the United States Dollar*, FXEXCHANGERATE (Feb 12, 2017), <http://gyd.fxexchangerate.com/usd/600000-currency-rates.html>.

victims”¹⁶¹ in a clear attempt to honor the protection of victims that the TVPA calls for.¹⁶²

C. *Recent Developments in Guyana’s Treatment of Human Trafficking*

The 2016 TIP Report points out that Guyana’s anti-trafficking unit for trafficking investigations was still severely understaffed and critiqued the Guyanese government for being susceptible to punishing trafficking victims for crimes committed due to being trafficked.¹⁶³ Recommendations from the report included recommendations for Guyana to continue its investigations and prosecutions of sex and labor trafficking;¹⁶⁴ the creation of better guidelines for identifying victims, specifically in the “police, health, immigration, labor, mining, and forestry” sectors;¹⁶⁵ and the creation of additional protections for victims in the context of immigration and trauma support.¹⁶⁶

The response of the Guyanese Government today shows a rededication to the TVPA. Human trafficking cases have increased between 2015 and 2016, despite the previous governmental efforts to curb the practice.¹⁶⁷ “Reported cases have climbed from 30 to 41 a 36.7 percent increase while the number of victims soared from 65 to 103 from 2015 to the first ten months of last year [2016], a spike of 58.5 percent.”¹⁶⁸ Most of the victims recovered in Guyana were both Guyanese and non-nationals.¹⁶⁹ Guyana’s new administration is intent on tackling it.¹⁷⁰ “The government of Guyana today, is solving the problem and not suppressing bad news.”¹⁷¹

Perhaps in an attempt to change the TIP Report’s perspective on

161 TIP Report (2016), *supra* note 18, at 189. The shelter is the only one of its kind. *Id.* The donation was intended “to enhance the shelter’s psycho-social services for victims.” *Id.* The government also “increased collaboration with anti-trafficking NGOs by instituting procedures to refer victims to the shelter” *Id.*

162 *See generally* TVPA (2000), *supra* note 58; *see also* Palermo Protocol (2000), *supra* note 2.

163 TIP Report (2016), *supra* note 18, at 189.

164 *Id.*

165 *Id.*

166 *Id.*

167 Neola Damon, *Gov’t Pledges to Go After Human Traffickers*, GUY. GOV’T INFO. AGENCY (Jan. 11, 2017), <http://dpi.gov.gy/govt-pledges-to-go-after-human-traffickers/>.

168 *Id.*; *see also* CARIBBEAN 360, *supra* note 120 (“Guyana recorded 40 TIP cases in 2014; a 47 per cent increase in 2015 and a 145 per cent increase in 2016. Of the 197 persons trafficked during the 2014-2016 period, 89 per cent were females and 89 percent were 32 years and younger.”).

169 CARIBBEAN 360, *supra* note 120 (“[N]on-nationals accounting for 41 per cent.”).

170 THE DAILY OBSERVER, *supra* note 120.

171 *Id.* (Guyana . . . launched its latest offensive against human trafficking with President David Granger indicating that his administration is collaborating with other stakeholders to deal with the situation.”).

Guyana's treatment of trafficking, on January 18, 2017, Guyana's government launched a new initiative: the National Plan of Action for the Prevention and Response to Trafficking in Persons (2017-2018), with work to begin immediately.¹⁷² With little information released about the specifics of the plan, the overall impact of this new plan and how it will be implemented remains to be seen, but Guyanese officials appear optimistic in their ability to begin confronting trafficking head-on.¹⁷³

IV. PROBLEMS AND RECOMMENDATIONS

As evidenced through the implementation of the TVPA sanction regime in the Caribbean, a dichotomy has emerged between the enforcement mechanism of the TVPA and the rhetoric associated with the global fight to end trafficking in persons.¹⁷⁴ Throughout the literature and policies surrounding human trafficking, there has been a surge in reference to the need for multilateral cooperation.¹⁷⁵ In fact, the Palermo Protocol specifically calls for a collaborative and "comprehensive international approach."¹⁷⁶ The TVPA, however, analyzes success on a state-by-state basis through the use of its unilateral sanctions.¹⁷⁷ Use of these sanctions

¹⁷² *Id.*; see also CARIBBEAN 360, *supra* note 120.

¹⁷³ President David Granger et al., Speech Launching Ceremony for the National Plan of Action for the Prevention and Response to Trafficking In Persons 2017-2018 (Jan. 18, 2017) (transcript available at Guyana's Department of Public Information website), <http://dpi.gov.gy/speech-launching-ceremony-for-the-national-plan-of-action-for-the-prevention-and-response-to-trafficking-in-persons-2017-2018/> (stating the dedication of Guyana to the "prevention, protection, prosecution and partnerships" necessary to root out trafficking and the exploitation of vulnerable persons within the country).

¹⁷⁴ See *supra* Section II and Section III (discussing the ways in which the TVPA has departed from the Palermo Protocol regarding sex work and discussing the TVPA's enforcement impact through the sanction system).

¹⁷⁵ James Scott, *Multilateralism International Relations*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/multilateralism> (last visited Dec. 26, 2017) (defining multilateralism as a "process of organizing relations between groups of three or more states" compromising and working together to make meaningful change on a particular issue). The need for a multilateral approach is referenced in both the TVPA and in the UNODC report on Trafficking 2009, and it is highlighted as a necessary means to combat trafficking in the TIP Report 2016. See UNODC GLOBAL REPORT (2009), *supra* note 2, at 69 (stating that "[t]he first step in tackling a transnational issue must be information sharing . . . Tackling transnational trafficking in human beings requires an ongoing exchange of data"); see also TVPA (2000), *supra* note 58, §102(24).

¹⁷⁶ PALERMO PROTOCOL (2000), *supra* note 2, at pmbl.

¹⁷⁷

The use of unilateral economic sanctions has become a common foreign policy tool to alter state behavior, providing 'a middle road response between diplomacy and military action.' By far the most active sanctions proponent in the world, the United States has used unilateral sanctions to promote its foreign policy objectives, including combating nuclear proliferation, fighting trafficking in drugs and weapons, promoting democracy and human rights, and punishing territorial aggression.

undercuts the multilateral aspect of international human rights law because “[t]he ‘minimum standards’ by which the United States evaluates country performance are poorly articulated and inconsistently applied.”¹⁷⁸ Specifically, the United States advocates the adoption of legal norms that “employ selective (and sometimes misleading) references to the Palermo Protocol norms”¹⁷⁹ which “export[s] U.S. domestic standards under the guise of universally applicable international norms.”¹⁸⁰

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.”¹⁸¹

This is evidenced by the anger displayed by the Guyanese government in 2013 regarding what Guyana felt was their undeserved ranking on the Tier 2 Watch-List.¹⁸²

The most problematic aspect of the promulgation of U.S. domestic standards through unilateral sanctions is that these sanctions present a mechanism that may only serve to harm vulnerable populations within the sanctioned country rather than having a positive effect.¹⁸³ Policies that have the potential to further disadvantage the intended beneficiaries should be closely examined.¹⁸⁴ The threat of sanctions in this context must be carefully monitored when applied to economically disadvantaged countries such as those in the Caribbean.¹⁸⁵ Additionally, the TIP Report Tier System is undeniably correlated with a country’s status as a source, transit, or destination country, in which countries that are source countries, either in part or exclusively, are ranked as lesser than destination countries.¹⁸⁶

Chuang, *supra* note 21, at 457. “In practice, the sanctions regime has inspired many governments to develop domestic laws and policies to combat trafficking. But whether these actions contribute positively to the global fight against trafficking should not be assumed.” *Id.* at 439.

¹⁷⁸ *Id.* at 439.

¹⁷⁹ *Id.* at 439-40.

¹⁸⁰ *Id.* at 440.

¹⁸¹ SEELKE & SISKIN, *supra* note 154.

¹⁸² See *supra* Part III(B) (discussing the breakdown of TVPA relationships between Guyana and the United States).

¹⁸³ Chuang, *supra* note 21, at 459 (“U.S. sanctions have resulted in the populations of the target countries, rather than their governments, suffering the consequent economic pain.”).

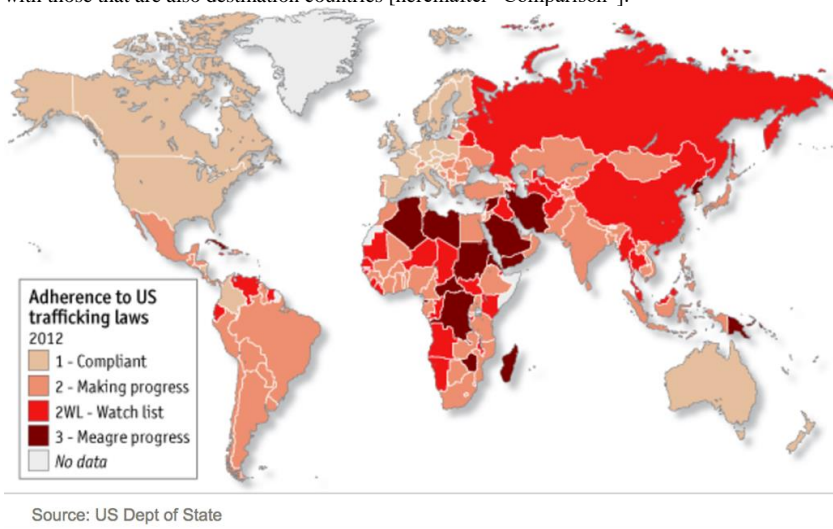
¹⁸⁴ *Id.*

¹⁸⁵ See *supra* notes 134-38 and accompanying text (detailing the vulnerabilities of Caribbean populations).

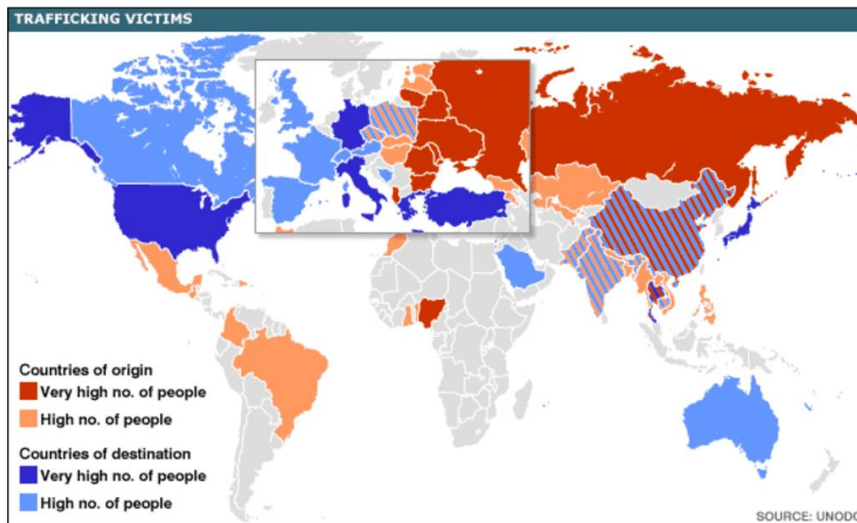
¹⁸⁶ Note how the countries of origin or source countries map closely to the countries that have been

Therefore, the problems with the implementation of Palermo Protocol through the TVPA can be analyzed in two manners:

ranked as Tier 2, Tier 2 Watch List, and Tier 3, and those that are ranked at Tier 1 are closely correlated with those that are also destination countries [hereinafter "Comparison"].



Name and Shame, THE ECONOMIST ONLINE (July 9, 2012), <http://www.economist.com/blogs/graphicdetail/2012/07/daily-chart-5>.



UN Highlights Human Trafficking, BBC NEWS, http://news.bbc.co.uk/2/hi/in_depth/6497799.stm (last updated Mar. 26, 2007).

- (1) Under the current framework, supply countries, which are almost always poor or developing countries, are implicitly blamed for their trafficking problems. This inequality is further exacerbated by imposing a tier and sanction system through the TVPA anti-trafficking model.
- (2) Though couched in rhetoric¹⁸⁷ about the need for an international response to human trafficking, implementing anti-trafficking norms through the TVPA tier framework provides a one-size fits all approach to bring the failing state into the United States view of best practices, which can be highly westernized or patriarchal.¹⁸⁸

The Tier system implicitly reaffirms that demand countries do not have as pressing trafficking problems, forcing supply countries to disproportionately shoulder the blame through issuing a TIP Report that is significantly skewed in favor of destination countries.¹⁸⁹

Despite its critiques, the TVPA is a necessary enforcement complementing the Palermo Protocol, and its effectiveness is crucial to the battle against human trafficking. The TVPA's ability to persuade countries to adopt better anti-trafficking frameworks is, however, linked to its "actual and perceived credibility," which requires that the reports are accurate and consistent in their assessment of countries.¹⁹⁰ It is clear that a more consistently applied or transparent approach is necessary in preserving the authenticity of the ranking of countries subject to the TVPA.¹⁹¹ The most obvious place to begin would be to better align the TVPA with the guidelines of the Palermo Protocol, thus resolving the inherent conflict between the two policies, specifically in regards to sex trafficking.¹⁹²

However, some critics of the tier regime further suggest that sanctions should not have been implemented in the first place and should be removed

¹⁸⁷ This rhetoric often uses phrases such as "multilateralism" or "collaboration." See TVPA (2000), *supra* note 58, at §102(24); see also Palermo Protocol (2000), *supra* note 2, at art. 9.

¹⁸⁸ See Section III(B) and accompanying text (discussing conflicting definitions of sex trafficking).

¹⁸⁹ See Comparison, *supra* note 186. "Some argue that it is difficult to determine what standards make a country eligible for Tier 1. They assert that Tier 2 and Tier 2 'Watch List' have become 'catch-all' categories . . ." SEELKE & SISKIN, *supra* note 154. See also Jones et al., *supra* note 17 (indicating that the United States has 15,000 to 50,000 persons trafficked within its borders each year). "Critics have also argued that the TIP Reports employ selective criticism of country practices, 'going light' on U.S. allies and reserving their criticism for countries with which the United States has either a strained relationship or no strategic interests." Chuang, *supra* note 21, at 482 (citing an interview with TIP Office staff members in 2004).

¹⁹⁰ Chuang, *supra* note 21, at 474.

¹⁹¹ *Id.*

¹⁹² This may also relieve some of the specific difficulties Caribbean countries with legalized sex trade have found when complying with the TVPA. See *supra* Part III(A).

all together:

A sanction strategy would compromise U.S. efforts to seek international agreement on the Palermo Protocol and undermine the collaborative ethic the Protocol was intended to foster in at least two critical respects. First, sanctions would negatively impact international cooperation by causing governments to downplay the seriousness of their trafficking problems in order to avoid the direct or political consequences of sanctions . . . Second, the threat of sanctions would undermine international cooperation by causing governments and local populations to view as a threat the important work of local NGOs to raise the profile of trafficking.¹⁹³

The problem, as stated above, suggests that the sanctions system may, in fact, only replicate the exact problem the Palermo Protocol sought to remedy: the lack of an international framework for eliminating human trafficking and an overreliance on the nation state implementation of anti-trafficking policies.¹⁹⁴ However, because there is a lack of incentive to adhere to the Palermo Protocol in the absence of a TVPA-like structure, the sanctions regime seems to be a necessary evil. Therefore, rather than relying on a looming threat of sanctions and rankings of countries within the purview of the TVPA, economic incentives tied to clear and universally applied goals may be a preferable alternative.¹⁹⁵

V. CONCLUSION

Enforcement of international human trafficking laws and Caribbean enforcement of human trafficking laws are continually developing. As Guyana and other Caribbean countries recognize and craft national action plans to address trafficking across and within their borders, they will continue to experience a fraught relationship with the vague and ever evolving standards of the TVPA. The TVPA, although a system which, on its face, serves as the reprimanding mechanism behind the norms of the Palermo Protocol, has diverged from the spirit of the Protocol in two key ways: (1) its standards differ slightly from the Protocol, meaning that it fails to be a predictive or consistently applied persuasion device; and (2) it

¹⁹³ Chuang, *supra* note 21, at 455.

¹⁹⁴ See *supra* Part III(A)-(C).

¹⁹⁵ "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." SEELKE & SISKIN, *supra* note 154, at 36.

departs from the Protocol's call for multilateralism by reinforcing nation-state responsibility and culpability for trafficking that occurs within their borders. This departure from the original goals of the Protocol may seem necessary for the adoption and enforcement of international human trafficking laws, but a shift to more transparent expectations and incentives, rather than or in addition to sanctions, is far more likely to generate the willful compliance of Tier 2, Tier 2 Watch List, and Tier 3 countries, thereby fostering the collaborative approaches originally proposed by the Protocol.

VI. 2017 TRAFFICKING IN PERSONS REPORT ADDENDUM

On June 27, 2017, the United States' Department of State published its most recent TIP Report ("TIP Report 2017").¹⁹⁶ There were notable changes in the Caribbean and overall compliance with the TVPA increased: Suriname and Haiti moved from Tier 3 to Tier 2 Watch List; Trinidad and Tobago, St. Vincent and the Grenadines, and St. Lucia all moved from Tier 2 Watch List to Tier 2; and Guyana finally attained Tier 1 status.¹⁹⁷ TIP Report 2017 states that Guyana made the necessary achievements to reach Tier 1 status, "includ[ing] approving the 2017-2018 national action plan for combatting trafficking in persons; increasing the number of investigations, prosecutions and convictions; and identifying and assisting more victims for the second year in a row."¹⁹⁸

The advancements made in the region, while a clear step toward addressing and eradicating human trafficking under the TVPA, are unlikely to be enough for the Caribbean or Latin American countries to maintain their Tier categorization. The TIP Report 2017 criticized Guyana for "not increase[ing] protection and services for victims outside the capital or provid[ing] adequate protection and shelter for child and male victims."¹⁹⁹ Both critiques are steps Guyana will have to take to be reassigned to Tier 1 in following years. The TIP Report 2017 further criticized other Caribbean and Latin American Countries for not meeting minimum standards in areas of action plan publication, victim services and support, and law

¹⁹⁶ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2017), <https://www.state.gov/documents/organization/271339.pdf> [hereinafter "TIP Report 2017"].

¹⁹⁷ Compare TIP Report 2017, *supra* note 196, at 46, with TIP Report (2016), *supra* note 18, at 56. See also Parker Asmann, *Latin America Still Falling Short in Combatting Human Trafficking: Report*, INSIGHT CRIME (June 27, 2017), <http://www.insightcrime.org/component/content/article?id=8953:latin-america-still-falling-short-combating-human-trafficking-report> (explaining that while Puerto Rico, Guyana, the Bahamas, Colombia and Chile attained Tier 1, over half of the region are Tier 2 and many, including Belize and Venezuela, fell below that).

¹⁹⁸ TIP Report 2017, *supra* note 196, at 193.

¹⁹⁹ *Id.*

enforcement, despite the region's general improvement.²⁰⁰

Overall, the international landscape in human trafficking has not changed significantly. In the TIP Report 2017, thirty-six countries received Tier 1 status, while most countries remain at Tier 2 or below.²⁰¹ Eighty countries were ranked at Tier 2, forty-five were placed on the Tier 2 Watch List, and twenty-three at Tier 3.²⁰² In 2017, only around twenty-percent of the countries achieved or maintained Tier 1 status²⁰³ and most Tier 1 countries are destination countries,²⁰⁴ indicating that since the publishing of the TIP Report 2016 there has been little change.²⁰⁵ A more collaborative response between destination and source countries will be necessary to create a holistic anti-trafficking approach. The TIP Report 2017 signifies that while the TVPA Tier system can create some change, source countries remain disproportionately responsible for trafficking.

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200 Barbados “did not initiate new prosecutions, had difficulty obtaining victim cooperation to prosecute traffickers, did not provide adequate resources to government agencies or relevant NGOs for training or furthering anti-trafficking efforts, and did not provide sufficient resources for victim care.” TIP Report 2017, *supra* note 196, at 82. Jamaica “did not hold complicit officials accountable, publish a standard victim protocol, or publish an annual report monitoring its efforts.” *Id.* at 223. St. Vincent and the Grenadines “did not meet the minimum standards . . . in its national action plan, investigations, and victim care.” *Id.* at 344. Trinidad and Tobago has not “secure[d] a conviction under its anti-trafficking law. The government decreased funding for its anti-trafficking unit and victim care.” *Id.* at 396.

201 *Id.* at 46; *see also* TIP Report 2017, *supra* note 196, at 45 (indicating that the criteria for Tier 1-Tier 3 has not been changed).

202 *Id.* at 46.

203 36 out of 184 countries were ranked Tier 1, approximately 19.5 percent. *Id.* (calculated from the Tier lists).

204 *Compare* TIP Report 2017, *supra* note 196, at 46 (describing the amount of Tier 1 countries in 2017), *and* TIP Report (2016), *supra* note 82 (describing the amount of Tier 1 countries in 2016).

205 *See* TIP Report (2016), *supra* note 18, at 56.

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