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The State Department's *Trafficking in Persons* Report: Scope, Aid Restrictions, and Methodology

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SUMMARY

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The State Department's *Trafficking in Persons* Report: Scope, Aid Restrictions, and Methodology

The State Department's annual release of the *Trafficking in Persons* report (commonly referred to as the TIP Report) has been closely monitored by Congress, foreign governments, the media, advocacy groups, and other foreign policy observers. The 109th Congress first mandated the report's publication in the Trafficking Victims Protection Act of 2000 (TVPA; Div. A of the Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386).

The number of countries covered by the TIP Report has grown over time. In the 2019 TIP Report, released on June 20, 2019, the State Department categorized 187 countries, including the United States. Countries were placed into one of several lists (or *tiers*) based on their respective governments' level of effort to address human trafficking between April 1, 2018, and March 31, 2019. An additional category of special cases included three countries that were not assigned a tier ranking because of ongoing political instability (Libya, Somalia, and Yemen).

Its champions describe the TIP Report as a foundational measure of government efforts to address and ultimately eliminate human trafficking. Some U.S. officials refer to the report as a crucial tool of diplomatic engagement that has encouraged foreign governments to elevate their antitrafficking efforts. Its detractors question the TIP Report's credibility as a true measure of antitrafficking efforts, suggesting at times that political factors, such as the desire to maintain positive bilateral relations with a given country, distort its country assessments. Some foreign governments perceive the report as a form of U.S. interference in their affairs.

Continued congressional interest in the TIP Report and its country rankings has resulted in numerous key modifications to the country-ranking process and methodology. Modifications have included the creation of the special watch list, limiting the length of time a country may remain on a subset of the special watch list, modifying some of the criteria for evaluating antitrafficking efforts, establishing a list of governments that recruit and use child soldiers and subjecting these countries to potential security assistance restrictions, and prohibiting the least cooperative countries on antitrafficking matters from participating in authorized trade negotiations. These modifications were often included as part of broader legislative efforts to reauthorize the TVPA, whose current authorization for appropriations expires at the end of FY2021.

Recent Developments

Largely due to congressional concerns that the report's methodology lacks transparency and is susceptible to political pressure, in January 2019 Congress passed two bills that further modified key aspects of the annual country-ranking and reporting process. Taken together, the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (2018 TVPPRA; P.L. 115-425) and the Trafficking Victims Protection Reauthorization Act of 2017 (2017 TVPRA; P.L. 115-427) reduce to a degree the State Department's flexibility and discretion in assigning tier rankings to countries, and may result in increases in the number of countries that fall into the lowest-effort category (Tier 3). The 2018 TVPRRA also broadened the criteria for listing child soldier countries, potentially leading to greater numbers of countries that are listed.

Ensuring that countries perceive the TIP Report as credible is crucial to its effectiveness in motivating governments to improve their antitrafficking efforts. Changes introduced to strengthen the credibility of the TIP Report's methodology, however, have also resulted in a ranking process and antitrafficking criteria that have shifted and grown more complex over time, raising potential policy questions. Congress may consider whether the report's antitrafficking expectations and rankings are perceived by countries as inconsistent or overly elaborate.

Congress also may consider if the prospect of achieving an improved ranking in the TIP Report can sometimes appear beyond reach, potentially eroding the TIP Report's ability to motivate countries to improve their antitrafficking efforts.

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Introduction

The State Department estimates that globally there are 24.9 million victims of human trafficking, also commonly referred to as modern slavery.[1] Several international mechanisms exist to define and address human trafficking, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol) and the United Nations (U.N.) Convention against Transnational Organized Crime. In the United States, Congress has led efforts to eliminate severe forms of trafficking in persons domestically and internationally, particularly with its enactment of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386). Division A of that act, the Trafficking Victims Protection Act of 2000 (TVPA), established U.S. antitrafficking policy to (1) *prevent* trafficking, (2) *protect* trafficking victims, and (3) *prosecute* and punish traffickers (known as the three Ps).[2]

A key element of the TVPA's foreign policy objectives involved a new requirement for the Secretary of State to produce an annual report on human trafficking and to rank foreign governments based on their antitrafficking efforts. In the ensuing reports, which the State Department titled as *Trafficking in Persons* (TIP) reports, the department developed a ranking system in which the best-ranked countries were identified as Tier 1 and the worst-ranked as Tier 3. Moreover, the TVPA stipulated that the worst performers (Tier 3 countries) in the TIP Report could be subject to potential restrictions on certain types of U.S. foreign aid and other U.S. and multilateral funds—a policy that is intended to motivate countries to avoid Tier 3 by prioritizing antitrafficking efforts.

The TIP Report's annual release remains a topic of widespread interest among international and domestic stakeholders, including Congress. Since the TVPA's enactment 19 years ago, Congress has continued to adjust the requirements associated with how countries are ranked in the TIP Report, as well as the policy consequences of such rankings (see **Figure 1**). These changes were often the result of congressional dissatisfaction with some aspect of the TIP Report:

- Due to difficulty discerning differences among Tier 2 countries, Congress modified the TVPA in 2003 to create a special watch list, composed of countries that deserve enhanced scrutiny.
- Out of concern that countries were listed for too many consecutive years on the special watch list, Congress modified the TVPA in 2008 to limit the number of years a country may remain on it.
- In response to the plight of children exploited in armed conflict, Congress modified the TVPA in 2008 to require the State Department to identify countries whose governments recruit and use child soldiers, with identified countries subject to potential security assistance restrictions.
- With the objective of linking U.S. trade policy to antitrafficking outcomes, Congress in 2015 prohibited Tier 3 countries from participating in authorized trade negotiations.[3]

[1] U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Briefing by Ambassador-at-Large to Monitor and Combat Trafficking in Persons John Cotton*, Special Briefing, June 20, 2019.

[2] In addition, the State Department employs a fourth "P," partnerships "as a complementary means to achieve progress across the 3Ps and enlist all segments of society in the fight against modern slavery." U.S. Department of State, Policy Issues, "Human Trafficking," at https://www.state.gov/policy-issues/human-trafficking/.

[3] This restriction, put in place by the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I

- Reflecting continued concern over country-ranking decisions, Congress modified the TVPA in 2019 to impose further limitations on how long countries may remain on the special watch list, and to require that the State Department provide justifications for changing a country's tier ranking.
- Desiring stronger action against child soldiering, Congress in 2019 expanded the child soldier country listing requirements by including the recruitment or use of child soldiers by police or other security forces, and requiring additional and public reporting on the use of waivers and exceptions for security assistance restrictions to listed countries.
- As a result of greater awareness of antitrafficking best practices, Congress has also continued to expand incrementally and modify definitions pertaining to the expected antitrafficking efforts that guide country-ranking determinations.

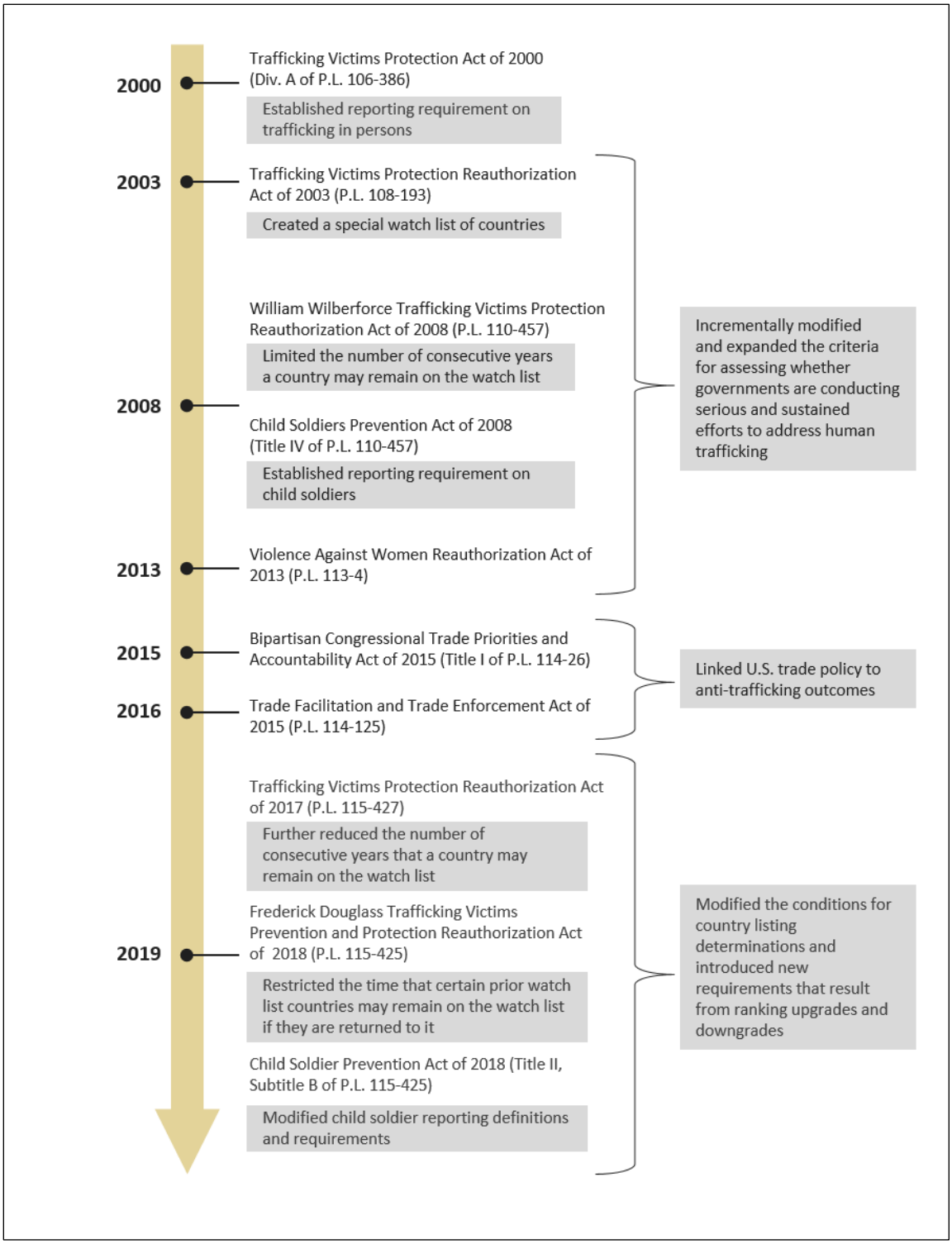
A key question is whether changes to the TIP Report's methodology and ranking process, meant to bolster the report's legitimacy and incentivize countries to boost their antitrafficking efforts, also run the risk of increasing the complexity of these factors in a manner that undermines the report's impact.[4]

This CRS report describes the legislative provisions that govern the U.S. Department of State's production of the annual TIP Report, reviews country-ranking trends in the TIP Report, and identifies recent congressional oversight of and legislative activity to modify the TIP Report.

of P.L. 114-26), was subsequently amended to allow for a waiver by the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125).

[4] See discussion under "Legislative Outlook" below.

Figure 1. Key Legislative Changes to the TIP Report, 2000-2019



Source: CRS, based on Congress.gov.

TIP Report Scope

The contents of each annual TIP Report are governed by two provisions, one in the TVPA, as amended, and a second in the Child Soldiers Prevention Act of 2008 (CSPA; Title IV of P.L. 110-457), as amended.[5] In addition, current law requires the President and the Secretary of State to prepare related follow-on documentation for certain categories of countries. These include reporting requirements that were added to the TVPA as part of TVPA reauthorization acts, as well as requirements contained in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA; Title I of P.L. 114-26, the Defending Public Safety Employees' Retirement Act), as amended.

Country Narratives and Country Lists ("Tiers")

The TVPA, as amended, establishes the core contents of the TIP Report. Specifically, it requires the Secretary of State to submit to appropriate congressional committees an annual report, due not later than June 1 each year, which describes, on a country-by-country basis,[6]

- government efforts to eliminate severe forms of trafficking in persons;
- the nature and scope of trafficking in persons in each country; and
- trends in each government's efforts to combat trafficking.

What Are *Severe Forms of Trafficking in Persons*?

The TVPA defines *severe forms of trafficking in persons* to mean

> (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
>
> (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[7]

This definition is largely consistent with the definition of trafficking in persons contained in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children[8] (adopted by the U.N. in 2000, often referred to as the "Palermo Protocol"). TIP Reports use the terms trafficking in persons, severe forms of trafficking in persons, and human trafficking interchangeably, and in recent years have also described human trafficking as *modern slavery*. The 2019 TIP Report states, "The United States considers 'trafficking in persons,' 'human trafficking,' and 'modern slavery' to be interchangeable umbrella terms that refer to both sex and labor trafficking."[9] The report emphasizes that human trafficking as defined under the Palermo Protocol does not require movement across national borders, nor the transport or movement of the victim from one place to another. It illustratively describes manifestations of human trafficking to include sex trafficking, child sex trafficking, forced labor, bonded labor (also known as debt bondage), domestic servitude, forced child labor,

[5] §110 of the TVPA (22 U.S.C. 7107) and §404 of the CSPA (22 U.S.C. 2370c-1).

[6] *Appropriate congressional committees* in the TVPA refers to the Senate Foreign Relations Committee (SFRC), the Senate Judiciary Committee (SJUD), the House Foreign Affairs Committee (HFAC), and the House Judiciary Committee (HJUD). See §103 of the TVPA; 22 U.S.C. 7102.

[7] §103 of the TVPA; 22 U.S.C. 7102.

[8] For the treaty's current status, see United Nations Treaty Collection, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

[9] U.S. Department of State, *2019 Trafficking in Persons Report*, June 20, 2019.

and unlawful recruitment and use of child soldiers.[10] Some government and nongovernmental entities may apply different definitions to refer to human trafficking, sometimes conflating human trafficking with human smuggling, illegal adoptions, international trade in human organs, child pornography, and prostitution.

Central to the content of the TIP Report, as required by the TVPA, is a set of country lists, based on whether governments are achieving four minimum standards that the law prescribes for the elimination of severe forms of trafficking in persons (for information on the minimum standards see the "Standards and Definitions for Determining Country Rankings" section below). Specifically, the TVPA requires the report to include[11]

- A list of countries whose governments *fully comply* with the minimum standards for the elimination of severe forms of trafficking in persons; TIP Reports describe this list as Tier 1.[12]
- A list of countries whose governments *do not fully comply* with the minimum standards but are making *significant efforts* to become compliant; TIP Reports describe this list as Tier 2.
- A list of countries whose governments do not fully comply and are not making significant efforts to become compliant; TIP Reports describe this list as Tier 3.

In addition, in accordance with the 2003 amendments to the TVPA, which required the creation of a new "special watch list," TIP Reports since 2004 have listed countries on what the State Department describes as the Tier 2 Watch List.[13] For further discussion, see section on "Reporting Requirements Related to the Special Watch List."

Finally, the CSPA requires that the TIP Report include a separate list of countries whose governments recruit or use child soldiers. (See "Child Soldier Reporting Requirements" below.)

Tier 3 countries and child soldier countries are subject to potential aid and other restrictions (for details, see section on "Actions Against Governments Failing to Meet Minimum Standards").

2019 TIP Report Country Lists

The country lists from the 2019 TIP Report, which covered developments from April 2018 through March 2019, are illustrated by **Figure 2** below. Complete country lists are in **Appendix A.**

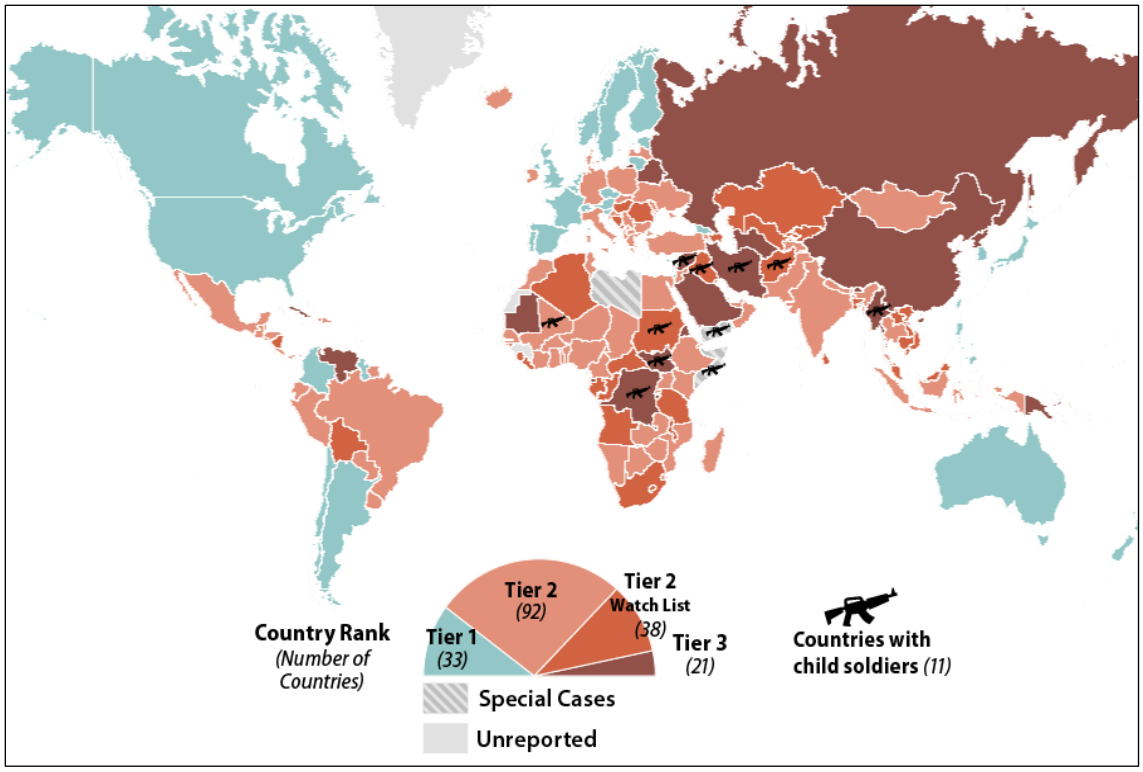
[10] Ibid.

[11] §110 of the TVPA; 22 U.S.C. 7107. The TIP Reports treat some constituent political entities as separate countries for reporting purposes. For example, the reports have included a separate narrative and ranking for Hong Kong in addition to those for China.

[12] The 2019 TIP Report states that a Tier 1 ranking "does not mean that a country has no human trafficking problem or that it is doing enough to address the problem," but rather "indicates that a government has made efforts to address the problem that meet the TVPA's minimum standards." U.S. Department of State, 2019 Trafficking in Persons Report. Prior reports have also included this statement.

[13] §6 of the 2003 TVPRA amended §110 of the TVPA; 22 U.S.C. 7107.

Figure 2. 2019 TIP Report: Country Rankings



Source: CRS, based on U.S. Department of State, *2019 Trafficking in Persons Report*, June 20, 2019.

Reporting Requirements Related to the Special Watch List

The TVPA, as amended, requires the Secretary of State to submit to appropriate congressional committees a special watch list composed of countries determined by the Secretary of State to require special scrutiny during the following year. This requirement to develop a special watch list was first enacted in the TVPA reauthorization of 2003.[14]

The TVPA mandates that this list be composed of three types of countries: (1) countries upgraded in the most recent TIP Report and now assessed to be fully compliant with the minimum standards (from Tier 2 to Tier 1); (2) countries upgraded in the most recent TIP Report and now assessed to be making significant efforts toward compliance with the minimum standards (from Tier 3 to Tier 2); and (3) a subset of Tier 2 countries in which

- the estimated number of victims is very significant or significantly increasing and the country is not taking proportional concrete actions;[15] or
- there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons, compared to the previous year.[16]

[14] This criterion was added by §6 of the 2003 TVPRA and amended by §1205 of the 2013 VAWRA; 22 U.S.C. 7107.

[15] This criteria was amended by §203 of the 2018 TVPPRA. See footnote 35 for the TVPA's definition of "concrete actions," as amended by the 2017 TVPRA.

[16] A prior third criteria relating to commitments by the country to take additional future steps was removed by §6 of the 2017 TVPRA.

Although the TVPA, as amended, authorizes the special watch list to be submitted separately from the TIP Report, the State Department introduced it as a feature in the 2004 TIP Report.[17] Beginning with that report, the department included an additional list of countries in the annual TIP Report, called the Tier 2 Watch List. This Tier 2 Watch List is composed of the special watch list countries that fall into the third category of countries described above—those that would otherwise be listed as Tier 2 except that the number of victims is large and growing and the country is not taking proportional concrete actions, or there is a failure to provide evidence of increasing antitrafficking efforts.[18]

Mid-Year Interim Assessment

The TVPA, as amended, requires the Secretary of State to submit to appropriate congressional committees by February 1 each year an interim assessment of the progress made by each special watch list country since the last TIP Report.[19] These mid-year assessments are typically brief, stating both positive and negative developments in each special watch list country. Readers are unable to predict, based solely on these reports, whether a country's ranking will improve, remain the same, or decline in the next TIP Report.

Watch List Automatic Downgrades and Downgrade Waivers

The TVPA, as amended, requires that a country on the special watch list (in practice, the Tier 2 Watch List) for two consecutive years be subsequently listed among those whose governments do not fully comply and are not making significant efforts to become compliant (Tier 3).[20] The President may waive this automatic downgrade for one additional year (as of a January 2019 amendment, see below) if the President determines and reports credible evidence justifying a waiver because

- the country has a written plan to begin making significant efforts to become compliant with the minimum standards for the elimination of trafficking in persons;
- the written plan, if implemented, would constitute significant efforts to become compliant with the minimum standards; and
- the country is devoting sufficient resources to implement the plan.[21]

The requirement to limit the length of time a country may remain on the watch list was enacted in the TVPA reauthorization of 2008.[22] The first year in which it came into effect was 2009 and the

[17] §110 of the TVPA, as amended, specifically requires the special watch list to be submitted to appropriate congressional committees no later than the date when the President submits a notification and determination regarding which countries will be barred or waived from certain categories of foreign assistance due to their failure to comply with the minimum standards and make significant efforts toward compliance. The latter notification and determination is required to be made not less than 45 days or more than 90 days after submission of the TIP Report (due June 1) or an "Interim Report" pursuant to §110(b)(2) of the TVPA, which may be referring to a provision that was struck by §1205(2) of the 2013 VAWRA.

[18] The State Department does not provide separate lists for the first two categories of countries.

[19] §110 of the TVPA, as amended by §6 of the 2003 TVPRA; 22 U.S.C. 7107.

[20] In practice, the State Department may alternatively subsequently determine that the country meets Tier 2 or Tier 1 standards and list it accordingly.

[21] §110 of the TVPA, as amended by §6 of the 2003 TVPRA; 22 U.S.C. 7107. The President delegated this waiver authority to the Secretary of State. See 75 FR 67023.

[22] §110 of the TPVA, as amended by §107 of the 2008 TVPRA; 22 U.S.C. 7107.

first year in which a Tier 2 Watch List country was downgraded because of its time in this tier category was 2013.

The 2017 TVPRA, enacted in January 2019, reduced the presidential waiver authority to the current one-year duration from a prior maximum of two consecutive years, effectively reducing the maximum consecutive number of years a country may be listed on the Tier 2 Watch List from four years to three years.[23]

"Special Rule" Restriction

The 2018 TVPPRA, also enacted in January 2019, created a new "special rule" for countries that are listed on the Tier 2 Watch List for three or more consecutive years (two years and any additional years as a result of a presidential waiver) and are subsequently downgraded to Tier 3. These countries, if they are then later returned to the Tier 2 Watch List, may be listed on the Tier 2 Watch List for no more than one consecutive year. These conditions apply to prior country lists since December 23, 2008, the date of enactment of the 2008 TVPRA.[24]

Among Tier 2 Watch List countries in the 2019 TIP Report, the above new restrictions appear to limit the State Department's flexibility to list Bolivia, Gabon, Laos, Malaysia, and Uzbekistan on the Tier 2 Watch List again next year.

2019 TIP Report Watch List Downgrades and Downgrade Waivers

In the 2019 TIP Report, three countries were downgraded to Tier 3 after two or more consecutive years on the Tier 2 Watch List:

- Cuba (downgraded after four consecutive years on the Tier 2 Watch List);
- The Gambia (downgraded after two consecutive years); and
- Saudi Arabia (downgraded after four consecutive years).

A total of seven countries received waivers to stay on the Tier 2 Watch List for more than two consecutive years (see **Table 1**). All seven countries have now exhausted the new three consecutive year duration limitation.

Table 1. Tier 2 Watch List Countries for More than Two Consecutive Years

Country Rank Outcomes in the 2016-2019 TIP Reports

Country	2016 TIP Report	2017 TIP Report	2018 TIP Report	2019 TIP Report
Algeria	Tier 3	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List
Bangladesh	Tier 2	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List
Hungary	Tier 2	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List
Iraq	Tier 2	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List
Liberia	Tier 2	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List
Montenegro	Tier 2	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List
Nicaragua	Tier 2	Tier 2 Watch List	Tier 2 Watch List	Tier 2 Watch List

Source: U.S. Department of State, TIP Reports, 2016-2019.

[23] §6 of the 2017 TVPRA; 22 U.S.C. 7107.

[24] §203 of the 2018 TVPPRA; 22 U.S.C. 7107.

How Is Congress Notified of Watch List Downgrade Waivers?

Credible evidence in support of downgrade waivers is to be submitted to the Senate Foreign Relations and the House Foreign Affairs Committees. Within 30 days after such congressional notification, the TVPA, as amended, also requires the Secretary of State to provide a detailed description of the *credible information* supporting the determination on a publicly available website maintained by the State Department, and to offer to brief the Senate Foreign Relations and House Foreign Affairs Committees on the written plans for significant efforts to become compliant with the minimum standards.[25]

Justifications for Country-Ranking Changes

The 2017 TVPRA added a new requirement that the TIP Report include a justification for each country that is ranked differently than it was in the prior year's TIP Report. In particular, the law requires a "detailed explanation" on how "concrete actions" taken or not taken by the country contributed to the listing change, "including a clear linkage between such actions and the minimum standards."[26] (See "Four Minimum Standards" below.)

Information on Tier 3 Upgrades Pursuant to the TPA

Pursuant to the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA), as amended, the President is also separately required to submit to appropriate congressional committees information on countries upgraded from Tier 3 in the prior year's TIP Report. Pursuant to the TPA, the President must submit detailed descriptions of credible evidence supporting these upgrades.[27] The detailed descriptions may be accompanied by copies of documents providing such evidence.

[25] §110 of the TPVA, as amended by §107 of the 2008 TVPRA and §1205 of the 2013 VAWRA; 22 U.S.C. 7107. The 2017 TVPRA added the briefing requirement, while the prior 2013 VAWRA added the public notice provision. For the 2019 public notification, see State Department, Office to Monitor and Combat Trafficking in Persons, "Memorandum of Justification Consistent with Section 110(B)(2)(D) of the Trafficking Victims Protection Act of 2000,"June 20, 2019, https://www.state.gov/memorandum-of-justification-consistent-with-section-110b2d-of-the-trafficking-victims-protection-act-of-2000-as-amended-tvpa. §2 of the 2017 TVPRA defined "credible information" to include a variety of information sources, including State Department reports, reports by other federal agencies, documentation provided by foreign governments and others. See 22 U.S.C. 7102.

[26] §6 of the 2017 TVPRA, 22 U.S.C. 7107. §2 of the 2017 TVPRA amended the TVPA to define the term "concrete actions" as "actions that demonstrate increased efforts by the government of a country" to meet the minimum standards, including enforcement actions taken, investigations underway, prosecutions conducted, convictions attained, training provided, programs and partnerships underway, efforts to prevent severe forms of trafficking, and victim services offered, as well as the amount of money committed by the government to all of the aforementioned actions. See 22 U.S.C. 7102.

[27] The TPA is Title I of P.L. 114-26, the Defending Public Safety Employees' Retirement Act. The TIP Report-related provision in the TPA was amended by §914 of the Trade Facilitation and Trade Enforcement Act of 2015. See 19 U.S.C. 4205. The President delegated this reporting requirement to the Secretary of State. See 81 FR 35579.

Child Soldier Reporting Requirements

Congress enacted the Child Soldiers Prevention Act of 2008 (CSPA) as part of its 2008 reauthorization of the TVPA.[28] A key element of the CSPA is the requirement to include in the annual TIP Report an additional list of foreign governments that recruit or use child soldiers in their armed forces, police, or other security forces, or in government-supported armed groups.[29] Government-supported armed groups include paramilitaries, militias, and civil defense forces.

Who Is a *Child Soldier*?

Pursuant to the CSPA, as amended, the term "child soldier" refers to persons under age 18 who

(i) take direct part in hostilities as a member of government armed forces, police, or other security forces; or

(ii) are compulsorily recruited into governmental armed forces, police, or other security forces (or are under 15 years old and are voluntarily recruited), including in noncombat support roles; or

(iii) are recruited or used in hostilities by non-state armed forces, including in noncombat support roles.

The 2019 TIP Report placed 11 countries on the CSPA list: Afghanistan, Burma, Democratic Republic of the Congo (DRC), Iran, Iraq, Mali, Somalia, South Sudan, Sudan, Syria, and Yemen.[30]

Other Required Information in the TIP Report

In addition to the required country lists, the TVPA requires the State Department to include other information in the annual TIP Report. This includes[31]

- information on what the United Nations (U.N.), Organization for Security and Cooperation in Europe (OSCE), North Atlantic Treaty Organization (NATO), and other multilateral organizations, as appropriate, are doing to prevent their employees, contractors, and peacekeeping forces from engaging in human trafficking or exploiting victims of trafficking;
- information on changes in the global patterns of human trafficking, including prevalence data, disaggregated by source, transit, and destination countries, as well as nationality, gender, and age;
- information on emerging human trafficking issues; and
- information on "promising practices in the eradication of trafficking in persons."[32]

[28] Title IV of the 2008 TVPRA; 22 U.S.C. 2370c et seq.

[29] The CSPA of 2018 (Title II, Subtitle B of P.L. 115-425) amended previous language of "recruit and use" to "recruit or use," and broadened the scope to include the recruitment or use of child soldiers within police or other security forces. See 22 U.S.C. 2370c and 22 U.S.C. 2370c-1.

[30] Pursuant to amendment by the CSPA of 2018, the Secretary of State is required to formally notify the government of listed countries within 45 days of their having been listed as a child soldier country in the TIP Report, and then to subsequently notify the appropriate congressional committees that this requirement has been met. See 22 U.S.C. 2370c-1.

[31] §110 of the TVPA, as amended; 22 U.S.C. 7107.

[32] §1205 of the Violence Against Women Reauthorization Act of 2013 (2013 VAWRA; P.L. 113-4) added this requirement to §110 of the TVPA; 22 U.S.C. 7107.

Standards and Definitions for Determining Country Rankings

As discussed above, the TIP Report is the evaluates of each government's commitment to eliminating severe forms of trafficking in persons. Countries are assessed based on whether they are complying with, or making *significant efforts* to comply with, four *minimum standards* prescribed by the TVPA, as amended.[33] The TVPA defines the four minimum standards and 12 related criteria, and also provides guidance on the factors that the State Department is to consider when determining whether a country that is not compliant with the minimum standards is nonetheless making *significant efforts* to bring themselves into compliance.

While the four minimum standards have not been amended since the TVPA was first enacted, the criteria for evaluating what constitutes *serious and sustained efforts* to eliminate trafficking, which relate to the fourth standard, have been modified and expanded through multiple reauthorizations of the TVPA since 2000.[34] The factors relating to *significant efforts* (which are separate from and not to be confused with the current 12 criteria) have also been modified through recent reauthorizations.[35]

Although these provisions prescribe the means through which the State Department is to evaluate the efforts of foreign governments, State Department officials may exercise considerable discretion in categorizing countries (for further discussion, see "Criticisms and Alternatives to the TIP Report.")

Four *Minimum Standards*

The TVPA identifies four *minimum standards* for the elimination of trafficking, which governments are expected to achieve:[36]

1. Governments should prohibit severe forms of trafficking in persons and punish such acts.
2. Governments should prescribe punishment commensurate with that of grave crimes for the knowing commission of any act involving sex trafficking induced by force, fraud, or coercion; sex trafficking involving a child; or any act that includes rape, kidnapping, or which causes death.

[33] §108 of the TVPA, as amended; 22 U.S.C. 7106.

[34] Although the four minimum standards have not been amended since the TVPA was first enacted, §106 of the 2008 TVPRA revised a prefatory provision that specified the types of countries, which would be evaluated in TIP Reports for compliance with the minimum standards. Originally, §108 of the TVPA stated that the minimum standards were "applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking." §106 of the 2008 TVPRA removed from §108 of the TVPA the phrase *a significant number of*—a phrase that the State Department had previously used to limit the number of countries subject to rankings in the TIP Report.

[35] See "Factors for Evaluating Significant Efforts" below. §2 of the 2017 TVPRA also clarified that ranking determinations are to be based solely on *concrete actions* taken by the country during the assessed reporting period, and not on any commitments to take future steps. The law amended the TVPA to define *concrete actions* as "actions that demonstrate increased efforts by the government of a country" to meet the minimum standards, including enforcement actions taken, investigations underway, prosecutions conducted, convictions attained, training provided, programs and partnerships underway, efforts to prevent severe forms of trafficking, and victim services offered, as well as the amount of money committed by the government to all of the aforementioned actions.

[36] §108 of the TVPA; 22 U.S.C. 7106.

3. Governments should prescribe punishment for the knowing commission of any severe form of trafficking in persons that is sufficiently stringent to deter future acts and adequately reflect the heinous nature of the offense.
4. Governments should make *serious and sustained efforts* to eliminate severe forms of trafficking in persons.

Twelve Criteria for *Serious and Sustained Efforts*

In assessing whether governments are achieving the fourth minimum standard, that of making *serious and sustained efforts* to eliminate severe forms of trafficking in persons, the TVPA initially included seven criteria, or indicative factors.[37] Subsequent TVPA reauthorizations amended the TVPA to modify some of the original criteria and expand the list. There are currently 12 criteria:

1. **Enforcement and prosecution—**whether governments vigorously investigate and prosecute acts of severe forms of trafficking in persons, including convicting and sentencing those responsible for such acts.[38]
2. **Victim protection—**whether governments protect victims of severe forms of trafficking in persons, encourage their assistance in the investigation and prosecution of such trafficking, and ensure that victims are not inappropriately incarcerated, filed, or otherwise penalized for unlawful acts resulting directly from having been trafficked.[39]
3. **Trafficking prevention—**whether governments have adopted measures to prevent severe forms of trafficking in persons.[40]
4. **International cooperation—**whether governments cooperate with other governments in the investigation and prosecution of severe forms of trafficking in persons and whether governments have entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with others.[41]
5. **Extradition—**whether governments extradite those charged with acts of severe forms of trafficking in persons on terms and to an extent similar to those charged with other serious crimes.
6. **Trafficking patterns and human rights protections—**whether governments monitor migration patterns for evidence of severe forms of trafficking in persons and whether law enforcement responses to such evidence are both consistent with

[37] The Conference Report accompanying the TVPA clarified that countries are not required to meet all the listed criteria. Specifically it states: "The conferees do not expect that a government would be required to fulfill all the criteria … in order to be making 'serious and sustained efforts' to eliminate severe forms of trafficking in persons. Rather, the subsection requires only that the Secretary consider these factors in determining whether the government is making such efforts." See Conference Report to Accompany H.R. 3244, Victims of Trafficking and Violence Protection Act of 2000, H.Rept. 106-939, October 5, 2000, p. 96.

[38] This criterion was amended by §6 of the 2003 TVPRA, §106 of the 2008 TVPRA, §6 of the 2017 TVPRA, and §202 of the 2018 TVPPRA.

[39] This criterion was amended by §106 of the 2008 TVPRA.

[40] This criterion was amended by §104 of the 2005 TVPRA (P.L. 109-164), §106 of the 2008 TVPRA, and §1204 of the VAWRA of 2013.

[41] This criterion was amended by §1204 of the 2013 VAWRA.

the vigorous investigation and prosecution of acts of such trafficking and with the protection of a victim's human rights.

7. **Enforcement and prosecution of public officials**—whether governments vigorously investigate, prosecute, convict, and sentence public officials who participate in or facilitate severe forms of trafficking in persons, as well as whether governments take all appropriate measures against officials who condone such trafficking.[42]
8. **Foreign victims**—whether noncitizen victims of severe forms of trafficking in persons are insignificant as a percentage of all victims in a country.[43]
9. **Partnerships**—whether governments have entered into effective and transparent partnerships, cooperative arrangements, or agreements that have resulted in concrete and measurable outcomes with the United States or other external partners.[44]
10. **Self-monitoring**—whether governments systematically monitor their efforts to satisfy certain above-listed criteria and publicly share periodic assessments of such efforts.[45]
11. **Progress**—whether governments achieve appreciable progress in eliminating severe forms of trafficking in persons, compared to the previous year's assessment.[46]
12. **Demand reduction**—whether governments have made serious and sustained efforts to reduce demand for commercial sex acts and international sex tourism.[47]

Factors for Evaluating *Significant Efforts*

Countries that are not compliant with the four minimum standards can avoid the worst (Tier 3) ranking if they are deemed to be making *significant efforts* to become compliant. In determining whether a government is making *significant efforts* to become compliant with the four minimum standards, the TVPA requires the Secretary of State to consider the following factors:

- the extent to which a country is a source, transit, or destination for severe forms of trafficking in persons;
- the extent of noncompliance with the minimum standards by the countries, including in particular whether public officials are involved in severe forms of trafficking in persons;
- what measures are reasonable, due to resource and capability constraints, to bring the government into compliance with the minimum standards;
- the extent to which the government is devoting sufficient budgetary resources to investigate acts of severe trafficking in persons, to investigate, prosecute, convict

[42] This criterion was amended by §6 of the 2003 TVPRA, §104 of the 2005 TVPRA, and §1204 of the 2013 VAWRA.

[43] This criterion was added by §6 of the 2003 TVPRA.

[44] This criterion was added by §1204 of the 2013 VAWRA.

[45] This criterion was added by §6 of the 2003 TVPRA (and moved by §1204 of the 2013 VAWRA).

[46] Ibid.

[47] Key elements of this criterion had previously been included in the third criterion, as added by §104 of the 2005 TVPRA. It was later moved and modified by §106 of the 2008 TVPRA and then moved again by §1204 of the 2013 VAWRA.

and sentence persons responsible, to obtain restitution for human trafficking victims, to protect and support human trafficking victims, and to prevent severe forms of trafficking in persons;[48] and

- the extent to which the government has consulted with domestic and international civil society organizations and has taken concrete actions to improve the provision of services to human trafficking victims as a result.[49]

In addition, if the government itself exhibits patterns or policies of trafficking, forced labor, sexual slavery, or child soldiers, the Secretary of State is instructed to consider this as proof of a failure to make significant efforts.[50]

Country-Ranking Decision Flow

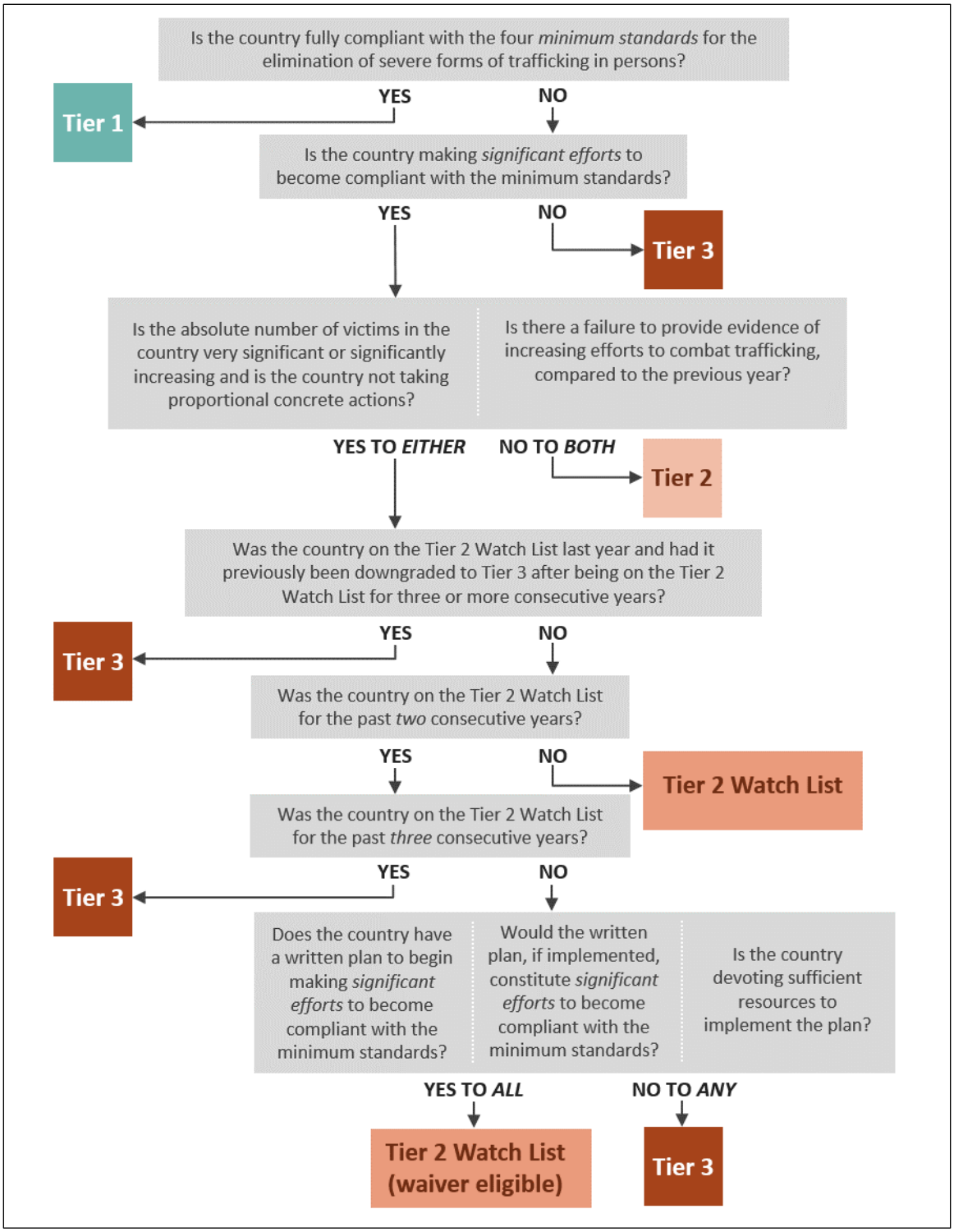
Taken in their entirety, the TVPA's prescribed standards and guidelines for country-ranking determinations, and its time duration restrictions and related waiver provisions for consecutive Tier 2 Watch List determinations, create a complex decision-flow process for determining each country's ranking (see **Figure 3**).

[48] These criteria were added by §6 of TVPRA 2017.

[49] This criterion was added by §6 of TVPRA 2017.

[50] This consideration was added by §203 of the 2018 TVPPRA.

Figure 3. Country-Ranking Decisions: Which Tier in the TIP Report?



Source: CRS, based on the TVPA, as amended.

Actions Against Governments Failing to Meet Minimum Standards

Aid Restrictions for Tier 3 Countries

The TVPA established that certain types of foreign assistance may not be provided to governments that are not committed to meeting the minimum standards for the elimination of severe forms of trafficking in persons (Tier 3 countries):

> 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.[51]

The TVPA's provisions to restrict certain types of U.S. aid and certain other categories of U.S. and multilateral funding to Tier 3 countries began with the 2003 TIP Report. Funding subject to potential restriction includes *nonhumanitarian, nontrade-related foreign assistance* authorized pursuant to the Foreign Assistance Act of 1961, sales and financing authorized by the Arms Export Control Act (AECA), and educational and cultural exchange funding, as well as loans and other funding provided by multilateral development banks and the International Monetary Fund.

Aid Authorized by the Foreign Assistance Act of 1961

Nonhumanitarian, nontrade-related foreign assistance is defined in the TVPA as assistance authorized pursuant to the Foreign Assistance Act of 1961 (FAA) *except* for the following:[52]

- Assistance authorized under Chapter 4 of part II of the FAA (Economic Support Fund) in support of programs, projects, or activities conducted by nongovernmental organizations and eligible for Development Assistance under Chapter 1 of part I of the FAA.
- International Narcotics Control assistance authorized under chapter 8 of part I of the FAA.
- Any other counternarcotics assistance authorized under Chapters 4 or 5 of part II of the FAA (Economic Support Fund and International Military Education and Training), subject to certain congressional notification procedures.[53]
- Disaster relief assistance, including any assistance under Chapter 9 of part I of the FAA (International Disaster Assistance).
- Antiterrorism assistance authorized under Chapter 8 of part II of the FAA.
- Refugee assistance.

[51] §110 of the TVPA; 22 U.S.C. 7107.

[52] §103 of the TVPA; 22 U.S.C. 7102.

[53] For the notification procedures, see Section 634 of the FAA, as amended (22 U.S.C. 2394-1).

- Humanitarian and other development assistance in support of programs conducted by nongovernmental organizations under Chapters 1 and 10 of the FAA.[54]
- Overseas Private Investment Corporation programs authorized under Title IV of Chapter 2 of part I of the FAA.
- Other trade-related or humanitarian assistance programs.

Sales and Financing Authorized by the Arms Export Control Act

Pursuant to the TVPA, *nonhumanitarian, nontrade-related foreign assistance* subject to aid restriction also includes

- sales or financing on any terms authorized by the AECA—with the exception of sales or financing provided for narcotics-related purposes if congressionally notified.[55]

Funding for Educational and Cultural Exchanges

In the case of countries that do not receive such *nonhumanitarian, nontrade-related foreign assistance*, the TVPA authorizes the President to withhold funding for participation by officials or employees of Tier 3 countries in educational and cultural exchange programs.[56]

Loans and Other Funds Provided by Multilateral Development Banks and the International Monetary Fund

The TVPA authorizes the President to instruct the U.S. Executive Directors of each multilateral development bank and of the International Monetary Fund to vote against and otherwise attempt to deny loans or other uses of funds to Tier 3 countries.[57]

Presidential Determinations, Waivers, and Certifications

Between 45 and 90 days after submission of the annual TIP Report (due June 1), the TVPA requires the President to make a determination regarding whether and to what extent antitrafficking aid restrictions are to be imposed on Tier 3 countries during the following fiscal year.[58] (See **Table 2** below.) Typically issued near the beginning of the fiscal year and published in the *Federal Register*, the presidential determinations address the following:

- **Applicability of aid restrictions—**whether to withhold *nonhumanitarian, nontrade-related assistance* authorized by the FAA and the AECA, and whether to withhold funding for education and cultural exchanges and loans and other

[54] Pursuant to notes in the U.S. Code, the TVPA's reference to Chapters 1 and 10 of the FAA probably refers to Chapters 1 and 10 of part I of the FAA, which authorize development assistance and the Development Fund for Africa.

[55] For the notification procedures, see Section 634 of the FAA, as amended (22 U.S.C. 2394-1).

[56] §110 of the TVPA; 22 U.S.C. 7107.

[57] Pursuant to §110 of the TVPA (22 U.S.C. 7107), the U.S. Executive Directors of each multilateral development bank and the International Monetary Fund may support loans and other uses of funds to Tier 3 countries for humanitarian assistance; trade-related assistance; or development assistance that directly addresses basic human needs, is not administered by the government of the Tier 3 country, and confers no benefit to that government.

[58] The TVPA specifies that presidential determinations are to be made between 45 and 90 days after submission of the annual TIP Report or an "Interim Report" pursuant to §110(b)(2) of the TVPA. The Interim Report may be in reference to a provision that was struck by §1205(2) of the 2013 VAWRA.

funds provided by multilateral development banks and the International Monetary Fund;

- **Duplication of aid restrictions—**whether ongoing, multiple, broad-based restrictions, comparable to those specified by the TVPA, on assistance in response to human rights violations are already in place;
- **Subsequent compliance**—whether the Secretary of State has found that the government of a Tier 3 country is now compliant with the minimum standards or is making significant efforts to become compliant; and
- **National interest concerns**—whether to continue assistance, in part or in whole, because it would promote the purposes of the TVPA or is otherwise in the national interest of the United States—including when the continuation of assistance is necessary to avoid significant adverse effects on vulnerable populations, such as women and children.

Pursuant to the TVPA, the President may selectively waive aid restrictions for national interest concerns, including by exercising a waiver for one or more specific programs, projects, or activities. Following the initial presidential determination required by the TVPA, as amended, the President may make additional determinations to waive, in part or in whole, aid restrictions on Tier 3 countries.[59]

As part of the President's determinations, the TVPA also requires the President to include a certification by the Secretary of State that no counternarcotics or counterterrorism assistance authorized by the FAA or arms sales and financing authorized by the AECA is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.[60]

Table 2. Aid Restrictions and Waivers for Tier 3 Countries, Pursuant to the TVPA, FY2004-FY2020

Fiscal Year	Aid Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2004	Burma, Cuba, North Korea	none	Liberia, Sudan	Belize, Bosnia and Herzegovina, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Suriname, Turkey, Uzbekistan
FY2005	Burma, Cuba, North Korea	none	Equatorial Guinea, Sudan, Venezuela	Bangladesh, Ecuador, Guyana, Sierra Leone
FY2006	Burma, Cuba, North Korea	Ecuador, Kuwait, Saudi Arabia	Cambodia, Venezuela	Bolivia, Jamaica, Qatar, Sudan, Togo, United Arab Emirates
FY2007	Burma, Cuba, North Korea	Saudi Arabia, Sudan, Uzbekistan	Iran, Syria, Venezuela, Zimbabwe	Belize, Laos

[59] §110 of the TVPA, as added by §6 of the 2003 TVPRA; 22 U.S.C. 7107.

[60] §110 of the TVPA, as amended with technical edits by §1212 of the 2013 VAWRA; 22 U.S.C. 7107.

Fiscal Year	Aid Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2008	Burma, Cuba	Algeria, Bahrain, Malaysia, Oman, Qatar, Saudi Arabia, Sudan, Uzbekistan	Iran, North Korea, Syria, Venezuela	Equatorial Guinea, Kuwait
FY2009	Burma, Cuba, Syria	Algeria, Fiji, Kuwait, Papua New Guinea, Qatar, Saudi Arabia, Sudan	Iran, North Korea	Moldova, Oman
FY2010	Cuba, North Korea	Chad, Kuwait, Malaysia, Mauritania, Niger, Papua New Guinea, Saudi Arabia, Sudan	Burma, Eritrea, Fiji, Iran, Syria, Zimbabwe	Swaziland
FY2011	Eritrea, North Korea	Democratic Republic of Congo, Dominican Republic, Kuwait, Mauritania, Papua New Guinea, Saudi Arabia, Sudan	Burma, Cuba, Iran, Zimbabwe	none
FY2012	Eritrea, Madagascar, North Korea	Algeria, Central African Republic, Guinea-Bissau, Kuwait, Lebanon, Libya, Mauritania, Micronesia, Papua New Guinea, Saudi Arabia, Sudan, Turkmenistan, Yemen	Burma,[a] Cuba, Democratic Republic of Congo, Equatorial Guinea, Iran, Venezuela, Zimbabwe	none
FY2013	Cuba, Eritrea, Madagascar, North Korea	Algeria, Central African Republic, Kuwait, Libya, Papua New Guinea, Saudi Arabia, Yemen	Democratic Republic of Congo, Equatorial Guinea, Iran, Sudan, Syria, Zimbabwe	none
FY2014	Cuba, Iran, North Korea	Algeria, Central African Republic, China, Guinea-Bissau, Kuwait, Libya, Mauritania, Papua New Guinea, Russia, Saudi Arabia, Uzbekistan, Yemen	Democratic Republic of Congo, Sudan, Equatorial Guinea, Eritrea, Syria, Zimbabwe	none
FY2015	Iran, North Korea, Russia	Algeria, Central African Republic, The Gambia, Guinea-Bissau, Kuwait, Libya, Malaysia, Mauritania, Papua New Guinea, Saudi Arabia, Thailand, Uzbekistan, Yemen	Cuba, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Syria, Venezuela, Zimbabwe	none
FY2016	Iran, North Korea	Algeria, Belarus, Belize, Burundi, Central African Republic, Comoros, The Gambia, Guinea-Bissau, Kuwait, Libya, Marshall Islands, Mauritania, Thailand	Equatorial Guinea, Eritrea, Russia, South Sudan, Syria, Venezuela, Yemen, Zimbabwe	none

Fiscal Year	Aid Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2017	Iran, North Korea	Algeria, Belarus, Belize, Burma, Burundi, Central African Republic, Comoros, Djibouti, The Gambia, Guinea-Bissau, Haiti, Marshall Islands, Mauritania, Papua New Guinea, Suriname, Turkmenistan, Uzbekistan	Equatorial Guinea, Eritrea, Russia, South Sudan, Sudan, Syria, Venezuela, Zimbabwe	none
FY2018	Iran, North Korea	Belarus, Belize, Burundi, Central African Republic, China, Comoros, Republic of Congo, Guinea, Guinea-Bissau, Mali, Mauritania, Turkmenistan, Uzbekistan	Democratic Republic of Congo, Equatorial Guinea, Eritrea, Russia, South Sudan, Sudan, Syria, Venezuela	none
FY2019	Bolivia, Burma, Burundi, China, Comoros, Democratic Republic of Congo, Republic of Congo, Equatorial Guinea, Gabon, Iran, North Korea, Laos, Mauritania, Russia, South Sudan, Syria, Venezuela	Belarus, Turkmenistan	Belize, Eritrea, Papua New Guinea	none
FY2020	Burundi, China, Cuba, Equatorial Guinea, Eritrea, The Gambia, Iran, DPRK, Mauritania, Russia, Syria	Belarus, Bhutan, Comoros, Papua New Guinea, Turkmenistan, Venezuela	Burma, Democratic Republic of Congo, Saudi Arabia, South Sudan	TBD

Sources: Determination of the President of the United States, Nos. 2003-35 (68 FR 53871), 2004-46 (69 FR 56155), 2005-37 (70 FR 57481), 2006-25 (71 FR 64431), 2008-4 (72 FR 61037), 2009-5 (73 FR 63839), 2009-29 (74 FR 48365), 2010-15 (75 FR 67017, 68411), 2011-18 (76 FR 62599), 2012-16 (77 FR 58921, as amended by 77 FR 61046), 2013-16 (78 FR 58861), 2014-16 (79 FR 57699), 2016-01 (80 FR 62435), 2016-12 (81 FR 70311), 2017-15 (82 FR 50047), 2019-05 (83 FR 65281); The White House, "Presidential Memorandum on Determination with Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons," October 18, 2019.

a. Indicates that following the President's delegation of authority on February 3, 2012 (see 77 FR 11375), the Secretary of State revised Presidential Determination No. 2011-18 on February 6, 2012, to waive prohibitions on U.S. support for assistance to Burma through international financial institutions. See U.S. Department of State Public Notice No. 7799 (77 FR 9295). Other residential delegations of authority were issued on July 29, 2013, for Syria (78 FR 48027) and on October 5, 2015, for Yemen (78 FR 6505).

Trade Restrictions for Tier 3 Countries

Pursuant to the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA), as amended, trade authorities procedures may not apply to any implementing bill submitted with respect to an international trade agreement involving the government of a country listed as Tier 3

in the most recent annual TIP Report.[61] The trade authorities procedures described in the TPA are critical for the fast-tracking of international trade agreements, such as a free trade agreement.

The Trade Facilitation and Trade Enforcement Act of 2015 created an exception to the TPA's initial prohibitions.[62] This exception authorizes trade agreement negotiations to proceed with Tier 3 countries, but only if the President specifies in a letter to appropriate congressional committees that the country in question has taken "concrete actions to implement the principal recommendations with respect to that country in the past recent annual report on trafficking in persons."[63] The letter must include a description of the *concrete actions* and supporting documentation of *credible evidence* of each concrete action (e.g., copies of relevant laws, regulations, and enforcement actions taken, as appropriate). Moreover, the letter must be made available to the public.

Other Requirements Related to Noncompliant Countries

Amendments to the TVPA in 2019 created new additional requirements related to noncompliant countries.

State Department Communications with Certain Watch List Countries. Pursuant to amendments made by the 2017 TVPRA, for countries that were *upgraded* from Tier 3 to the Tier 2 Watch List in the latest TIP Report, no later than 180 days after the report's release, the State Department is to develop and present to the country's government an action plan for further improving the country's ranking. Action plans shall include *concrete actions* that the government can take to address deficiencies in order to meet Tier 2 standards, and include short-term and multi-year goals.[64] A separate provision pertaining to countries that were *downgraded* to the Tier 2 Watch List requires that the Secretary of State "not less than annually" provide the foreign minister of each such country a copy of the TIP Report and information relating to the country's downgrade, including steps that the country must take to be considered for a Tier ranking upgrade (among other required elements).[65]

USAID Strategies. Pursuant to amendments made by the 2018 TVPPRA, the U.S. Agency for International Development (USAID) is to integrate child protection and trafficking risk reduction strategies into its development strategies for Tier 3 and Tier 2 Watch List countries. USAID is to develop strategies for these countries to "address the root causes of insecurity" that leave children vulnerable to trafficking, and that monitor progress to prevent and address violence against children in post-conflict and post-disaster areas.[66]

Security Assistance Restrictions for Child Soldier Countries

Pursuant to the CSPA, as amended, countries listed in the most recent TIP Report as having recruited or used child soldiers are prohibited from participating in certain types of security assistance and cooperation activities.[67] These restrictions include

[61] §106 of the TPA added this statutory restriction; it was subsequently amended by §914 of the Trade Facilitation and Trade Enforcement Act of 2015; see 19 U.S.C. 4205.

[62] §914 of the Trade Facilitation and Trade Enforcement Act of 2015.

[63] *Appropriate congressional committees* in §106 of the TPA, as amended, refer to the Senate Finance Committee, SFRC, House Ways and Means Committee, and HFAC (the TVPA, in contrast, uses the term to refer to the SFRC, SJUD, HFAC, and HJUD). The definition was added by §914 of the Trade Facilitation and Trade Enforcement Act of 2015; 19 U.S.C. 4205. The President delegated this authority to the Secretary of State. See 81 FR 35579.

[64] §6 of the 2017 TVPRA, 22 U.S.C. 7107. See footnote 35 for the law's definition of "concrete actions." The law also requires that the Ambassador-at-Large for the Office to Monitor and Combat Trafficking in Persons and the appropriate regional Assistant Secretaries make themselves available to brief the Foreign Relations/Foreign Affairs and Appropriations Committees in the House and Senate regarding implementation of the action plans.

[65] §7 of the 2017 TVPRA. This provision did not amend the TVPA and has not been provided a citation number in the U.S. code.

[66] §204 of the 2018 TVPPRA.

[67] These restrictions are pursuant to 22 U.S.C. 2370c-1.

- licenses for direct commercial sales of military equipment;
- foreign military financing for the procurement of defense articles and services, as well as design and construction services;[68]
- excess defense articles;[69]
- international military education and training;[70] and
- peacekeeping operations and other programs.[71]

Presidential waiver determinations relating to CSPA restrictions have also referenced some Department of Defense (DOD) security cooperation authorities that by law cannot be utilized if they are "otherwise prohibited by any provision of law" as being potentially restricted by the CSPA. This has included DOD's "train and equip" authority for building the capacity of foreign defense forces, now codified at 10 U.S.C. 333.[72]

Other forms of U.S. security assistance to CSPA-listed countries may continue to be provided under the law, although constraints may be applied as a matter of policy.

Exceptions and Presidential Determinations, Certifications, and Waivers

CSPA security assistance restrictions may not apply if one of four circumstances is invoked.[73]

- **Peacekeeping exception.** Assistance may continue to child soldier countries for peacekeeping operations that support military professionalization, security sector reform, heightened respect for human rights, peacekeeping preparation, or the demobilization and reintegration of child soldiers.
- **International military education and training and nonlethal supplies exception.** Assistance for international military education and training may be provided through the Defense Institute for International Legal Studies or the Center for Civil-Military Relations at the Naval Post-Graduate School, and nonlethal supplies to child solider countries may continue for up to five years, if the President certifies to appropriate congressional committees that (1) such assistance will directly support professionalization of the military; and (2) the country is taking "reasonable steps to implement effective measures to demobilize child soldiers ... and is taking reasonable steps in the context of its national resources to provide demobilization, rehabilitation, and reintegration assistance to those former child soldiers."[74]

[68] As authorized by §23 of the Arms Export Control Act, as amended; 22 U.S.C. 2763.

[69] As authorized by §516 of the FAA, as amended; 22 U.S.C. 2321j.

[70] As authorized by §541 of the FAA, as amended; 22 U.S.C. 2347.

[71] As authorized by §551 of the FAA, as amended; 22 U.S.C. 2348.

[72] In the most recent presidential determination with respect to the CSPA, for instance, Somalia's partial waiver allowed for the provision of support authorized by 10 U.S.C. 333. See Presidential Determination No. 2018-13 (83 FR 53363), September 28, 2018. Prior waiver determinations have also referenced Section 1208 of the FY2014 National Defense Authorization Act (P.L. 113-66), used by DOD to support operations to counter the Lord's Resistance Army. Both authorities include a clause that "The Secretary of Defense may not use the authority…to provide any type of support that is otherwise prohibited by any provision of law."

[73] 22 U.S.C. 2370c-1.

[74] The CSPA originally provided a general exception for any qualifying international military education and training, but this was amended by the CSPA of 2018 to limit this exception to the specified institutions.

- **National interest waiver.** The President may waive the CSPA security assistance restrictions if the President determines that such a waiver is in the national interest of the United States and certifies to the appropriate congressional committees that the country's government is "taking effective and continuing steps to address the problem of child soldiers."[75] The President is to notify the appropriate committees of the waiver and the justification within 45 days of granting a waiver. Presidential determinations concerning waivers are typically published in the *Federal Register* near the beginning of the fiscal year. (See **Table 3** below.).
- **Reinstatement certification.** Security assistance otherwise prohibited by the CSPA may be reinstated if the President certifies to appropriate congressional committees that the government of the listed country has (1) implemented measures, including an action plan and actual steps to stop recruiting and using child soldiers, and (2) implemented policies and mechanisms to prohibit and prevent future recruitment or use of child soldiers.

Table 3. Aid Restrictions and Waivers to Child Soldier Countries, Pursuant to the CSPA, FY2011-FY2020

Fiscal Year	Aid Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2011	Burma, Somalia	Chad, Democratic Republic of Congo, Sudan, Yemen	none	none
FY2012	Burma, Somalia, Sudan	Yemen	Democratic Republic of Congo	Chad
FY2013	Burma, Sudan	Libya, South Sudan, Yemen	Democratic Republic of Congo, Somalia[a]	none
FY2014	Burma, Central African Republic, Rwanda, Sudan, Syria	Chad, South Sudan, Yemen	Democratic Republic of Congo, Somalia	none
FY2015	Burma, Sudan, Syria	Rwanda, Somalia, Yemen	Central African Republic, Democratic Republic of Congo, South Sudan	none
FY2016	Burma, Sudan, Syria, Yemen	Democratic Republic of Congo, Nigeria, Somalia	South Sudan	none
FY2017	Sudan, Syria, Yemen	Burma, Iraq, Nigeria	Democratic Republic of Congo, Rwanda, Somalia, South Sudan	none
FY2018	Sudan, Syria	Mali, Nigeria	Democratic Republic of Congo, Somalia, South Sudan, Yemen[b]	none
FY2019	Burma, Democratic Republic of Congo, Iran, Syria	Iraq, Mali, Niger, Nigeria	Somalia, South Sudan, Yemen	none

[75] 22 U.S.C. 2370c-1.

Fiscal Year	Aid Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2020	Burma, Iran, Sudan, Syria	Afghanistan, Iraq	Democratic Republic of Congo, Mali, Somalia, South Sudan, Yemen	TBD

Sources: Determination of the President of the United States, Nos. 2011-4 (75 FR 75855), 2012-01 (76 FR 65927), 2012-18 (77 FR 61509), 2013-17 (78 FR 63367), 2014-18 (79 FR 69755), 2015-13 (80 FR 62431), 2016-14 (81 FR 72683), 2017-14 (82 FR 49085), 2018-13 (83 FR 53363); The White House, "Presidential Determination and Certification with Respect to the Child Soldiers Prevention Act of 2008," October 18, 2019.

a. Following the President's delegation of authority on August 2, 2013 (see 78 FR 72789), the Secretary of State revised Presidential Determination No. 2012-18 on August 14, 2013, to partially waive restrictions on Somalia to allow for assistance under the Peacekeeping Operations authority for logistical support and troop stipends in FY2013. This State Department decision was not published in the *Federal Register*.

b. In at least two instances, the President has delegated authority to the Secretary of State to make additional CSPA determinations with respect to Yemen: on September 29, 2015 (80 FR 62429), and on September 28, 2016 (81 FR 72681). In August 2018, the Secretary of State partially waived FY2018 restrictions on Yemen to allow for assistance under the Peacekeeping Operations authority. This State Department decision was not published in the *Federal Register*.

Reporting Requirements for Exceptions and Waivers

The President is required to submit an annual report to the appropriate congressional committees that includes the list of countries notified that they were listed as a child soldier country pursuant to the CSPA (all listed countries are to be notified of their inclusion of the list); descriptions and amounts of any assistance withheld; a list of waivers or exceptions exercised and justifications for each waiver and exception; and descriptions and amounts of any assistance provided as a result of waivers or exceptions. The report is to be submitted by June 15 of the following year and, pursuant to the CSPA of 2018, is also to be included in the TIP Report.[76]

Impacts of Restrictions and Waivers

The prospect of aid and other restrictions against Tier 3 countries and child soldier countries may work to create greater incentives for countries to improve their antitrafficking efforts. To the extent that this approach can be expected to be effective (a punitive approach cannot address capacity issues on the part of the government in question, for example), it is arguably undermined by the executive branch's frequent use of waivers, a practice that has sometimes drawn criticism from some Members of Congress. On the other hand, the use of waivers allows the executive branch to balance the desire to push for antitrafficking improvements against potential unintended human security consequences or negative impacts on other foreign policy goals.

The Trump Administration has generally provided fewer waivers for Tier 3 countries than had prior Administrations. President Trump opted not to provide waivers for FY2019 assistance for over 15 Tier 3 countries (see **Table 2**), thereby restricting assistance to more countries than had been restricted by any prior determination. The Administration described the decision as "strong action … to hold accountable those governments that have persistently failed to meet the minimum standards for combating human trafficking in their countries," and declared that "this administration will no longer use taxpayer dollars to support governments that consistently fail to

[76] The CSPA of 2018 also expanded the information required to be reported on. See §212 of CSPA of 2018; 22 U.S.C. 2370c-2.

address trafficking."[77] The decision reportedly delayed some aid programs and created confusion among aid organizations concerning which programs are impacted.[78] Some Members of Congress criticized in particular the impact on programs to combat Ebola in the Democratic Republic of the Congo and noted that the justification for waivers the TVPA provides includes for reasons of avoiding significant adverse effects on vulnerable populations.[79] For FY2020, the President fully restricted assistance to 11 Tier 3 countries, while also providing a broad national interest waiver for any "programs, projects, activities, and assistance to respond to the threat posed by the Ebola virus disease."[80]

Security Assistance Restrictions in Appropriations

FY2019 appropriations for the Department of State and Department of Defense contained provisions that additionally prohibit certain types of security assistance from being used to support military training or operations that involve child soldiers. Similar provisions have also been included in prior appropriations measures in recent years.

- Section 8087 of the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245), stated that CSPA-listed countries may not receive certain funds appropriated by this act "to support any military training or operation that includes child soldiers" unless the President issues a determination pursuant to the CSPA that permits such assistance.[81]
- Section 7049(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 (Division F of P.L. 116-6), stated that funds appropriated by this act "should not be used to support any military training or operations that include child soldiers."[82]

TIP Report Methodology

The TVPA created the Office to Monitor and Combat Trafficking in Persons (J/TIP) within the State Department, whose director holds the rank of Ambassador-at-Large.[83] The J/TIP director is charged with overseeing the annual publication of the TIP Report, among other responsibilities laid out in the TVPA. In parallel to the drafting of the introductory material and the country narratives, the department's Bureau of Democracy, Human Rights, and Labor (DRL) initiates the process for identifying countries to be included in the list of governments that recruit and use

[77] Ivanka Trump, "The Trump administration is taking bold action to combat the evil of human trafficking," *Washington Post*, November 29, 2018.

[78] Michael Igoe, "Exclusive: 'Haphazard' White House crackdown on human trafficking disrupts aid," Devex, May 9, 2019; Robbie Gramer, "U.S. Stopped Vital Foreign Aid Programs in the Name of Counter-Trafficking," *Foreign Policy*, June 26, 2019.

[79] HFAC Subcommittee on Africa, Global Health, Global Human Rights and International Organizations hearing, "Eradicating Ebola: Lessons Learned and Medical Advancements," June 4, 2019; SFRC Subcommittee on Africa and Global Health Policy hearing, "Confronting Ebola: Addressing a 21st Century Global Health Crisis," July 24, 2019. See also the proposed Ebola Eradication Act of 2019 (S. 1340).

[80] The White House, "Presidential Memorandum on Determination with Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons," October 18, 2019.

[81] Specified funds subject to restriction include those made available for excess defense articles, assistance under 10 U.S.C. 333, and peacekeeping operations. Similar provisions have been included in recent past Defense Department Appropriations Acts. For FY2018, see Section 8088 of P.L. 115-141.

[82] Similar provisions have been included in recent past Department of State, Foreign Operations, and Related Programs Appropriations Acts. For FY2018, see Section 7034(b)(1) of P.L. 115-141.

[83] §105 of the TVPA; 22 U.S.C. 7103.

child soldiers. Each TIP Report is to cover country developments beginning in April of the preceding year each year and ending in March of the year of the report's issuance.[84]

Report Release

Although not required by law, the State Department has always publicly released the report and the Secretary of State has personally presided over its launch. The report, however, has never been published by its statutory June 1 deadline.[85] In addition to the statutory deadline for the annual release of the report, current law includes two other provisions related to the TIP Report's release:

- **Translation requirement.** Pursuant to the Advance Democratic Values, Address Nondemocratic Countries, and Enhance Democracy Act of 2007, the Secretary of State is required to "expand the timely translation" of the TIP Report, among other reports prepared by the State Department.[86] Current law further specifies that the TIP Report is to be translated "into the principal languages of as many countries as possible, with particular emphasis on nondemocratic countries, democratic transition countries, and countries in which extrajudicial killings, torture, or other serious violations of human rights have occurred."[87]
- **Award ceremony.** Pursuant to the TVPA reauthorization of 2008, the timing of the TIP Report's release corresponds to a requirement for the Secretary of State to host an annual ceremony for recipients of the Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons.[88] Current law provides that the Secretary-hosted ceremony occur "as soon as practicable after the date on which the Secretary submits to Congress the [TIP R]eport...."[89]

What Other Required Reports Address International Human Trafficking Matters?

Congress requires the executive branch to prepare and submit several other reports that address, at least in part, human trafficking matters. These include reports prepared by the Departments of State, Justice, and Labor.

- **State Department.** The TVPA and the CSPA require the State Department's annual Country Reports on Human Rights Practices to include information on human trafficking and child soldiers. In practice, the State Department satisfies this requirement in part by including a sub-heading on *Trafficking in Persons* for each country in the report, referring and hyperlinking to the TIP Report. The most recent version of this report was released in March 2019 and covers human rights practices in 2018.

[84] §6 of the 2017 TVPRA codified this reporting timeline, which the State Department had followed in practice prior to this statutory requirement.

[85] Publications dates of the TIP Report were as follows: July 12, 2001; June 19, 2002; June 11, 2003; June 14, 2004; June 3, 2005; June 5, 2006; June 12, 2007; June 4, 2008; June 16, 2009; June 14, 2010; June 27, 2011; June 19, 2012; July 11, 2013; June 20, 2014; July 27, 2015; June 30, 2016; June 28, 2017; June 28, 2018; and June 20, 2019.

[86] See §2122 of Title XXI of the Advance Democratic Values, Address Nondemocratic Countries, and Enhance Democracy Act of 2007 (P.L. 110-53); 22 U.S.C. 8222. See also §107 of the 2008 TVPRA; 22 U.S.C. 7107 note.

[87] The provision, codified at 22 U.S.C. 8222, additionally required the Secretary of State to submit annual reports to appropriate congressional committees in 2008 through 2010 on the status of the law's implementation.

[88] §112B of the TVPA, as added by §109 of the 2008 TVPRA; 22 U.S.C. 7109b.

[89] The provision, codified at 22 U.S.C. 7109b, additionally authorizes the Secretary of State to pay the travel costs for each award recipient and for a guest of each recipient who attends the ceremony. For the fiscal years 2008 through 2011, Congress had authorized to be appropriated such sums as may be necessary to carry out the provision. This authority has since lapsed.

- **Justice Department.** The TVPA's reauthorization in 2003 added a provision to require the Attorney General to annually report, beginning in 2004, on U.S. government efforts to combat trafficking in persons.[90] The most recent publicly available edition of this report covers FY2017.
- **Labor Department.** The TVPA's reauthorization in 2005 added a provision to require the Bureau of International Labor Affairs to develop and make available a public list of goods from countries it has reason to believe are produced by forced labor or child labor in violation of international standards.[91] The list was most recently updated in September 2018. The Labor Department is also responsible for preparing an annual report on the Worst Forms of Child Labor.[92]

Illustrative Draft Cycle

The annual process for drafting and releasing the TIP Report involves a period of worldwide information gathering, followed by an intense process of report drafting, led by J/TIP, but involving significant input from U.S. diplomatic missions and consular posts overseas as well as regional and functional bureaus (see **Figure 4**). According to the State Department's Office of Inspector General (OIG), the annual rush to meet the report's statutory release deadline may increase tensions over disagreements between bureaus and J/TIP regarding the draft country narratives and proposed tier rankings.[93]

Over time, the report draft cycle has evolved. Beginning with preparations for the 2010 TIP Report, for example, the State Department began to issue annual notices in the *Federal Register*, requesting information from nongovernmental groups on whether governments meet the TVPA's minimum standards for the elimination of trafficking.[94] A 2012 OIG inspection report of the J/TIP Office identified several other internal process changes that resulted in a significant reduction of tier ranking disputes.[95]

[90] §6 of the 2003 TVPRA amended §105 of the TPVA; it was also amended by §205 of the 2005 TVPRA, §231 and 304 of the 2008 TVPRA, and §1231 of the 2013 VAWRA. See 22 U.S.C. 7103.

[91] §105 of the 2005 TVPRA, as amended by §§1232 and 1233 of the 2013 VAWRA; 22 U.S.C. 7112.

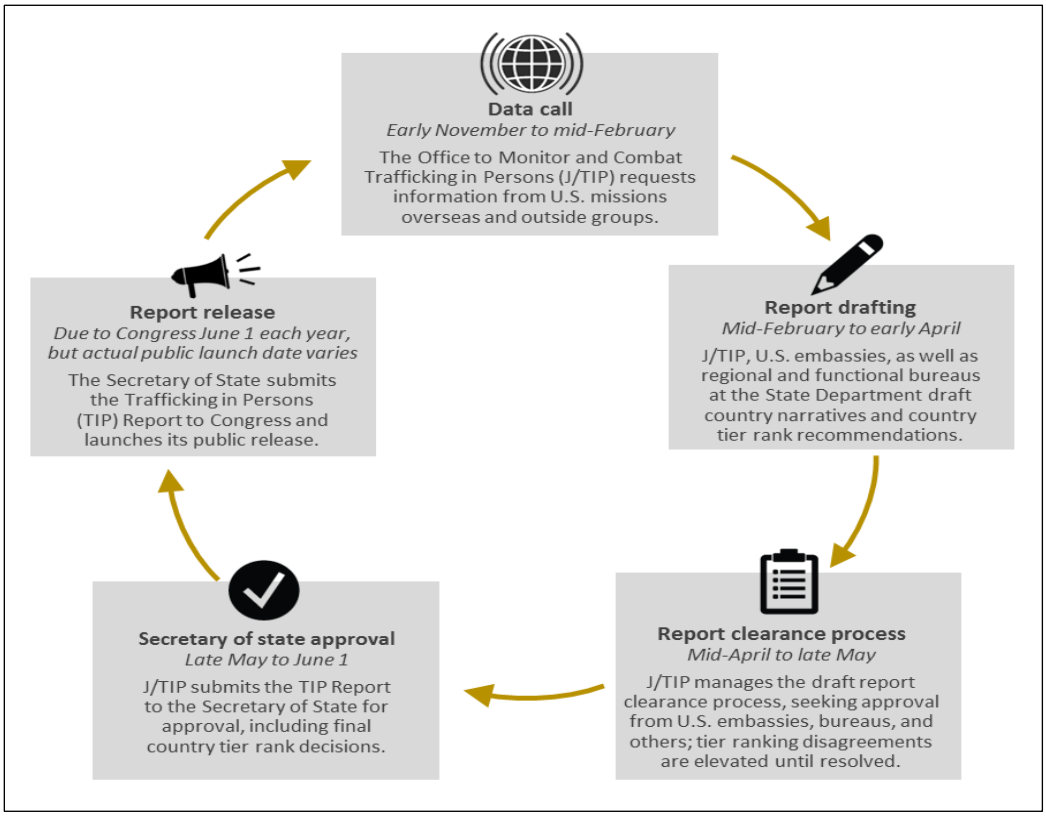
[92] §412 of the Trade and Development Act of 2000 (P.L. 106-200) amended the Trade Act of 1974 (P.L. 93-618) to create this reporting requirement on the worst forms of child labor; 19 U.S.C. 2464. Also, pursuant to Title XII of the Violence Against Women Reauthorization Act of 2013, Congress requires the Departments of State and Labor to share information on forced labor, with the objective of informing both the State Department's TIP Report and the Labor Department's report on goods produced by forced or child labor in violation of international standards. §105 of the 2005 TVPRA, as amended by §1232 of the 2013 VAWRA; 22 U.S.C. 7112.

[93] U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, *Inspection of the Office to Monitor and Combat Trafficking in Persons*, ISP-I-12-37, June 2012.

[94] For the 2019 TIP Report, see 83 FR 63553.

[95] *Inspection of the Office to Monitor and Combat Trafficking in Persons*, ISP-I-12-37, p. 8. Among the changes identified by the OIG report were the inclusion of footnotes in internal drafts and the use of SharePoint software to make country-specific information accessible across different parts of the State Department.

Figure 4. TIP Report: Typical Draft and Review Process



Source: U.S. Government Accountability Office (GAO), *Human Trafficking: State Has Made Improvements in Its Annual Report but Does Not Explicitly Explain Certain Tier Rankings or Changes*, GAO-17-56, December 2016, and U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, *Inspection of the Office to Monitor and Combat Trafficking in Persons*, ISP-I-12-37, June 2012.

Information Sources

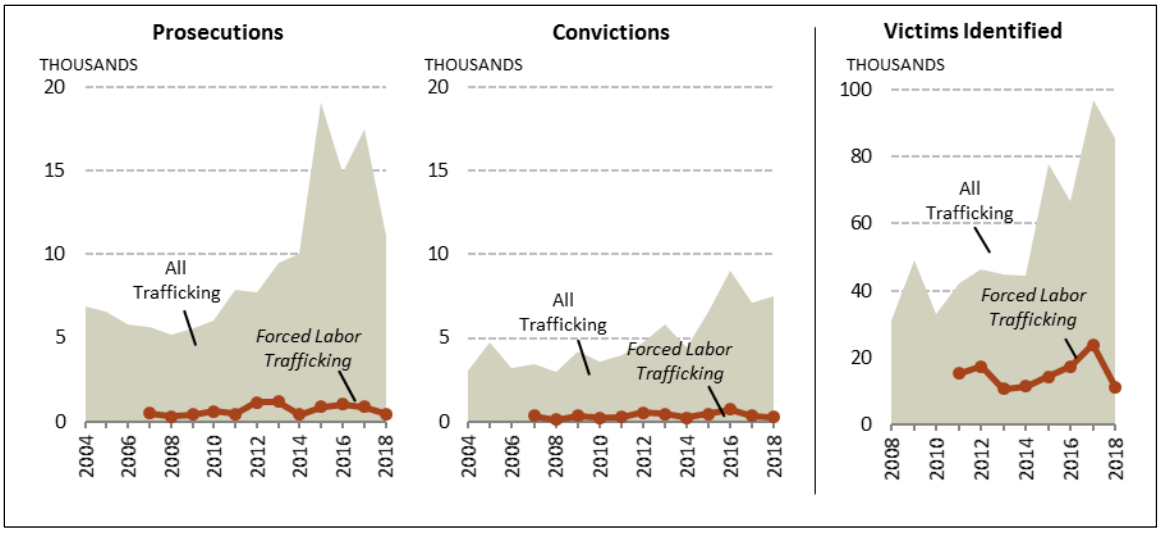
According to the State Department, information used to prepare the report is based on a variety of sources, including U.S. embassies, government officials, nongovernmental and international organizations, published reports, news articles, academic studies, and research trips. U.S. diplomatic posts and domestic agencies report on human trafficking issues throughout the year and the TIP Report incorporates information based on meetings with government officials, local and international nongovernmental representatives, officials of international organizations, journalists, academics, and survivors.

Global Law Enforcement Data

Pursuant to the TVPA reauthorization of 2003, Congress added a new criterion for governments to achieve full compliance with the minimum standards for the elimination of severe forms of trafficking in persons: providing the State Department with data on trafficking investigations, prosecutions, convictions, and sentences.[96] Beginning with the 2004 TIP Report, the State Department has included this information in its TIP Reports—on a country-by-country basis, as well as in aggregate on a global and regional basis (see **Figure 5**).

[96] §108 of the TPVA, as amended by §6 of the 2003 TVPRA; 22 U.S.C. 7106.

Figure 5. Global Law Enforcement Data from TIP Reports, 2004-2018



Source: CRS, based on data from U.S. Department of State TIP Reports.

Notes: According to the most recent TIP Report (2019), with data covering the years 2012-2018: "The above statistics are estimates derived from data provided by foreign governments and other sources and reviewed by the Department of State. Aggregate data fluctuates from one year to the next due to the hidden nature of trafficking crimes, dynamic global events, shifts in government efforts, and a lack of uniformity in national reporting structures."

Human Trafficking Trends

An implicit objective of the TVPA was to leverage the country-ranking process of the TIP Report to motivate foreign governments to prioritize and address human trafficking. Some suggest the TIP Report can be used as a potent form of soft power, both as a "name-and-shame" or "blacklist" process and as a mechanism for country-by-country monitoring of antitrafficking progress. Research has indicated that the TIP Report, and potentially other reports like it, may mobilize domestic and international pressure for policy change.[97] However, while some countries appear to be responsive to the TIP Report, others remain intractable. In the 2019 TIP Report, more than 80% of the 187 ranked countries remained noncompliant with the minimum standards laid out by the TVPA for eliminating trafficking in persons.

Pathways to the Top. Several countries' rankings have improved from Tier 3 to Tier 1:

- **Bahrain** was rated Tier 3 in 2001 and 2002 before eventually achieving a Tier 1 rating for the first time in 2018.
- **Guyana** was rated Tier 3 in 2004 and experienced multiple years on the Tier 2 Watch List before attaining a Tier 1 rating for the first time in 2017.
- **Israel** was rated Tier 3 in 2001 and eventually improved to Tier 1 by 2012.
- **South Korea** was rated Tier 3 in 2001 and immediately improved to Tier 1 the following year.

[97] Judith G. Kelley, *Scorecard Diplomacy: Grading States to Influence Their Reputation and Behavior* (Cambridge: Cambridge University Press, 2017).

Progress in Reverse. Other countries that used to be fully compliant with the minimum standards to eliminate trafficking (Tier 1) have since become noncompliant, including, for example, the following:

- **Bosnia and Herzegovina** began as a Tier 3 country in 2001 and attained Tier 1 status in 2010, but has been rated as either Tier 2 or Tier 2 Watch List every year since then (it was Tier 2 Watch List in 2019).
- **Denmark, Germany, Italy, and Poland**, which had previously been rated as Tier 1 countries nearly every consecutive year since the TIP report's inception, were all ranked as Tier 2 in the 2019 TIP Report.[98]
- **Hungary**, which attained Tier 1 status in 2007, but dropped to Tier 2 Watch List in 2017 and has remained there since.
- **Malawi**, which was ranked Tier 1 in 2006 and 2007, but has since been rated as either Tier 2 or Tier 2 Watch List (it was Tier 2 Watch List in 2019).
- **Mauritius** began as a Tier 1 country in 2003 and has since vacillated between compliant and noncompliant. After dropping to Tier 2 Watch List in 2015, it rose to Tier 2 in 2016, where it has remained since.
- **Nicaragua** was rated as Tier 1 from 2012 to 2014 but dropped to Tier 2 in 2015 and then to Tier 2 Watch List in 2017, where it has remained.
- **Nepal** attained Tier 1 status in 2005, but has since been rated Tier 2.

No Change. The rankings of several other countries have been unchanged.

- **Unchanged Tier 1:** Australia, Austria, Belgium, the Netherlands, New Zealand, Norway, Spain, United Kingdom, and United States.[99]
- **Unchanged Tier 2:** El Salvador, Kosovo, Palau, and Uganda.[100]
- **Unchanged Tier 3:** Eritrea and North Korea.[101]

Of the 38 countries on the Tier 2 Watch List in the 2019 TIP Report, 18 had been on the Tier 2 Watch List in 2018, and 7 required waivers to remain on the Tier 2 Watch List for their third consecutive year (see **Table 1**).

Criticisms and Alternatives to the TIP Report

Although many observers view the TIP Report as a credible reflection of global efforts to address human trafficking, others criticize the methodology behind the rankings.

Lack of Consistent and Transparent Evaluations

Some observers have been critical of the methodology used to evaluate foreign country efforts and assign tier rankings. In a 2012 report from the Office of the Inspector General (OIG), the TIP

[98] With the exception of a Tier 2 ranking for Poland in the 2001 report, all four countries to this point had received a Tier 1 ranking every year they had been ranked. Denmark was first ranked in 2003.

[99] Norway was first ranked in 2003, Australia and New Zealand were first ranked in 2005, and the United States was first ranked in 2010.

[100] Kosovo and Palau were first ranked in 2009 and Bhutan was first ranked in 2013.

[101] North Korea was first ranked in 2003 and Eritrea was first ranked in 2009.

Report was praised as having "gained wide credibility for its thoroughness" and "recognized as the definitive work by the anti-trafficking community on the status of anti-trafficking efforts."[102] The OIG report, however, also noted other countries' arguments that "the U.S. Government's annual assessment is flawed and its tier-ranking system subjective."

In December 2016, the U.S. Government Accountability Office (GAO) issued a report assessing the State Department's TIP Report and country-ranking procedures.[103] The GAO report assessed that the State Department lacked consistent and explicit explanations to justify upgrades and downgrades, which the report found problematic. It stated: "The lack of an explicit explanation for most of State's decisions to upgrade or downgrade countries to a different tier could limit the ability of internal and external stakeholders to understand the justification for tier changes and, in turn, use the report as a diplomatic tool to advance efforts to combat trafficking."[104] (A January 2019 amendment to the TVPA to require concrete justifications for tier ranking changes is aimed at addressing these concerns—see "Justifications for Country-Ranking Changes" above.)

Some country rankings, initially proposed by J/TIP in early drafts of the TIP Report, have reportedly been disputed by other parts of the State Department, including regional bureaus and senior leadership. According to the 2012 OIG Report, "the number of tier-ranking disputes between regional bureaus and J/TIP declined from 46 percent of all countries ranked in 2006 to 22 percent of those ranked in 2011."[105] No comprehensive analysis has yet been published documenting the number of such disputes in the years since then.

Political Motivation Behind Rankings

Some observers allege that political considerations influence rankings and that countries may be downgraded due partly to a reticence to share information with the United States. On August 3, 2015, a *Reuters* news article reported that tier-ranking disputes for 2015 TIP Report involved 17 countries and that the J/TIP Office "won only three of those disputes, the worst ratio in the 15-year history of the unit."[106] The article indicated that countries whose rankings were disputed included China, Cuba, India, Malaysia, Mexico, and Uzbekistan—all of which reportedly received better rankings than the J/TIP Office had recommended.

In testimony before the Senate Foreign Relations Committee in July 2017, then-J/TIP Director and Ambassador-at-Large Susan Coppedge declined to identify the specific number of tier-ranking disputes that preceded the release of the 2016 TIP Report. She stated, however, that the "vast majority" of the State Department's staff recommendations to the Secretary of State—encompassing those of J/TIP and the regional bureaus—were consensus recommendations.[107] In testimony before the Senate Foreign Relations Committee on the 2017 TIP Report, Coppedge noted that department staff could not agree on five countries' tier rankings.[108]

In 2017, *Reuters* reported that then-Secretary of State Tillerson chose not to include Burma, Afghanistan, and Iraq on the child soldiers list despite reports that children had been in the ranks

[102] ISP-I-12-37 (June 2012).

[103] GAO-17-56 (December 2016).

[104] Ibid.

[105] Ibid.

[106] Jason Szep and Matt Spetalnick, "Special Report: State Department Watered Down Human Trafficking Report," *Reuters*, August 3, 2015.

[107] CQ transcript of SFRC hearing on "Review of the 2016 Trafficking in Persons Report," July 12, 2016.

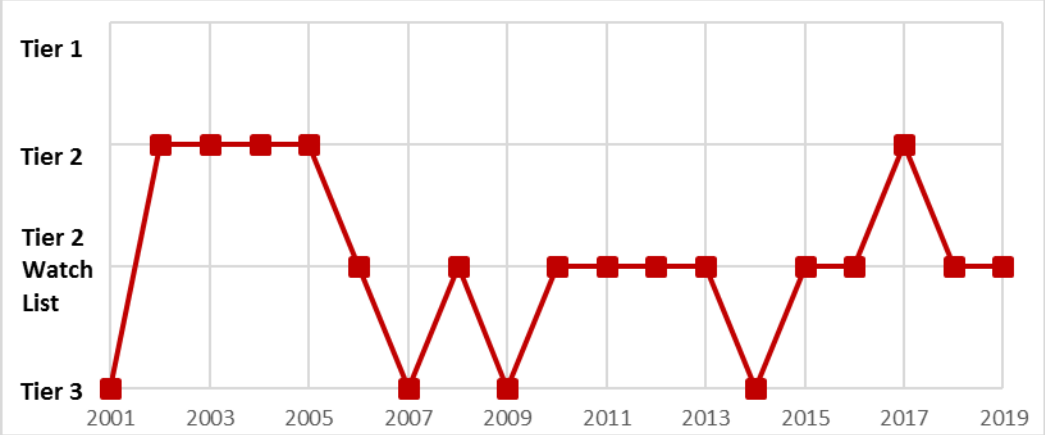
[108] CQ transcript of SFRC hearing on "Review of the 2017 Trafficking in Persons Report," July 13, 2017.

of the armed forces and/or government-affiliated militias in those countries; the decision reportedly prompted internal protest via the State Department's dissent channel.[109] According to *Reuters*, an anonymous official stated that Tillerson's decision to leave Iraq and Afghanistan off the list appeared to have been "made following pressure from the Pentagon to avoid complicating assistance to the Iraqi and Afghan militaries." On June 18, 2019, a *Reuters* article reported that Secretary of State Pompeo had chosen not to include Saudi Arabia on the child soldier's list over the objection of J/TIP officials.[110] The 2019 TIP Report noted reports that Saudi Arabia had provided salaries, training, and other support to "Sudanese combatants which included children aged 14-17 years old, who may have been used in direct hostilities in Yemen;" according to J/TIP Director and Ambassador-at-Large John Cotton Richmond, the department determined that that information was not sufficient to warrant Saudi Arabia's inclusion on the child soldiers list.[111] According to the *Reuters* article, some human rights advocates attributed the decision to political pressure to maintain the U.S.-Saudi relationship.[112]

Case Study: Alleged Political Influence in Malaysia's Ranking in the 2015 and 2016 TIP Reports

Many observers alleged that Malaysia's rankings in the 2015 and 2016 TIP Reports were influenced by factors unrelated to the Malaysian government's efforts to eradicate human trafficking. After four consecutive years on the Tier 2 Watch List from 2010 through 2013, Malaysia was downgraded in 2014, as required by law, to Tier 3 for lack of significant progress to combat human trafficking. In 2015 and 2016, however, the State Department ranked Malaysia as a Tier 2 Watch List country (see **Figure 6** below).

Figure 6. Malaysia: Historical TIP Rankings, 2001-2019



Source: U.S. Department of State, TIP Reports, 2001-2019.

Notes: Malaysia received full waivers from aid restrictions when it was rated Tier 3 in 2007, 2009, and 2014.

The timing of the State Department's upgrade in 2015 was criticized by outside advocacy groups and many Members of Congress as politically motivated by the Trans-Pacific Partnership (TPP) trade negotiations with Malaysia, which were ongoing at the time. Just before release of the 2015 TIP Report, the 114th Congress enacted

[109] Jason Szep and Matt Spetalnick, "Exclusive: Overruling Diplomats, U.S. to Drop Iraq, Myanmar from Child Soldiers' List," *Reuters*, June 24, 2017; Jason Szep and Matt Spetalnick, "U.S. diplomats accuse Tillerson of breaking child soldiers law," *Reuters*, November 21, 2017.

[110] Jason Landay and Matt Spetalnick, "Exclusive: Overruling His Experts, Pompeo Keeps Saudis off U.S. Child Soldiers List," *Reuters*, June 18, 2019.

[111] U.S. Department of State, 2019 Trafficking in Persons Report, June 20, 2019; U.S. Department of State, "Briefing by Ambassador-at-Large to Monitor and Combat Trafficking in Persons John Cotton Richmond," June 20, 2019.

[112] Ibid.

the TPA, which specified that authorities for fast-tracking trade deals like the TPP would not be applicable to Tier 3 countries.

Following the June 30, 2016, release of the 2016 TIP Report, in which Malaysia remained on the Tier 2 Watch List for a second consecutive year, several Members of Congress continued to express concerns over Malaysia's ranking. In the 2017 TIP Report, the department upgraded Malaysia to Tier 2. While Malaysian officials pointed to that year's TIP Report ranking as proof of the country's improved commitment to combating human trafficking, advocacy groups expressed skepticism. In the 2018 and 2019 TIP Reports, the department downgraded Malaysia to the Tier 2 Watch List, citing ongoing protection concerns and corruption.

Some observers claim that political interests dictate rankings on a wider scale, by privileging countries with strong U.S. relations and disadvantaging governments that decline to share data with the State Department. One academic suggested that there is an "interesting parallel between those countries that are ranked as Tier 3 countries and their poor political relations with the U.S."[113] One legal scholar noted that some states "see [the TIP report] as a form of U.S. hegemony … designed to embarrass other nations."[114]

Treatment of the United States

Certain observers contend that despite its designation as a Tier 1 country, the United States does not meet the anti-trafficking standards it sets out in the report.[115] Some criticize the United States for not having included itself in the rankings until 2010, while others point to more recent family separation policies and other protection issues. [116]

The 2018 TIP Report emphasized the risks of trafficking posed by separating children from their families, stating that "The international community agrees that a family caregiving setting, or an alternative solution that is appropriate and culturally sensitive, is the most conducive environment for the growth, well-being, and safety of children. Removal of a child from the family should only be considered as a temporary, last resort."[117] Critics pointed to the fact that despite its Tier 1 ranking, the Trump Administration had enacted a "Zero Tolerance" policy of separating immigrant parents and children at the border in spring 2018, just prior to the report's release.[118] A *Reuters* article from June 2019 noted that language about family separation had been removed from the 2019 TIP report and referenced advocates' views that family separation in the United States should have been cited.[119] The Trump Administration officially ended that policy in June 2018, though in July 2019 the American Civil Liberties Union alleged that more than 900 migrant children had been separated from their families since June 2018.[120]

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[113] Moshoula Capous Desyllas, "A Critique of the Global Trafficking Discourse and U.S. Policy," *Journal of Sociology & Social Welfare*, vol. 34, no. 4 (December 2007), p. 67.

[114] Susan Tiefenbrun, *Decoding International Law*, 1st ed. (New York: Oxford University Press, 2010), p. 426.

[115] The 2019 TIP report acknowledges some of these issues: "Although the [U.S] government meets the minimum standards, it opened, charged, and prosecuted fewer cases, issued fewer victims trafficking-specific immigration options, and granted fewer foreign national victims of trafficking eligibility to access benefits and services." U.S. Department of State, 2019 Trafficking in Persons Report, June 20, 2019.

[116] Council on Hemispheric Affairs, "The Trafficking in Persons Report: Who is the United States to Judge?" November 22, 2011, at http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/.

[117] U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, June 2018, p. 22.

[118] Daphne Psaledakis, "U.S. Report on Human Trafficking Warns Against Separating Children and Parents," *Reuters*, June 28, 2018.

[119] Jonathan Landay, "U.S. Human Trafficking Report Drops Child Separation Warning," *Reuters*, June 20, 2019.

[120] Ms. L., et al. v. U.S. Immigration and Customs Enforcement ("ICE"), et al., Case No. 18-cv-00428-DMS-MDD,

Critics suggest that the State Department has downgraded other states over issues relating to the protection of vulnerable groups, while the U.S. government has simultaneously rolled back similar protections. For example, in the 2019 report, Denmark was downgraded from Tier 1 to Tier 2, partly over protection concerns for migrants as "the government continued to focus on the undocumented status of some foreign victims rather than screening for indicators of trafficking."[121] Some advocates suggest that the United States should be downgraded for similar policies.[122] Another criticism of the United States' classification highlights the TIP report's previous acknowledgement of LGBT people as needing additional protection resources (the Trump Administration has moved to ban transgender individuals from serving in the military and argued that the Civil Rights Act of 1964 does not extend to LGBT individuals). A third notes that it has become more difficult for victims of trafficking to obtain a T visa, a temporary immigration benefit.[123]

Emphasis on Prosecution

While the State Department adheres to the "4P" paradigm (prevention, protection, prosecution, and partnerships), some observers maintain that the TIP report prioritizes prosecution data over other measures, causing the report to be disproportionately focused on law enforcement rather than victims-based.[124] Criticisms point to the primacy of law enforcement data (specifically prosecutions and convictions) in the report rather than measures of vulnerability or prevalence.[125]

Certain advocates say that while prosecution is important to counteract widespread impunity, "a rigid focus on this aspect of the anti-trafficking response can cause real harm, especially in countries with dysfunctional or poorly developed criminal justice systems"; as a result, it may detract from a focus on assisting victims.[126] Others contend that focusing on law enforcement obscures structural factors that cause trafficking. A 2018 report by the Human Rights Foundation (HRF) said, "the TIP Report emphasizes criminalization and prosecution as the solution to human trafficking, but ignores the larger structural problems underlying trafficking, including political and economic 'push' factors."[127]

(U.S. District Court Southern District of California), July 30, 2019, p. 1-3.

[121] U.S. Department of State, 2019 Trafficking in Persons Report, June 20, 2019.

[122] Jenna Krajeski, "Trump's Human Trafficking Record is Fake News," *Foreign Policy*, June 20, 2019.

[123] Katie Rogers, "Trump's Celebration of L.G.B.T. Rights is Met With Criticism," *The New York Times*, June 1, 2019.

[124] According to one legal scholar, "Prosecutorial-minded proponents of the TVPA argue that reform must concentrate both on strengthening provisions of the law that criminalize trafficking activities and on enhancing law enforcement training and specialization in trafficking. Victims' advocates, however, maintain that it is fundamentally problematic to use a law enforcement perspective in fighting trafficking, particularly with regard to a law that, as evidenced by its name, was enacted to provide protection to trafficking victims." Jennifer A.L. Sheldon-Sherman, 'The Missing "P': Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act," *Penn State Law Review*, vol. 117, no. 2 (2012), p. 446.

[125] While earlier editions of the TIP report included national trafficking estimates, such figures were hotly debated and difficult to confirm. A 2006 GAO report found that such estimates of prevalence were "questionable" and that there was a "significant discrepancy between the number of estimated victims and the number of observed victims, which include officially reported, certified, registered and assisted victims." GAO, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825, July 18, 2006.

[126] Anne Gallagher and Luis C. deBaca, "4 Ways the US Can Take the Lead in the Fight Against Human Trafficking," World Economic Forum, November 20, 2018.

[127] Prachi Vidwans and Malaak Jamal, *Authoritarianism and Trafficking in Persons*, Human Rights Foundation, Policy Memo, July 27, 2018.

Insufficient Coverage of Key Themes

Despite the report's attempt to highlight key themes, some observers argue that the report pays insufficient attention to certain forms of trafficking and to the role of authoritarianism. Some advocates have found that, "there has always been a disproportionate focus on trafficking for sexual exploitation" and in particular, on child sex trafficking.[128] They argue that the report should expand its focus to "the many forms of exploitation, from forced labour to the global organ trade that are not receiving the attention and response they deserve."[129]

In a 2018 *Time Magazine* article, advocates pointed to what they contend are under-emphasized links between trafficking and authoritarianism. In reviewing the 2018 TIP report, they highlighted the correlation between better rankings and democratic governments, and argued that "year after year, the [TIP] report fails to discuss how authoritarianism contributes to human trafficking."[130] In the 2018 HRF report by the same authors, they suggest that anti-trafficking measures should be more closely linked to democracy promotion, as "any anti-trafficking plan that neglects to promote democracy and individual rights advocacy is incomplete."[131]

Other Global Reports and Databases

- **The United Nations Office on Drugs and Crime (UNODC)'s Global Report on Trafficking in Persons.** In 2010, the United Nations Global Plan of Action to Combat Trafficking in Persons mandated UNODC to publish the Global Report.[132] Published in 2012, 2014, 2016, and 2018, the report includes individual country profiles but does not rank countries or assign each country a score. According to UNODC, the 2018 report "covers 142 countries and provides an overview of patterns and flows of trafficking in persons at global, regional and national levels, based primarily on trafficking cases detected between 2014 and 2016."[133]
- **The Walk Free Foundation (WFF)'s Global Slavery Index (GSI).** The Walk Free Foundation is an initiative of the Australian philanthropic organization, Minderoo. WFF has published four editions of the GSI (2013, 2014, 2016, and 2018). The index ranks countries by prevalence of modern slavery (including forced marriage, which the TIP report treats as related, but distinct from trafficking), vulnerability, and strength of government response across 167 countries. Earlier editions of the GSI have been criticized for potentially inaccurate extrapolations and vague definitions of terms. A 2017 *Anti-Trafficking Review* article suggested that some categories that contributed to rankings were not directly relevant to calculating vulnerability, prevalence, or government response.[134] According to the WFF, the 2018 GSI addressed many data gaps

[128] Ibid.

[129] Ibid.

[130] Prachi Vidwans and Malaak Jamal, "Human Trafficking Has a Hidden Cause – and It's on the Rise Worldwide," *Time Magazine*, July 30, 2019.

[131] Ibid.

[132] Fabrizio Sarrica, "The Evolution of the UNODC Global Report on Trafficking in Persons," Delta 8.7, February 12, 2019.

[133] United Nations Office on Drugs and Crime; "Trafficking in Persons," at https://www.unodc.org/unodc/data-and-analysis/glotip.html.

[134] The article states, "there are compelling indications that the availability of data points influenced, and in some cases determined, the selection of vulnerability ... For example, confidence in the judiciary is cited as a vulnerability factor, rather than what is perhaps the most well-established and defensible measure of vulnerability to forms of exploitation

by relying on the 2017 Global Estimates of Modern Slavery, a collaborative effort between the WFF, International Labour Organization (ILO), and International Organization for Migration (IOM).[135]

- **Other Reports and Databases.** The European Commission has published a range of reports on human trafficking in EU member states since the adoption of European Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.[136] In 2017, IOM launched the Counter-Trafficking Data Collaborative (CTDC) data portal, which initially listed Liberty Asia and U.S-based anti-trafficking NGO Polaris as contributors.[137]

Legislative Outlook

The State Department's TIP Report is often highly anticipated each year in Congress, with congressional oversight and evaluation taking the form of hearings, requests for GAO reports, and legislation. The Senate Foreign Relations Committee has sometimes held closed briefings with State Department officials in anticipation of the TIP Report release as well as public hearings after its publication. The House Foreign Affairs Committee, particularly its Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, has also long held hearings on the TIP Report. To date, GAO has prepared two reports that directly address the State Department's TIP Report, one in 2006 and a second in 2016.[138]

In response to continued concerns over the credibility and transparency of the TIP Report's country rankings, as discussed above, Congress in January 2019 passed two pieces of legislation that reduce State Department flexibility in assigning tier rankings, require concrete justifications for tier ranking changes, and generally make it more likely that countries are assigned a Tier 3 ranking or are listed as child soldier country. If more countries begin to fall to Tier 3, policy questions may arise relating to whether the President will begin to regularly subject more Tier 3 countries to foreign aid restrictions or whether the Administration will use waivers to minimize the consequences of poor rankings.

More broadly, a critical issue for many is whether changes to the TIP Report are motivating countries to do more to combat human trafficking, or, conversely, whether some changes undermine the report's value as a tool of soft power diplomacy. Some countries may prefer more detailed statutory requirements for how to assign tier rankings, and additional transparency in the TIP Report's rankings and country narratives may clarify expectations for future upgrades. Other countries, particularly those with limited resources and capabilities to address human trafficking, may now have more difficulty proving progress in the report. Some countries may also perceive

associated with modern slavery: the capacity of the State to protect citizens from violence including violent crime." Anne Gallagher, "What's Wrong with the Global Slavery Index?" *Anti-Trafficking Review*, Issue 8, 2017, p. 90-112.

[135] The Global Estimates combined three sources in an attempt to better estimate forced labor: (1) 54 national surveys across 48 countries (2) administrative data from IOM's database of assisted victims of trafficking (3) validated secondary sources and comments from the ILO Committee of Experts on the Application of Conventions and Recommendations relating to state-imposed forced labor. Walk Free Foundation, *The Global Slavery Index 2018*, 2018, p. 166-174.

[136] European Commission, *Data Collection on Trafficking in Human Beings in the EU*, 2018, p. 12.

[137] Migration Data Portal, "Human Trafficking," at https://migrationdataportal.org/themes/human-trafficking#data-sources

[138] GAO-17-56 (December 2016); GAO, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825, July 18, 2006.

that the report's antitrafficking expectations are insufficiently steady over time in light of repeated amendments to the TVPA.

As it considers future legislative and oversight efforts, Congress may seek to balance the desire to enhance the report's transparency and insulate it from political pressure with other important, and potentially conflicting, goals—ensuring that its ranking processes and standards are perceived by foreign governments as clear, consistent, and achievable.[139]

[139] For some discussion of the importance of, and elements that pertain to, the consistency and credibility of the report, see Judith G. Kelley, *Scorecard Diplomacy: Grading States to Influence Their Reputation and Behavior*, pp. 250-253; and Sally Engle Merry, *The Seductions of Quantification*, pp. 112-139.

Appendix A. Country Tier Rankings in the 2019 TIP Report

Table A-1. Tier 1 Countries in the 2019 TIP Report

Argentina	Cyprus	South Korea	Spain
Australia	Czech Republic	Lithuania	Sweden
Austria	Estonia	Luxembourg	Switzerland
The Bahamas	Finland	Netherlands	Taiwan
Bahrain	France	New Zealand	United Kingdom
Belgium	Georgia	Norway	United States
Canada	Guyana	Philippines	
Chile	Israel	Portugal	
Colombia	Japan	Slovenia	

Source: U.S. Department of State, *2019 Trafficking in Persons Report*, June 20, 2019.

Table A-2. Tier 2 Countries in the 2019 TIP Report

Albania	Germany	Mali	St. Maarten
Antigua & Barbuda	Ghana	Malta	St. Vincent & the Grenadines
Armenia	Greece	Mauritius	Senegal
Aruba	Guatemala	Mexico	Serbia
Benin	Guinea	Micronesia	Seychelles
Botswana	Haiti	Moldova	Singapore
Brazil	Honduras	Mongolia	Slovakia
Bulgaria	Hong Kong	Morocco	Solomon Islands
Burkina Faso	Iceland	Mozambique	Suriname
Cabo Verde	India	Namibia	Tajikistan
Cameroon	Indonesia	Nepal	Thailand
Chad	Ireland	Niger	Timor-Leste
Costa Rica	Italy	Nigeria	Togo
Cote d'Ivoire	Jamaica	Oman	Tonga
Croatia	Jordan	Pakistan	Trinidad & Tobago
Denmark	Kenya	Palau	Tunisia
Djibouti	Kosovo	Panama	Turkey
Dominican Republic	Kuwait	Paraguay	Uganda
Ecuador	Latvia	Peru	Ukraine
Egypt	Lebanon	Poland	United Arab Emirates
El Salvador	Macau	Qatar	Uruguay

Albania	Germany	Mali	St. Maarten
Ethiopia	Macedonia	Rwanda	Zambia
Eswatini	Madagascar	St. Lucia	Zimbabwe

Source: U.S. Department of State, *2019 Trafficking in Persons Report*, June 20, 2019.

Table A-3. Tier 2 Watch List Countries in the 2019 TIP Report

Afghanistan	Cambodia	Kyrgyz republic	Romania
Algeria	Central African Republic	Laos	Sierra Leone
Angola	Congo, Republic of the	Lesotho	South Africa
Azerbaijan	Curacao	Liberia	Sri Lanka
Bangladesh	Fiji	Malawi	Sudan
Barbados	Gabon	Malaysia	Tanzania
Belize	Guinea-Bissau	Maldives	Uzbekistan
Brunei	Hungary	Marshall Islands	Vietnam
Bolivia	Iraq	Montenegro	
Bosnia & Herzegovina	Kazakhstan	Nicaragua	

Source: U.S. Department of State, *2019 Trafficking in Persons Report*, June 20, 2019.

Table A-4. Tier 3 Countries in the 2019 TIP Report

Belarus	Democratic Republic of the Congo	North Korea	Syria
Bhutan	Cuba	Mauritania	Turkmenistan
Burma	Equatorial Guinea	Papua New Guinea	Venezuela
Burundi	Eritrea	Russia	
China	The Gambia	Saudi Arabia	
Comoros	Iran	South Sudan	

Source: U.S. Department of State, *2019 Trafficking in Persons Report*, June 20, 2019.

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