

2008

Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings

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Mohamed Y. Mattar, Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings, 41 *Vanderbilt Law Review* 1355 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol41/iss5/3>

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Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings

Mohamed Y. Mattar*

ABSTRACT

A comprehensive approach to combating trafficking in human beings requires precise knowledge of the scope of the problem and constant evaluation of government responses. Reporting on the status of human trafficking achieves both goals. This Article is designed to examine the various human trafficking reporting mechanisms, including reports that states are required to submit to the United Nations as well as national reports whereby governments engage in a process of self-assessment. Comparative models from Europe and the United States will be examined. The Article analyzes reports released by interministerial task forces as well as congressional hearings held on progress made and future steps that must be taken. This Article advocates establishing an independent and competent national rapporteur or a similar mechanism to assess government actions to combat the problem and recommend changes that should be implemented to reform existing frameworks. While reporting is an essential element of monitoring the status of human trafficking, it has not received adequate attention. This Article attempts to provide the first comprehensive study on the issue.

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I. INTRODUCTION

The ultimate goal of monitoring and reporting on government policies and actions against trafficking in human beings¹ is to create an effective mechanism to ensure that government promises materialize into action and that corresponding legal and administrative provisions are implemented. A suitable mechanism is needed whereby this progress can be measured, but the critical question is what an adequate and effective mechanism might be. Various approaches have been adopted by a few countries. An analysis of the various models reveals that one approach might be to entrust the duty of reporting on trafficking in human beings to an interministerial task force or a ministerial member of such a task force. Another approach is to appoint a more independent body, such as an office of a national rapporteur. Reports may also be made by a congressional or parliamentary committee charged with oversight of the government's performance in combating trafficking in human beings.

In addition to these models of national reporting, international law requires states to submit reports to the United Nations pursuant to relevant international conventions and to note in these reports actions taken against trafficking in persons. These conventions include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),² the Convention on the Rights of the Child (CRC),³ and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol)⁴ supplementing the UN Convention Against Transnational Organized Crime.⁵ Further, the United Nations itself appoints a special rapporteur⁶ to report on the status of trafficking in

1. The Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, C.E.T.S. No. 197 [hereinafter The Council of Europe Convention], and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/55/383 (Nov. 15, 2000), refer to trafficking in "human beings" and trafficking in "persons," respectively. Throughout this Article, the terms are used interchangeably.

2. G.A. Res. 34/180, U.N. Doc. A/34/46 (Dec. 18, 1979).

3. G.A. Res. 44/25, U.N. Doc. A/44/49 (Nov. 20, 1989).

4. G.A. Res. 55/25, Annex I, U.N. Doc. A/55/383 (Nov. 15, 2000).

5. *Id.*

6. On August 1, 2008, Joy Ngozi Ezeilo of Nigeria was appointed as the second Special Rapporteur on Trafficking in Persons, Especially Women and Children by the Office of the United Nations High Commissioner for Human Rights. Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on Trafficking in Persons, Especially in Women and Children, <http://www2.ohchr.org/english/issues/trafficking/index.htm> (last visited Oct. 25, 2008). Ms. Ezeilo is a human rights lawyer and professor at the University of Nigeria. *Id.*

human beings worldwide. The Special Rapporteur on Trafficking in Persons, Especially Women and Children has the power to investigate the scope of the problem, monitor and report on government actions, receive and inquire into complaints, and make recommendations for policy change.⁷

The three main reporting mechanisms for monitoring and reporting on trafficking in human beings are: (1) national reporting (or self-assessment); (2) state reports submitted to international bodies; and (3) international reporting by an international body. The purpose of this Article is to examine these approaches to reporting and, by way of a critical analysis, identify inputs and analytical elements of an effective mechanism for monitoring and reporting on trafficking in human beings. Part II of this Article focuses on the call for a national rapporteur. Here, the Article introduces the origins and concept of a national rapporteur as a legitimate reporting mechanism on the issue of human trafficking, given that the Hague Declaration, the Organization for Security and Co-operation in Europe (OSCE) Action Plan, and the Council of Europe Convention all promote the implementation of such a mechanism. Part III looks into specific models of national reporting, particularly in the OSCE region. The popular interministerial task force is identified along with the victim-centered approach promulgated by the Swedish situation reports. The Dutch, Romanian, Czech, and U.S. examples follow before consideration of the congressional hearing mechanism used in Canada and the United States. Part IV deals with state reports submitted to the United Nations as mandated by a variety of international conventions, and Part V examines the office of the United Nations Special Rapporteur. Part VI analyzes the structure of the reports on the status of human trafficking. This Part addresses the “Five Ps”—prevention, protection, provision, prosecution, and participation—focusing on governments seeking to implement trafficking legislation, the role of outside organizations such as NGOs, the effectiveness of a special rapporteur after the reporting stage has been completed, and the rapporteur’s role in the “Four Rs” of research, report, review, and recommend.

In conclusion, the Article reiterates the importance of monitoring and reporting on national governments’ actions against trafficking in human beings, identifies best practices, points out shortcomings, and outlines a number of suggestions toward designing effective mechanisms for reporting on trafficking in human beings.

7. *Id.*

II. A CALL FOR A NATIONAL RAPPORTEUR

A. *The 1997 Hague Declaration: The Birth of the Concept of a National Rapporteur*

On April 26, 1997, the presidency of the European Union convened a ministerial conference that established the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (Hague Declaration).⁸ By recommending a set of actions to be taken regarding reporting on trafficking in human beings, the Hague Declaration established a new reporting mechanism: the office of National Rapporteur.⁹

The Council of Europe Parliamentary Assembly similarly urged the governments of member states to "appoint a National Rapporteur on trafficking in human beings in each country affected by this problem."¹⁰ The Recommendation specified that "the office of the rapporteur should elaborate and implement the national plan of action against trafficking taking into account the specificities of the situation in each country."¹¹ The Recommendation further urged the governments of member states to draw up annual reports to their parliaments on the situations in their countries and on their governments' activities designed to prevent trafficking in women¹² and to encourage national and international research into the problem of trafficking in women in order to better understand and fight this phenomenon.¹³

8. Ministerial Conference Under the Presidency of the European Union, Apr. 24–26, 1997, *The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation*, § I (Apr. 26, 1997). Two major categories of guidelines emerged from this conference. One category was "European and International Co-operation in the Field of Prevention, Investigation, and Prosecution, Appropriate Assistance, and Support." *Id.* § II. These guidelines involved cooperation between EU member states, cooperation between EU member states and candidate countries, cooperation at the European level and with countries of origin, and cooperation with the UN System and Interpol. *Id.* The second category was "Action to Be Taken at the National Level in the Field of Prevention, Investigation, Prosecution, Appropriate Assistance and Support." *Id.* § III.

9. See *id.* § III.1.4. The following recommendations for action served as the basis for such a rapporteurship: reporting to governments on the scale of the prevention and combating of trafficking in women; developing criteria for reporting on the scale, nature, and mechanisms of reporting trafficking in women and the effectiveness of policies and measures concerning this phenomena; and encouraging the cooperation of national rapporteurs on a regular basis. *Id.* §§ II, III.

10. Eur. Parl. Ass., *Recommendation—Campaign Against Trafficking in Women*, § 10.ii, Doc. No. 1545 (2002).

11. *Id.*

12. *Id.* § 10.iii.

13. *Id.* § 10.iv.

The Recommendation went on to urge the governments of member states to create a European observatory on trafficking in human beings to (1) disseminate information and launch awareness-raising campaigns against trafficking in women and children in all member countries;¹⁴ (2) establish an international network of experts on trafficking in women and children to facilitate the exchange of information and expertise;¹⁵ (3) study the effects of new information technologies on trafficking in women and children, as well as their impact on the victims of trafficking;¹⁶ and (4) conduct systematic research into trafficking in women and children in cooperation with other international organizations.¹⁷

Additionally, a European Council Resolution on Initiatives to Combat Trafficking in Human Beings in Particular Women urged member states to “take into account the Hague Declaration of 26 April 1997, which invites Member States to provide or explore the possibilities for the appointment of National Rapporteurs on trafficking in women.”¹⁸ The 2003 Resolution further invited the European Commission and the member states to “promote measures to set up a monitoring system on trafficking in human beings in order to provide updated data through the continuous and regular collection of information from the competent National Authorities such as National Bureaux and National Rapporteurs.”¹⁹

14. *Id.* § 11.i.a.

15. *Id.* § 11.i.b.

16. *Id.* § 11.i.c.

17. *Id.* § 11.i.d.

18. Council Resolution No. 2003/C, 2003 O.J. (C 260) 4, 5 (EU). There have been several European instruments designed to combat trafficking in human beings, including the 2001 Council Framework Decision on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of Instrumentalities and the Proceeds of Crime, Council Framework Decision 2001/500/JHA, 2001 O.J. (L 182) 1, 2; the 2001 Council Framework Decision on the Standing of Witnesses in Criminal Proceedings, Council Framework Decision 2001/220/JHA, 2001 O.J. (L 82) 1–4; the 2004 Council Directive Relating to Compensation to Crime Victims, Council Directive 2004/80/EC, 2004 O.J. (L V 261) 15–18; and particularly the 2004 Council Directive on the Residence Permit Issued to Third-Country Nationals Who Are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate With the Competent Authorities, Council Directive 2004/81, 2004 O.J. (L 261) 19–23.

19. Council Resolution No. 2003/C, 2003 O.J. (C 260) 4, 5. The Resolution emphasizes a victim-centered approach that takes into consideration a gender-sensitive perspective to internationally recognized principles of nondiscrimination and respect for the human rights and fundamental freedoms of the victims. The Resolution specifically refers to actions that must be taken by European countries, including: (1) ratifying and implementing the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and related conventions; (2) continuing to conduct activities against trafficking in persons and providing support for NGOs; (3) achieving tangible results based upon good practices and networking; and (4) protecting victims of trafficking. *Id.*

B. *The OSCE Action Plan to Combat Trafficking in Human Beings: A Commitment to Promoting the Concept of a National Rapporteur*

The OSCE Action Plan recommends substantive actions related to investigation, law enforcement, prosecution, prevention, protection, and assistance, and specifically emphasizes the importance of giving effect to, monitoring, and implementing these actions.²⁰ The Action Plan recommends establishing a “follow-up and coordinating mechanism,”²¹ and recommends that OSCE participating states “consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.”²²

The Action Plan highlights the need for data collection,²³ an integral part of the reporting process, and directs parties to pay special attention to specific areas of research related to victims of trafficking,²⁴ the character and scale of trafficking in persons,²⁵ the role of organized criminal groups,²⁶ identification of the most vulnerable segments of the population,²⁷ and an analysis of the root causes of trafficking in persons.²⁸ Methods of data collection and research—including an analysis of best practices and the sharing of information among OSCE participating states; the principles of data collection and research, especially respect of the victim’s right of privacy; and the exchange of information with relevant international organizations—will be addressed in this context.

C. *Reporting Mechanisms in the Council of Europe Convention on Action to Combat Trafficking in Human Beings*

The Council of Europe Convention on Action to Combat Trafficking in Human Beings was adopted to complement the UN

20. Organization for Security and Co-operation in Europe [OSCE], *OSCE Action Plan to Combat Trafficking in Human Beings*, Annex, 462nd Plenary Meeting, PC.DEC/557 (July 24, 2003).

21. *Id.* pt. VI. The Action Plan refers to existing OSCE mechanisms, including “the annual Human Dimension Implementation Meeting, Review Conferences and relevant human dimension events.” *Id.*

22. *Id.* pt. VI.1.

23. *Id.* pts. IV.1, IV.6, V.1, VI.8.

24. *Id.* pt. IV.1.1.

25. *Id.*

26. *Id.*

27. *Id.* pt. IV.1.2.

28. *Id.* pt. IV.1.3. The Action Plan refers in particular to demand and supply factors, trafficking networks, economic consequences, and the link to illegal migration. *Id.*

Trafficking Protocol and enhance the protections provided therein.²⁹ As such, the Council of Europe Convention provides for a more comprehensive framework for the protection and assistance of victims of trafficking than does the UN Protocol.³⁰

To ensure effective implementation of the provisions of the Council of Europe Convention, Articles 36 and 37 provide for a specific monitoring system. Article 36 sets up a group of experts (GRETA) to be chosen from individuals known “for their recognised competence in the fields of human rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience” in these areas.³¹ GRETA is tasked with preparing a draft report containing “its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified.”³² On this basis, GRETA is to submit its report and conclusions to the party concerned and to the Committee of the Parties concerning the measures taken by the parties to implement the provisions of the Convention. Article 37 establishes such a Committee of the Parties.³³

29. See The Council of Europe Convention, *supra* note 1, pmbi., art. 39. See generally Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention*, 14 TUL. J. INT'L. & COMP. L. 357 (2006).

30. For a discussion of the Council of Europe Convention, see generally Anke Sembacher, *The Council of Europe Convention on Action Against Trafficking in Human Beings*, 14 TUL. J. INT'L. & COMP. L. 435 (2006). For the Convention on Action Against Trafficking in Human Beings to enter into force, ten ratifications are required, eight of which must be member states; these were obtained on January 2, 2008. The Council of Europe Convention, *supra* note 1, art. 42; Council of Europe, *Convention on Action Against Trafficking in Human Beings*, Status, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=10/16/2008&CL=ENG> (last visited Oct. 16, 2008) [hereinafter Council of Europe Convention Status]. As of Oct. 16, 2008, eighteen member states had ratified the Convention and forty were signatories but had not yet ratified. Council of Europe Convention Status, *supra*.

31. The Council of Europe Convention, *supra* note 1, art. 36. According to Article 36, GRETA shall be composed of ten to fifteen members selected based on such factors as gender, geographical balance, and multidisciplinary experience. *Id.* Members serve four-year terms, renewable once, and they are elected by the Committee of the Parties from among nationals of the state parties to the Convention. *Id.* No two members may be nationals of the same state. *Id.*

32. *Id.* art. 38.

33. The Council of Europe Convention, *supra* note 1, art. 37. The December 2005 EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings states that “member states should, where necessary, speed up the transposition of Directive 2004/81/EC and take into consideration legally binding instruments, political commitments and other relevant documents, in particular the recently concluded council of Europe Convention on Action Against Trafficking in Human Beings when developing national strategies.” EU

Article 29 of the Council of Europe Convention provides that each party shall consider appointing a national rapporteur or utilizing other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislation requirements.³⁴ The Explanatory Report to the Council of Europe Convention explains that

the institution of a National Rapporteur has been established in the Netherlands where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the Parliament containing its findings and recommendations.³⁵

Additionally, the Council of Europe Convention calls upon each party to establish or strengthen policies and programs to prevent trafficking in human beings by such means as research and information.³⁶

III. MODELS OF NATIONAL REPORTING

A. *The Role of an Interministerial Task Force in National Reporting: Data Collection and Information Gathering*

A number of countries have established special task forces to galvanize the various government agencies concerned with trafficking in women and children. Their tasks include coordinating government efforts to combat human trafficking, researching the status of trafficking in human beings, and evaluating government actions to combat the phenomenon.³⁷

Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005 O.J. (C 311) 2.

34. The Council of Europe Convention, *supra* note 1, art. 29(4).

35. The Council of Europe Convention on Action Against Trafficking in Human Beings, Explanatory Report ¶ 298, May 3–4, 2005, C.E.T.S. No. 197.

36. The Council of Europe Convention, *supra* note 1, art. 5. The Convention also requires state parties to discourage demand by adopting measures such as research of best practices, methods, and strategies targeting demand. *Id.* art. 6.

37. For instance, in Romania, the government established the Inter-Ministerial Working Group for Co-ordination and Evaluation of Activities for Preventing and Combating Trafficking in Persons in 2001. OSSERVATORIO TRATTA, RESEARCH ON CHILD VICTIMS OF TRAFFICKING IN ROMANIA (2007), available at <http://www.osservatoriotrattra.it/download/Ex%20Summary%20Romania.pdf>. The Working Group is responsible for publishing a report to monitor the scope of the problem of trafficking and efforts made in Romania to combat the problem. *Id.* The efforts of the Working Group resulted in two important actions: a new anti-trafficking law, Law 678 of 2001, Law 678/2001 on Preventing and Combating Trafficking in Human Beings (2001) (Rom.), available at http://www.iom.pl/res/files/traffickstop/lf_nl_8romania.pdf, and the approval of the National Plan of Action, which is compatible with the regional Plan of Action of the Stability Pact

B. *Situation Reports Providing for "Proposal of Measures" to Combat Trafficking in Human Beings: The Swedish Experience*

Sweden is one country that has chosen a government ministry to serve as a national rapporteur on trafficking in human beings. The National Police Board was appointed as the National Rapporteur on Trafficking in Women in Sweden in 1998, and thus Sweden became the first country to implement the 1997 Hague Declaration.³⁸ The Rapporteur works with the police to document instances of trafficking, which are recounted in an annual situation report.³⁹ The

Task Force on Trafficking, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE, ANNEX II: NATIONAL PLANS OF ACTION ON TRAFFICKING 123, 143, available at http://www.osce.org/publications/odihr/2005/04/13771_219_en.pdf [hereinafter NATIONAL PLANS OF ACTION ON TRAFFICKING].

In Bulgaria, the Bulgarian Act on Combating Trafficking in Human Beings of 2003 provided that a National Commission shall "promote the research, analysis and statistical reporting of human trafficking data." Combating Trafficking in Human Beings Act, No. 46/20.05.2003 (2003) (Bulg.).

In Croatia, a National Committee for the Suppression of Trafficking in Persons was established in 2002. NATIONAL COMMITTEE FOR SUPPRESSION OF TRAFFICKING IN PERSONS, COUNTRY REPORT ON SUPPRESSION OF TRAFFICKING IN PERSONS 2 (2002) (Croat.), available at http://www.osce.org/documents/odihr/2002/09/1741_en.pdf. Members of the National Committee are representatives of all relevant ministries and state-governing organizations, the Croatian Parliament, the State Attorney's Office, and representatives of non-governmental organizations and the media. *Id.* The Committee prepared a Report on the Implementation of the National Plan of Action, adopted in November 2002. NATIONAL PLANS OF ACTION ON TRAFFICKING, *supra*, at 134.

38. Government Offices of Sweden, Prostitution and Trafficking in Human Beings, <http://www.regeringen.se/sb/d/7119> (last visited Oct. 15, 2008). Recognizing the significance of combating trafficking in human beings, Sweden became the second country, after the United States, to appoint an Ambassador Against Trafficking in Human Beings. John Picarelli & Anna Jonsson, *Fostering Imagination in Fighting Trafficking: Comparing Strategies and Policies to Fight Sex Trafficking in the U.S. and Sweden 4-5* (June 2008) (unpublished final report) (on file with the U.S. Department of Justice). The ambassador is responsible for promoting the policy of the Swedish government abroad on trafficking in persons; contributing to the understanding of such policy; and promoting cooperation between Sweden, other countries, and international organizations. The Swedish Government's Human Rights Website, *Introducing Sweden's Ambassador Against Trafficking in Human Beings*, http://www.manskligarattigheter.gov.se/extra/pod/?id=43&module_instance=2&action=pod_show (last visited Oct. 15, 2008). In the U.S. in 2003, Congress passed the Trafficking Victims Prevention Reauthorization Act (TVPRA), amending Section 105 of the Trafficking Victims Prevention Act (TVPA) and providing that the Director of the Office to Monitor and Combat Trafficking in Persons shall be appointed by the President with the rank of Ambassador-at-Large. Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003) § 6, 23 U.S.C. § 7101. In the United States, the ambassador has the role of reporting on the status of trafficking in persons in foreign countries. *Id.*

39. See, e.g., RIKSKRIMINALPOLISEN [NATIONAL CRIMINAL POLICE], SITUATION REPORT NO. 8—TRAFFICKING IN HUMAN BEINGS FOR SEXUAL PURPOSES § 8 (2006)

report also provides a "Proposal of Measures" to be implemented by the Swedish government to address trafficking.⁴⁰ So far, the Swedish National Rapporteur has published eight situation reports, one each year from 1999 to 2006.⁴¹

(Swed.), available at http://www.osce.org/documents/cthb/2007/05/24548_en.pdf [hereinafter RIKSKRIMINALPOLISEN REPORT]

40. RIKSKRIMINALPOLISEN REPORT, *supra* note 39, § 8.

41. See, e.g., *id.* The Swedish situation reports focus heavily on law enforcement and prosecution, as the national rapporteur is the National Criminal Investigation Department (NCID). Prostitution and Trafficking in Human Beings, *supra* note 38. Components that are common to each of the annual reports include: statements on the scope of the role of NCID as national rapporteur; reports on NCID and Europol activities, including information on the status of human trafficking in other countries; reports on trafficking investigations and prosecutions in local police departments; summaries of the Baltic Sea Task Force activities; Swedish case law and legislative updates; summaries of the activity of sexual crimes committees; and summaries of NGO activities and interagency conferences and seminars. See, e.g., RIKSKRIMINALPOLISEN REPORT, *supra* note 39.

The Swedish situation reports focus mainly on prosecution and the work of the police. They contain NCID recommendations designed to facilitate investigation and prosecution of cases of trafficking, including legislation permitting legal proceedings against persons who have been involved in trafficking women to Sweden but have committed their crimes abroad. *Id.* § 7. NCID also reports a need for national training of prosecutors and police officers for border control activities and investigation activities, *id.* § 4, and proposes increased international cooperation between police in the Baltic countries, *id.* Other recommendations include: appointing special police groups in certain districts to follow up systematically on intelligence; performing surveillance for and initiating preliminary investigations against this type of crime; training police in investigative methods and proper treatment of prostituted women; training border control personnel; encouraging networking between police and prosecutors; instituting more legal proceedings against exploiters of women; creating a manual of guidelines for the Migration Board, Social Services, and other agencies; and creating plans of action for taking care of victims between the social welfare authorities and the police authorities. See *id.*

Sweden grants residency to victims only for a limited time period, pending prosecution of the trafficker. The Situation Report Number Eight states:

To make criminal proceedings against criminals easier, a provision on time-limited residence permits to foreign witnesses and injured parties has been introduced into the Alien's Act that makes it possible to grant a time limited residence permit when this is considered to be justified for the carrying out of preliminary investigation and main hearing in a criminal case.

Id. § 3. The Report also states that:

It is not necessary to automatically issue permanent residence permits to these victims of crime. Permanent residence permits are not necessary in order to carry out the legal proceedings. There is a risk of women accepting questionable offers of work and reckoning on solving possible problems by applying for a permanent residence permit if the worst scenario occurs. It must not be ignored that those who organize this crime can regard these permanent residence permits as a good method to 'plant' these women in Sweden and in that way strengthen their organization here.

Id.

While a report on the status of human trafficking is designed to cover the scope of the problem and the appropriate responses, a report should not lose sight of the ultimate goal: the rescue of trafficking victims. Consequently, stories of the victims can have a powerful influence on government action. The Swedish Situation Reports provide two examples.

One case that attracted attention involved a seventeen-year-old girl from Kosovo who escaped from a buyer of sex and went to the police. "During the trial, a photo of the girl was published in an evening paper, and after that the lives of the girl and her family in Kosovo were threatened."⁴² For this reason, the girl was granted a permanent residence permit in Sweden.⁴³ According to the report, "[t]hree men were sentenced to prison for trafficking in human beings, grave procuring, and rape."⁴⁴

In another case, two women were enticed into leaving Romania for Sweden upon the promise of jobs; in fact, the female perpetrator who promised them jobs intended to prostitute them. Upon arrival, one of the women was particularly vulnerable because did not speak the language, had no money, and was deprived of her passport. She had no realistic opportunity to resist providing the sexual services for which the principals offered payment. The other woman was raped on three occasions by the male perpetrator, but the district court did not consider this to be part of trafficking in human beings. The court decided, however, that the crime of trafficking in human beings had been completed because the perpetrators intended for the woman to be sold for sexual purposes, despite the fact that such a sale never took place. Both of the perpetrators were adjudicated guilty and sentenced for two counts of trafficking in human beings for sexual purposes, while the male trafficker was also sentenced for three counts of rape.⁴⁵

The Swedish reports also address the importance of improving the treatment of child victims:

If Sweden does not pay attention to the issue of trafficking in children, there is a risk of more children being brought to Sweden for exploitation in begging and for committing crimes in organized forms. In certain cases it is impossible to establish the identity of a person and in certain cases it would make it easier if a DNA test could be made in order to establish that children, brothers and sisters, and parents are in fact related.⁴⁶

42. RIKSKRIMINALPOLISEN REPORT, *supra* note 37, at Annex 1.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* § 8.

C. *The Mandate of the National Rapporteur in the Netherlands: The Dutch Model for Reporting on Trafficking in Human Beings*

On April 1, 2001, the Netherlands appointed a National Rapporteur on Trafficking in Human Beings in accordance with the 1997 Hague Declaration, which called for a specific and distinct model of reporting on the problem of human trafficking.⁴⁷ Unlike the Swedish model for the national rapporteur, the Dutch established an independent rapporteurship office.⁴⁸ Moreover, while the Hague Declaration called for appointing a national rapporteur on trafficking in women, the Dutch rapporteurship extended the rapporteur's mandate to include trafficking in all persons, including women, men, and children.⁴⁹ The mandate was extended to include these other forms of exploitation in accordance with amendments made to the Dutch Penal Code referring to slavery, servitude, and forced labor.⁵⁰ The Dutch National Rapporteur is asked to report annually on the problem of trafficking in human beings.⁵¹ Since the Dutch National Rapporteur was appointed in 2001, she has published five annual reports, one each in 2002, 2003, 2004, 2005, and 2007.⁵²

47. Press Release, Dutch Ministry of Justice, Appointment of National Rapporteur on Trafficking in Human Beings (Jan. 27, 2000), available at <http://english.justitie.nl/currenttopics/pressreleases/archives2000/-appointment-of-national-rapporteur-on-trafficking-in-human-beings.aspx>.

48. *Id.*

49. *Id.* Most victims of trafficking in the Netherlands are females between the ages of eighteen and twenty-nine, with more than one-third falling between the ages of eighteen and twenty-three. ANNA G. KORVINUS, TRAFFICKING IN HUMAN BEINGS, SUPPLEMENTARY FIGURES: FOURTH REPORT OF THE DUTCH NATIONAL RAPPOURTEUR 4–5 (2005), available at <http://rechten.uvt.nl/victimology/national/NL-NRMEngels4.pdf> [hereinafter KORVINUS, FOURTH REPORT]. The majority of the underage prostituted females in the Netherlands are not only from central and eastern Europe but also from North African countries, primarily Nigeria. *Id.* at 4.

50. "Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices, or servitude." Dutch Criminal Code § 273f(2), reprinted in DETTMELJER-VERMEULEN ET AL., TRAFFICKING IN HUMAN BEINGS, SUPPLEMENTARY FIGURES: SIXTH REPORT OF THE DUTCH NATIONAL RAPPOURTEUR, app. 1 at 41 (2008). The punishment is increased from six years of imprisonment to fifteen years of imprisonment in cases involving death. *Id.* art 273f(6).

51. Appointment of National Rapporteur on Trafficking in Human Beings, *supra* note 47. The annual report on June 29, 1999, to the Lower House of the Dutch Parliament was to include an account of the methods of research, the results of the research, conclusions based on this research, and recommendations to combat and prevent the offenses stipulated in Article 250a of the Dutch Penal Code. *Id.* The Justice Minister's letter stated that such recommendations may be addressed to the central government, municipalities, other administrative bodies, international organizations, and NGOs. *Id.*

52. See CTR. FOR RESEARCH IN ETHNIC RELATIONS, UNIV. OF WARWICK, PREVENTION AND FIGHT AGAINST TRAFFICKING: INSTITUTIONAL DEVELOPMENTS IN EUROPE—NETHERLANDS REPORT (2003); Ruth Hopkins & Jan Nijboer, *Country Report*

In her first report on trafficking in human beings, the Dutch National Rapporteur focused on trafficking for the purpose of sexual exploitation, taking into account the limited definition of trafficking in human beings provided in Article 250a of the Dutch Penal Code.⁵³ Despite the focus of her first report, the Dutch National Rapporteur recognized the need to address other forms of trafficking in human beings as well. She explicitly stated that

the existing THB [trafficking in human beings] Article in the Dutch Penal Code [Article 250a] must therefore be held up against the light of the text of the Protocol and the national regulation will in any case have to be supplemented with a more comprehensive criminal provision in order to cover these other forms of exploitation.⁵⁴

In relation to the main subject of her report, the rapporteur also recognized that “one must bear in mind that victims of sexual exploitation will continue to deserve legal protection and special treatment,”⁵⁵ and that one “advantage of a broader definition of THB is that victims of sexual exploitations are given a less stigmatizing label.”⁵⁶ The new Article 273a extended the crime of trafficking in human beings to other forms of exploitation, including forced or compulsory labor or services, slavery and practices similar to slavery, and removal of organs.⁵⁷

D. The Semestrial Progress Reports on the Fight Against Trafficking in Human Beings: The Romanian Approach

The Romanian National Agency Against Trafficking in Persons (the Romanian Agency) is responsible for coordinating, evaluating, and monitoring the implementation of government policies to fight trafficking in persons in accordance with the National Action Plan

The Netherlands, in RESEARCH BASED ON CASE STUDIES OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN 3 EU MEMBER STATES, I.E., BELGIUM, ITALY, AND THE NETHERLANDS 255 (Commission of the European Communities ed., 2001).

53. ANNA G. KORVINUS, TRAFFICKING IN HUMAN BEINGS: FIRST REPORT OF THE DUTCH NATIONAL RAPPORTEUR 127 (2002), available at <http://rechten.uvt.nl/victimology/national/nl-nrmengels2002.pdf> [hereinafter KORVINUS, FIRST REPORT].

54. *Id.* The Dutch National Rapporteur made it clear that existing provisions of the Penal Code dealing with slave trading (Article 274), intentional unlawful detention (Article 282), and hostage taking (Article 282a) are not adequate to address the crime of trafficking in human beings. *Id.* at 127.

55. *Id.* at 128.

56. *Id.*

57. See ANNA G. KORVINUS, TRAFFICKING IN HUMAN BEINGS: THIRD REPORT OF THE DUTCH NATIONAL RAPPORTEUR 17 (2005), available at <http://rechten.uvt.nl/victimology/national/NL-NRMEngels3.pdf> [hereinafter KORVINUS, THIRD REPORT]. Article 273a became Article 273f in 2007. See DETTMEIJER-VERMEULEN ET AL., *supra* note 50.

and the National Strategies.⁵⁸ Among the functions of the Romanian Agency in Persons are establishing indicators and evaluation criteria of the phenomenon of trafficking in persons; collecting, storing, processing, and analyzing statistical data and information; carrying out surveys and research on the diagnosis and evolution of the problem; and facilitating statistical data and information exchange.⁵⁹ Additionally, the Agency is tasked with drafting, in cooperation with other bodies of the Ministry of Administration and Interior, an annual report on the evolution of human trafficking activity in Romania based on data supplied by public institutions with experience in the field.⁶⁰

The Romanian Agency published four progress reports in 2006: one for May (Report A), one for May–June (Report B), one for July–August (Report C), and one for September (Report D).⁶¹ A summary for the reporting period of January–June 2007 is available online, awaiting supplementation by the Agency’s institutional partners.⁶²

58. National Agency Against Trafficking in Persons (NAATIP), NAATIP Presentation, <http://anitp.mira.gov.ro/en/?zone=prezentare> (last visited Oct. 15, 2008) (Rom.) [hereinafter NAATIP Presentation]; see also National Agency Against Trafficking in Persons, Legislation, <http://anitp.mai.gov.ro/en/index.php?zone=legislatie> (last visited Oct. 15, 2008) (Rom.) (explaining the Agency was established and organized by Government Decision no. 1584/2005).

59. NAATIP Presentation, *supra* note 58.

60. *Id.* The National Agency Against Trafficking in Persons (formerly the National Agency for Preventing Trafficking in Human Beings and for Monitoring the Assistance Provided for the Victims of the Trafficking in Human Beings) has published four Semestrial Progress Reports. See National Agency Against Trafficking in Persons, Instruments—Reports, <http://anitp.mai.gov.ro/en/index.php?zone=rapoarte> (last visited Sept. 27, 2008) (Rom.) [hereinafter NAATIP Instruments—Reports]. The Semestrial Progress Reports are divided into four main sections: legislation, institutional development and administrative capacity; training personnel; activities for preventing trafficking in human beings; and providing assistance to victims of trafficking. See, e.g., NATIONAL AGENCY AGAINST TRAFFICKING IN PERSONS, SEMESTRIAL PROGRESS REPORT: FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS (May 2006), available at http://anitp.mai.gov.ro/en/docs/progrese_mai_2006_en.pdf (Rom.). The July–August 2006 report covers the following topics: Agency staffing, the Agency’s budget, an integrated system for identifying and referring victims, victim evidence fiche, and creation of a “helpline.” NATIONAL AGENCY AGAINST TRAFFICKING IN PERSONS, PROGRESS REPORT: FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS 3–5 (August 17, 2006), available at http://anitp.mai.gov.ro/en/docs/progrese_august_2006_en.pdf (Rom.). This Report also covers institutional coordination. *Id.* at 5–6.

61. NAATIP Instruments—Reports, *supra* note 60.

62. *Id.*

E. *Evaluating the National Strategy of the Fight Against Trafficking in Human Beings: The Czech Republic Approach*

In the Czech Republic's Resolution 957 of July 20, 2005, concerning the National Strategy of the Fight Against Trafficking in Human Beings, the government "imposed upon . . . the Minister of Interior the duty of submitting to the government by 30 June, 2007 the evaluation of the National Strategy of the Fight Against Trafficking in Human Beings and its update for the next period."⁶³ The Ministry of Interior is thus the agency responsible for performing the role of a national rapporteur; as such, the Czech model is similar to that of Sweden, whereby an existing ministry serves as the national rapporteur.⁶⁴ In implementing this mandate, a 2005 report documents government measures to combat human trafficking.⁶⁵ The report has several major components, including a review of the situation of human trafficking in the Czech Republic⁶⁶ and measures used to combat trafficking in human beings.⁶⁷ This report focuses mainly on sex trafficking. The introduction to the report explains that it is an assessment of the Czech National Strategy Against Trafficking and that the National Strategy addresses only trafficking for the purpose of sexual exploitation because the Czech penal code covered only this form of trafficking.⁶⁸ After the penal code's definition of trafficking was broadened in 2004, the Strategy was extended to cover other forms of trafficking.⁶⁹ However, the report, while referring to labor trafficking, does not cover illegal adoption,

63. Resolution of the Government of the Czech Republic No. 957 of July 20, 2005, *Concerning the National Strategy for the Fight Against Trafficking in Human Beings (For the Period of 2005–2007)*, reprinted in SECURITY POLY DEP'T, MINISTRY OF THE INTERIOR, NATIONAL STRATEGY OF THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS (FOR THE PERIOD OF 2005–2007), at 2, (2005), available at http://aplikace.mvcr.cz/archiv2008/dokument/2005/strategie_angl.doc [hereinafter CZECH REPORT].

64. See *supra* Part III.B.

65. See generally CZECH REPORT, *supra* note 63.

66. This includes human trafficking for the purpose of sexual exploitation as well as other forms of trafficking in human beings. *Id.* at 8.

67. This includes legislative measures, measures of bodies responsible for penal proceedings, research, prevention of human trafficking, care for human trafficking victims, and financial measures. *Id.* at 16.

68. Under Article 246, trafficking in women is defined as luring, engaging, or taking a woman abroad for the purpose of sexual intercourse with another person. Trestní zákon č. 140/1962, art. 246(1) Sb. [Criminal Code of the Czech Republic], available at www.antitraffick.md/reps/legs/Cehia%20eng.pdf. The offense in this case is punished by imprisonment from one to five years. *Id.* The sentence is increased to imprisonment from three to eight years if the offense is committed against a female under the age of eighteen, or is committed for the purpose of prostitution, or involves an organized criminal group. *Id.* art. 246(2).

69. CZECH REPORT, *supra* note 63, at 7.

forced criminal activity, forced marriage, or organ trafficking. The report acknowledges its exclusion of these forms of trafficking, suggesting that such trafficking does exist within the Czech Republic.⁷⁰

*F. Reporting on Trafficking in Human Beings in the United States:
The Department of Justice Assessment of Government Activities
to Combat Trafficking in Persons*

In the United States, as in Sweden and in the Czech Republic, an agency of the government reports on the status of trafficking in human beings and the government's efforts to combat it. The U.S. model also makes a distinction between efforts made by foreign governments and the United States, and designs different reporting mechanisms for each. As such, the Department of Justice (DOJ) publishes assessments of the U.S. government's activities in combating trafficking in human beings, whereas the Department of State publishes a report assessing foreign governments' efforts in combating trafficking in human beings.⁷¹

The Trafficking Victims Protection Act of 2000⁷² (TVPA) created an "Interagency Task Force to Monitor and Combat Trafficking."⁷³ Section 105 of the TVPA prescribed the activities of the task force, which include "measur[ing] and evaluat[ing] progress of the United States"⁷⁴ in combating trafficking in human beings and "expand[ing] interagency procedures to collect and organize data, including significant research information on domestic and international

70. *Id.* at 15.

71. *See* Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. No. 108-193, § 6(a)(1), 117 Stat. 1875, 2880 (2003) (current version at 22 U.S.C. § 7103(d) (2006)) (mandating the Attorney General report on the U.S. government's activities); 22 U.S.C. § 2151n(d) (2006) (mandating the Secretary of State to issue reports assessing foreign governments).

72. Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (current version at 22 U.S.C. §§ 7101-7110 (2006)).

73. TVPA § 105(a).

74. *Id.* § 105(d)(2). Section 105(d) of the TVPA, in this regard, reads as follows:

[T]he Task Force shall carry out the following activities . . . (2) [m]easure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking. The Task Force shall have primary responsibility for assisting the Secretary of State in the preparation of the reports described in section 110.

Id. Other activities of the Task Force include coordinating the implementation of the TVPA, "engag[ing] in efforts to facilitate cooperation among countries of origin and destination," and "examin[ing] the role of international sex tourism industry in the trafficking in persons." *Id.* § 105(d)(1), (4), (5).

trafficking.”⁷⁵ In 2003, the Trafficking Victims Protection Reauthorization Act (TVPRA) entrusted the Department of Justice (DOJ), as a member of the Task Force,⁷⁶ with this mission.⁷⁷ As stipulated by Congress, the report must include information on the actions of federal agencies⁷⁸ in implementing the provisions of the TVPA. It must specify, at a minimum, the number of persons who received benefits or other services to which victims of trafficking are entitled under Section 107(b) of the TVPA; the number of persons certified as victims of trafficking by the U.S. government who have been granted continued presence under Section 107(c)(3) of the TVPA during the preceding fiscal year; the number of persons who have applied for, been granted, or been denied a visa or otherwise provided status under Section 101(a)(15)(T)(i) of the Immigration and Nationality Act during the preceding fiscal year as a result of human trafficking; the number of persons who have been charged or convicted of trafficking or related offenses under one or more enumerated sections of Title 18 of the U.S. Code during the preceding fiscal year, and the sentences imposed against each such person; the amount, recipient, and purpose of each grant issued by any federal agency to carry out the purposes of the TVPA; the nature of training conducted pursuant to Section 107(c)(4) of the TVPA during the preceding fiscal year; and the activities undertaken by the Senior Policy Operating Group to carry out its responsibilities under Section 105(f) of the TVPA.⁷⁹

75. *Id.* §105(d)(3).

76. The U.S. Interagency Task Force includes the Secretary of State, the Administrator of the U.S. Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of National Intelligence, Secretary of Defense, the Secretary of Homeland Security, and such other officials as may be designated by the President. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) § 140(a), 22 U.S.C. § 7103(b) (2006).

77. TVPRA 2003 § 6(a)(1). This general report is submitted in addition to specific reports by the different agencies, including Health and Human Services and the Attorney General. *See* TVPRA 2005 § 201(a)(2)(C). The TVPA requires the Attorney General to submit the annual report to the Committee on Ways and Means, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives and the Committee on Finance, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate. TVPRA 2003 § 6(a)(1). Moreover, the TVPRA requires the Attorney General to submit yearly reports, from 2004 onward, to Congress on U.S. government activities to combat trafficking. *Id.* The Attorney General submitted separate reports in May 2004, July 2005, and June 2006. *See* U.S. Dep’t of Justice, Office of the Attorney General, Annual Reports, <http://www.usdoj.gov/ag/annualreports.html> (last visited Oct. 15, 2008).

78. In addition to the Department of Justice, participating agencies include the Department of Homeland Security, the Department of Health and Human Services, the Department of Labor, the Department of State, and the Legal Services Corporation. *See* 22 U.S.C. § 7103(b), (d)(7)(A) (2006).

79. TVPRA 2003 § 6(a)(1).

The DOJ Reports on the Assessment of U.S. Activities to Combat Trafficking in Persons inquires into whether the U.S. government is providing victims of trafficking with the necessary protective benefits. The Reports consider whether services are being provided in the appropriate locations;⁸⁰ whether repatriation efforts are effective if more victims choose to return home;⁸¹ whether immigration benefits are granted to victims of trafficking;⁸² whether the victim has the option to apply for lawful permanent residency upon remaining in the U.S. for three years under the requirements of the T-Visa;⁸³ whether tools are being developed to assess the health consequences for victims of trafficking;⁸⁴ whether victims are provided with information about their rights under U.S. law;⁸⁵ and, finally, the Report provides a toll-free hotline for victims and NGOs to communicate directly with Immigration and Customs Enforcement (ICE).⁸⁶

80. U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 6 (2003), available at <http://www.state.gov/documents/organization/23598.pdf> [hereinafter U.S. DEP'T OF JUSTICE REPORT 2003].

81. *Id.* at 8.

82. *Id.*

83. U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 21 (2004), available at http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf [hereinafter U.S. DEP'T OF JUSTICE REPORT 2004].

84. *Id.* at 23.

85. U.S. DEP'T OF JUSTICE REPORT 2003, *supra* note 80, at 7.

86. U.S. DEP'T OF JUSTICE REPORT 2004, *supra* note 83, at 23. In the September 2007 Report, DOJ recommended that the U.S. government continue its focus on actionable research, specifically research that "provides precise data on the industries, types of establishments, and geographic areas in which trafficking victims are frequently found." U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 39 (2007), available at <http://www.usdoj.gov/ag/annualreports/tr2007/assessment-of-efforts-to-combat-tip0907.pdf> [hereinafter U.S. DEP'T OF JUSTICE REPORT 2007]. The Report recommended that the U.S. government "increase cooperation among U.S. agencies to maximize efficiency in services provided, program development, and information dissemination." *Id.* The Report also recommended that the U.S. government "streamline public awareness strategies to target health care professionals, legal practitioners, the education community, and other economic sectors best able to serve victims and combat human trafficking." *Id.*

The U.S. Department of Health and Human Services has started outreach programs as a way to combat victims' fear and encourage them to come forward. U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 10 (2005), available at www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf [hereinafter U.S. DEP'T OF JUSTICE REPORT 2005]. The theme of this campaign is "Look Beneath the Surface"—a message to all people that they may be encountering trafficking victims in their daily lives without recognizing the signs of this type of abuse and exploitation. *Id.* This campaign operates under three premises: (1) being victim-centered; (2) targeting intermediaries; and (3) being community-based. *Id.* at 10–11. Further, HHS has initiated media campaigns that focus on trafficking as not merely an international problem, but one whose effects

To enhance victims' services, the September 2006 Report makes the following recommendations: First, the Department of Health and Human Services (HHS) and the DOJ Office for Victims of Crimes (OVC) should inform the Department of Labor Employment and Training Administration (ETA) when grants assisting trafficking victims in specific areas are awarded.⁸⁷ This would facilitate communications between the grantee and the local workforce. Second, the Office of Refugee Resettlement (ORR) should provide information regarding employment and training services offered by ETA when issuing certification letters to trafficking victims.⁸⁸ Third, the DOJ, the Department of Homeland Security (DHS), and HHS should continue to improve coordination on tracking rescued victims' cases and the support that they receive.⁸⁹ Lastly, the DOJ Assessment Report of September 2005 questions why it is so difficult to identify and rescue victims of trafficking.⁹⁰ The Report concludes that victims are reluctant to be found out of fear for their own safety and that of their family, and that traffickers have exploited the "specter of American law" to the extent that victims grow very suspicious and fearful of American officials.⁹¹

G. Reporting on the Status of Severe Forms of Trafficking in Foreign Countries: The Role of the United States State Department Trafficking in Persons Report

Beyond the self-assessment that is conducted by the DOJ annually, the United States also monitors the status of trafficking in human beings in foreign countries and assesses these countries' progress in combating the phenomenon. In doing so, the Department of State, the federal agency tasked with this reporting, bases its

are pervasive within the borders of the U.S. *Id.* at 11. To center the focus on the trafficking problem domestically, HHS advocates for public service announcements, partnerships with state and local governments to raise awareness, and a referral hotline so that victims or concerned citizens can be connected to the appropriate agencies and officials. *See id.* at 12.

87. U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 9 (2006), available at http://www.usdoj.gov/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf [hereinafter U.S. DEP'T OF JUSTICE REPORT 2006].

88. *Id.*

89. *Id.*

90. U.S. DEP'T OF JUSTICE REPORT 2005, *supra* note 86, at 9.

91. *Id.* at 9–10. The Department of Justice published five reports assessing the United States' activities in combating trafficking in persons, one each in August 2003, June 2004, September 2005, September 2006, and September 2007. U.S. DEP'T OF JUSTICE REPORT 2007, *supra* note 86, at 1.

findings on various mechanisms⁹² that monitor the status of severe forms of trafficking in foreign countries, as stipulated by the TVPA.⁹³ This responsibility includes the submission of two reports: the human rights report, which includes a section on trafficking in persons, and the Trafficking in Persons (TIP) Report.⁹⁴

The TVPA requires the State Department to submit an annual TIP Report to appropriate congressional committees.⁹⁵ The TIP Report classifies countries into three main categories based upon their compliance with the minimum standards for the elimination of trafficking in persons as stipulated in the TVPA.⁹⁶ Tier 1 includes countries whose governments have fully complied with these standards.⁹⁷ Tier 2 includes countries whose governments do not yet fully comply with these standards but are making significant efforts to bring themselves into compliance.⁹⁸ Tier 3 includes countries whose governments do not fully comply with these standards and are not making significant efforts to bring themselves into compliance with these standards.⁹⁹

92. Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, § 104(a), 114 Stat. 1464, 1471 (2000) (current version at 22 U.S.C. § 2151n(d) (2006)).

93. See Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437 (2006). See generally Mohamed Y. Mattar, *Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated Under the U.S. Trafficking Victims Protection Act*, 10 BROWN J. WORLD AFF. 159 (2003).

94. TVPA §§ 104(a), 110(b)(1).

95. *Id.* § 110(b)(1).

96. *Id.*

97. *Id.* § 110(b)(1)(A).

98. *Id.* § 110(b)(1)(B).

99. *Id.* § 110(b)(1)(C). According to TVPA section 108 as amended in 2003 and 2005, the minimum standards for the elimination of trafficking in persons include four standards: whether a country has a specific anti-trafficking law that prohibits and punishes trafficking in persons, whether such punishment is commensurate with that of a serious crime, whether such punishment is sufficiently stringent to deter, and whether serious and sustained efforts have been made to eliminate trafficking in persons. *Id.* § 108(a).

Measuring such efforts is based on seven criteria: (1) investigations and prosecutions; (2) protection of victims; (3) measures to prevent severe trafficking in persons; (4) cooperation with other governments' investigations and prosecutions; (5) extradition of traffickers like persons charged with other serious crimes; (6) monitoring immigration and emigration patterns for evidence of trafficking; and (7) vigorous investigation and prosecution of public officials who participate in or facilitate severe human trafficking. *Id.* § 108(b).

Six factors must be taken into consideration in determining whether a country is making significant efforts to bring itself into compliance with the minimum standards. These are: (1) whether the country is a country of origin, transit or destination; (2) the extent of government noncompliance, including the extent to which government officials have participated in, facilitated, condoned, or were complicit in trafficking; (3) reasonable anti-trafficking measures in light of the country's resources and capabilities; (4) whether the percentage of noncitizen victims is insignificant; (5) the monitoring and public assessment of anti-trafficking efforts; and (6) progress in

A fourth classification, added to the TIP reporting requirements via the TVPRA in 2003, is the “Tier 2 Watchlist.”¹⁰⁰ This classification is reserved for countries that have demonstrated “a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons, from the previous year, including increased investigations, prosecutions and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials.”¹⁰¹

It is important to note that the TVPA considers reporting to be a significant measure that must be taken by a government in its efforts to combat trafficking in persons. According to the TVPRA, one factor in the commitment of a foreign government to eliminating trafficking in persons is “whether the government of a country, consistent with the capacity of that government, systematically monitors its efforts to satisfy the criteria described . . . and makes available publicly a periodic assessment of such efforts.”¹⁰² While the TIP Reports address the various efforts of the individual country, they do not specifically concern themselves with reporting mechanisms in any particular country; this suggests an incongruity between the minimum standards as stipulated in the TVPA and the TIP Report method of evaluating such standards. One of the few references to reporting mechanisms in a TIP Report was made regarding Guinea, which has been placed on the Tier 2 Watchlist.¹⁰³ The 2008 Report¹⁰⁴ specifically states that “Guinea’s Permanent Regional Monitoring System, which was formed as part of the 2005 West Africa multilateral agreement, issued a report in January 2008 detailing

eliminating trafficking when compared to previous years and data provided by the government. See MOHAMED Y. MATTAR, COMPREHENSIVE LEGAL APPROACHES TO COMBATING TRAFFICKING IN PERSONS: AN INTERNATIONAL AND COMPARATIVE PERSPECTIVE 41 (2006), available at http://www.lexisnexis.com/documents/pdf/20080620022649_large.pdf.

100. Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. No. 109-193, § 6(e)(3), 117 Stat. 2875, 2880 (2003) (current version at 22 U.S.C. § 7107(b) (2006)).

101. *Id.* § 6(e)(3)(A)(iii)(II). Section 6(e)(3) also sets forth additional factors that are considered in determining whether a country may be placed on the Tier 2 Watchlist. These factors include whether there are a “very significant” number of trafficking victims or a steadily increasing number of trafficking victims in a country and whether a country is making significant efforts to bring itself into compliance with the minimum standards based on “commitments by the country to take additional steps over the future year.” *Id.* § 6(e)(3)(A)(iii)(I), (II).

102. *Id.* § 6(d)(3).

103. U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 131 (2008), available at <http://www.state.gov/documents/organization/105501.pdf> [hereinafter U.S. STATE DEPT REPORT 2008]. The report covers 170 countries: twenty-nine in Tier 1, seventy in Tier 2, fourteen in Tier 3, forty on the Tier 2 Watchlist, and seventeen special cases. *Id.* at 44, 267–79.

104. *Id.* at 132.

government and NGO anti-trafficking activities.”¹⁰⁵ TIP Reports also examine whether a country has adopted a national action plan,¹⁰⁶ and whether it has established a national committee¹⁰⁷ to implement such a plan.

The TVPA does not require the TIP Report to provide a description of the scope of the problem. It is the annual country reports on human rights practices that must demonstrate the magnitude of trafficking in every country. According to the TVPA, the human rights reports must include “a description of the nature and extent of severe forms of trafficking in persons . . . in each foreign country.”¹⁰⁸ In addition, the human rights reports, as opposed to the TIP Report, focus on trafficking in persons as a violation of human rights more than on government efforts to address such violations.¹⁰⁹

The U.S. model of reporting on trafficking in human beings raises the question of whether a foreign government is under a duty to provide information on the status of trafficking in persons to the United States government. It is difficult to argue that there exists

105. *Id.*; see also *id.* at 101 (placing Cote D'Ivoire on the Tier 2 Watchlist and noting that “[t]he government continued to work with private cocoa companies to collect data to measure the incidence of the worst forms of child labor and forced adult labor in the cocoa sector.”); *id.* at 128 (commenting on Ghana, “[t]he government continued to work with private cocoa companies to collect data to measure the incidence of the worst forms of child labor and forced adult labor in the cocoa sector.”).

106. See, e.g., *id.* at 69 (noting that in Belarus, a Tier 2 nation, “[t]he government adopted a 2008–2010 State action plan to increase protection and rehabilitation of trafficking victims, enhance the efficiency of government prevention efforts, further improve trafficking-related legislation, and decrease prostitution.”); *id.* at 70 (noting that in Belgium, a Tier 1 nation, “[a] governmental executive board developed an anti-trafficking National Action Plan in 2007.”); *id.* at 72 (noting that in Benin, a Tier 2 nation, “[t]he government completed its UNICEF-sponsored National Policy and Strategy for Child Protection in October 2007 and approved in September 2007 an ILO-sponsored five year national action plan to combat trafficking.”).

107. See, e.g., *id.* at 209 (noting that in the Philippines, a Tier 2 nation, “[i]n February 2007, the Task Force Against Trafficking at Ninoy Aquino International Airport was formed to combat trafficking at the airport by intercepting undocumented passengers, assisting victims, and monitoring involvement of airport personnel.”); *id.* at 172 (noting that in Madagascar, a Tier 1 nation, “[i]n December 2007, the government adopted the National Action Plan to Fight against All Forms of Violence against Children, which includes child trafficking.”); *id.* at 156 (noting that in Kenya, a Tier 2 nation, “[i]n July 2007, the government established the National Steering Committee to Combat Human Trafficking under the leadership of the Ministry of Home Affairs.”).

108. Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, § 104(a), 114 Stat. 1464 (2000) (current version at 22 U.S.C. § 7101).

109. *Id.* In particular, the TVPA requires that the annual country reports on human rights practices include an assessment of “whether the government of that country refrains from prosecuting victims of severe forms of trafficking of persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims” and “whether the government of that country recognized the rights of victims of severe forms of trafficking in persons and ensures their access to justice.” *Id.*

any legal basis for the imposition of such a duty to report in the absence of a bilateral agreement of foreign assistance.¹¹⁰ Consequently, one may raise doubts concerning the merits of Section 108 of the TVPA, as amended in 2003, which provides that “[a]fter reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with the capacity of that government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts.”¹¹¹

The TVPA adopts a narrow definition of trafficking in persons to include only sex trafficking and labor trafficking.¹¹² In addition, the TVPA only covers severe forms of trafficking.¹¹³ The TVPA does not cover other forms of trafficking, especially trafficking for the purpose of illicit international adoption, or practices similar to slavery or trafficking in human organs. The only reference to other forms of trafficking was made in the First Trafficking in Persons Report issued by the U.S. Department of State, which referred to trafficking for the purpose of illicit adoption in Cambodia.¹¹⁴ Subsequent reports

110. See Mattar, *supra* note 94, at 169.

111. Trafficking Victims Protection Reauthorization Act of 2003 (TVPA 2003), Pub. L. No. 108-193, §6(d)(1)(B), 117 Stat. 2881 (2003) (current version at 22 U.S.C. § 7103). Note also that the U.S. model may be questioned because it calls for unilateral sanctions to be imposed on governments that do not comply with the minimum standards on the elimination of trafficking in accordance with the TVPA and are not making significant efforts to bring themselves into compliance with such standards. TVPA § 110. Sanctions have been criticized on the basis that they affect, in the final analysis, victims of trafficking by harming vulnerable populations, especially women and children, whom the TVPA was designed to protect. See *International Trafficking in Women and Children: Hearings Before the Near Eastern and South Asian Affairs Subcomm. of the S. Comm. on Foreign Relations*, 106th Cong. 8–9 (2000) (statement of Frank E. Loy, Undersecretary for Global Affairs, Department of State). Consequently, the emphasis of the United States should be on assisting governments to combat trafficking in persons, and this requires constructive engagement that one may argue that the TVPA intended to achieve. See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 5* (2006), available at <http://www.state.gov/documents/organization/66086.pdf>.

112. TVPA § 103(8).

113. *Id.* The TVPA defines severe forms of trafficking as:

[S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; 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.

Id.

114. U.S. DEP’T OF STATE, *VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT 38* (2001), available at <http://www.state.gov/documents/organization/4107.pdf> [hereinafter U.S. STATE DEP’T REPORT 2001].

were careful to comply with the strict definition of the TVPA, although the reports cover not only trafficking for the purpose of prostitution—"commercial sex acts," to quote the TVPA¹¹⁵—but also trafficking for the purpose of marriage.¹¹⁶

Comprehensive and adequate reporting on the status of trafficking in human beings requires covering all forms of human trafficking. The UN Protocol definition should serve as a guide in defining the scope of a report on human trafficking. Under the UN Protocol, exploitation is defined to include "exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."¹¹⁷ The Council of Europe Convention on Action Against Trafficking in Human Beings adopted the same definition.¹¹⁸ Most legal systems follow the internationally recognized definition of trafficking as it appears in the UN Protocol.¹¹⁹

115. TVPA § 103(8).

116. See U.S. STATE DEP'T REPORT 2008, *supra* note 104, *passim* (referencing forced marriage, compensation marriage, temporary marriage, and marriage by catalogue in the following countries: Afghanistan, India, Iran, Nepal, Burma, Cambodia, China, Egypt, Indonesia, Mongolia, North Korea, Papua New Guinea, Taiwan, Tajikistan, Vietnam, and Zambia).

117. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, art. 3(a), U.N. Doc. A/RES/55/25 (Nov. 15, 2000) [hereinafter UN Protocol].

118. The Council of Europe Convention, *supra* note 1, art. 4(a).

119. See, e.g., TVPA § 103(8); U.N. Protocol, *supra* note 117, art. 3(a). These forms of exploitation, as Article 3 of the UN Protocol indicates, are mentioned "at a minimum." U.N. Protocol, *supra* note 117, art. 3(a). Some legal systems specify other forms of trafficking explicitly. For instance, the October 29, 2006 Israeli Law on Trafficking defines trafficking to include "Giving Birth of a Child and Taking the Child Away" or what one may call trafficking for the purpose of child bearing. Prohibition of Trafficking in Persons (Legislative Amendments) Law, 5766–2006 (Isr.). Begging is mentioned specifically in the Italian Law on Measures against Human Trafficking of 2003. CODICE PENALE [C.P.] art. 600(1) (Italy), available at <http://www.legislationline.org/legislation.php?tid=178&lid=7619&less=false>. Pornography and forced marriage are specifically mentioned as forms of sexual exploitation under the Illicit Trafficking of Migrants and Trafficking in Persons Law No. 137 of 2003 of the Dominican Republic. See Mohammed Y. Mattar, The Birth of a New Anti-Trafficking Legislation: The Dominican Republic's Law Number 137-03 Regarding Illegal Trafficking of Migrants and Trade in Persons, Speech at the Conference on New Steps in Path Breaking Strategies in the Global Fight Against Sex Trafficking (Dec. 8, 2003), available at <http://www.protectionproject.org/commentary/vz2.htm>. The 2003 Philippines Anti-Trafficking Act makes a special reference to sex tourism in Article 4(d). An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing for Penalties for its Violations and for Other, Rep. Act No. 9208, § 4(d) (2003) (Phil.), available at http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html. Exploitation in armed conflicts is part of the definition of human trafficking in Article 11(b) of the Criminal Code of Serbia. CRIMINAL CODE art. 388(1) (Serb.), available at <http://www.legislationline.org/upload/legislations/dc/a9/576c23dc4>

The U.S. Congress recognized the scope of the problem of labor trafficking in paragraph 1 of Section 105(a) of the TVPA:

Congress finds that in the report submitted to Congress by the Secretary of State in June 2005 pursuant to section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)), the list of countries whose governments do not comply with the minimum standards for the elimination of trafficking and are not making significant efforts to bring themselves into compliance was composed of a large number of countries in which the trafficking involved forced labor, including the trafficking of women into domestic servitude.¹²⁰

The U.S. Congress also observed that the Trafficking in Persons Report does not fully cover labor trafficking. Commenting on the State Department 2005 Report, the 2005 TVPRA stated that:

It is the sense of Congress that the Director of the Office to Monitor and Combat Trafficking of the Department of State should intensify the focus of the office on forced labor in the countries described in paragraph (1) and other countries in which forced labor continues to be a serious human rights concern.¹²¹

Consequently, the DOJ, in its Assessment of U.S. Government Activities to Combat Trafficking in Persons of 2006, recommended that the U.S. government “[e]nhance its efforts to monitor and combat labor trafficking both domestically and internationally, especially in light of the new mandate in the 2005 TVPRA concerning forced labor and child labor.”¹²² At the press release of the 2008 TIP Report, Ambassador Mark Lagon noted different instances of exploitative labor and labor trafficking. He stated:

If we're to end the terrible reality of slave labor, all responsible countries must join forces to hold those guilty of this crime accountable. . . . One example of an industry in which we are concerned over reports of significant forced labor is Thailand shrimp processing and that sector. But in other cases, in Brazil, some charcoal is produced by forced labor and some of that charcoal may be used to produce pig iron. Over half of the 5,800 slaves rescued by Brazilian authorities were found on sugarcane plantations. Also of concern is China, where several slave labor scandals have recently been uncovered. Some of the cases reportedly involve the complicity of Chinese law enforcement officials themselves. All governments must act to ensure that cheap and efficient production of export goods does

1967e427086bf4c2b45.pdf. Use in criminal activities is considered one of the forms of exploitation under the definition of human trafficking in the Criminal Code of Ukraine. CRIMINAL CODE art. 149(1) (Ukr.), available at <http://www.legislationline.org/upload/legislations/2e/4b/e7cc32551f671cc10183dac480fe.htm>.

120. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), § 105(a)(1), 22 U.S.C. § 7112(a)(1) (2006).

121. *Id.* §105(a)(2).

122. U.S. DEPT OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2005, at 33 (2006), available at http://www.usdoj.gov/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf.

not come at the expense of the very dignity and fundamental rights of citizens.¹²³

Likewise, the 2008 TIP Report¹²⁴ pays special attention to forced labor trafficking in its various forms. For instance, the Report refers to the significance of the problem in Indonesia:

A significant number of Indonesian men and women who migrate overseas each year to work in the construction, agriculture, manufacturing, and domestic service sectors are subjected to conditions of forced labor or debt bondage in Malaysia, Japan, Saudi Arabia, Iraq, Singapore, Taiwan, Hong Kong, United Arab Emirates, Jordan, Kuwait, Qatar, Syria, France, Belgium, Germany, and the Netherlands. . . . Malaysia and Saudi Arabia are the top destinations for legal and illegal Indonesian migrant workers who are trafficked for domestic servitude, commercial sexual exploitation, and forced labor. . . . Internal trafficking is a significant problem in Indonesia with women and children exploited in domestic servitude, commercial sexual exploitation, rural agriculture, mining, fishing, and cottage industries.¹²⁵

The Report also emphasizes trafficking for the purpose of begging. For instance, the 2008 TIP Report states that in Gambia,

[b]oys are trafficked within the country for forced begging by religious teachers and for street vending. . . . Trafficking of Gambian boys to Senegal for forced begging and Senegalese boys to The Gambia for the same purpose is particularly prevalent. . . . However, overall efforts to combat trafficking over the past year stalled due to the lack of trafficking prosecutions and convictions, the absence of victim rescues, and the inappropriate deportations of child victims of forced begging. . . . In February 2008, the Director General of Immigration, however, issued a statement that foreign child victims of forced begging, called *almudos*, could face deportation as part of a government crackdown on street begging. . . . but during the year, child victims of

123. See Ambassador Mark P. Lagon, Briefing on the Release of the Eighth Annual Trafficking in Persons Report (June 4, 2008), available at <http://www.state.gov/g/tip/rls/rm/2008/105572.htm>.

124. For a review of the TIP Report, see THE PROTECTION PROJECT, REVIEW OF THE U.S. DEPARTMENT OF STATE OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS 2008 TRAFFICKING IN PERSONS REPORT (2008), available at <http://www.protectionproject.org/docs/TPP%202008%20Review.pdf>.

125. See U.S. STATE DEP'T REPORT 2008, *supra* note 103, at 141. Regarding domestic service specifically, the Report also refers to Algeria, Angola, Bangladesh, Benin, Burkina Faso, Burma, Burundi, Cameroon, Canada, Central African Republic, Chad, Republic of Congo, Cote D'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guyana, Kenya, Republic of Korea, Lebanon, Liberia, Madagascar, Malawi, Mali, Mauritania, Morocco, Mozambique, the Netherlands, Nicaragua, Niger, Nigeria, Pakistan, Papua New Guinea, Paraguay, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Switzerland, Tanzania, Togo, Uganda, United Arab Emirates, the United Kingdom, Uzbekistan, Zambia, Zimbabwe, Barbados, Haiti, Lesotho, Namibia, Swaziland, Tunisia, and Turkmenistan. *Id. passim*.

forced begging were punished through their detention by authorities.¹²⁶

The Report also covers child labor in detail. It states that in Zimbabwe,

[r]ural Zimbabwean men, women, and children are trafficked internally to farms for agricultural labor and domestic servitude and to cities for domestic labor and commercial sexual exploitation. Women and children are trafficked for domestic labor and sexual exploitation, including in brothels, along both sides of the borders with Botswana, Mozambique, South Africa, and Zambia. Young men and boys are trafficked to South Africa for farm work, often laboring for months in South Africa without pay before “employers” have them arrested and deported as illegal immigrants. Young women and girls are lured to South Africa, the People’s Republic of China, Egypt, the United Kingdom, the United States, and Canada with false employment offers that result in involuntary domestic servitude or commercial sexual exploitation. Men, women, and children from the Democratic Republic of the Congo, Malawi, Mozambique, and Zambia are trafficked through Zimbabwe en route to South Africa. Small numbers of South African girls are trafficked to Zimbabwe for domestic servitude.¹²⁷

The Report also notes that child soldiers are being used in countries such as Afghanistan, Burma, Burundi, the Central African Republic, Chad, Cote D’Ivoire, Democratic Republic of Congo, India, Nepal, Rwanda, Sri Lanka, Sudan, and Uganda.¹²⁸

H. Congressional (Parliamentary) Hearings as a Means of Monitoring and Reporting on Trafficking in Human Beings: Examples from Canada and the United States

In Canada, the Standing Committee on the Status of Women published a report in February 2007 covering various aspects of trafficking in human beings.¹²⁹ In Recommendation 18 of this report,

126. *Id.* at 122–23. The Report also refers to the problem of trafficking for the purpose of begging in Afghanistan, Albania, Bulgaria, Chad, China, Colombia, Egypt, Ethiopia, the Gambia, Greece, Guatemala, Guinea-Bissau, Italy, Mali, Mauritania, Moldova, Montenegro, Niger, Nigeria, Romania, Russia, Senegal, Sierra Leone, Slovenia, Sweden, Tajikistan, Thailand, Uganda, Ukraine, the United Kingdom, and Yemen., *Id. passim*.

127. *Id.* at 264. .

128. *See generally id.*

129. STANDING COMMITTEE ON THE STATUS OF WOMEN, HOUSE OF COMMONS, TURNING OUTRAGE INTO ACTION TO ADDRESS TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION IN CANADA (2007) (Can.), available at <http://cmte.parl.gc.ca/Content/HOC/committee/391/fewo/reports/rp2738918/feworp12/feworp12-e.pdf> [hereinafter CANADIAN SEXUAL EXPLOITATION REPORT]. The report is structured into six chapters and follows a “Three Ps” analysis of trafficking. *Id.* at vii–viii. The Committee found “the ‘three Ps’ framework useful for discussing the issues, and for that reason has adopted that framework as a structure for its report.” *Id.* at 2. The report covers the following issues: (1) the committee’s mandate, including the standard report structure;

the Committee urged that a national rapporteur be established to collect and analyze data on trafficking in persons and that the national rapporteur submit an annual report to Parliament.¹³⁰ Under the Committee's recommendation, the national rapporteur must consult with stakeholders as to how best to implement a data collection and tracking system that would protect both the integrity of police information, and the victims of trafficking.¹³¹

The Committee recognized that people are trafficked for domestic, agricultural and factory work, but focused on trafficking in persons for the purpose of sexual exploitation, because witnesses noted that 92% of victims are trafficked for that purpose.¹³² The Committee also stated that, given the particularly egregious abuse and degradation involved in trafficking for the purposes of sexual exploitation, addressing the trafficking of persons for domestic, agricultural and factory work, or any other exploitative situation would require another study.¹³³

(2) background on the issue, including a definition of trafficking and an overview of Canada's efforts to combat trafficking; (3) prevention through research and by identifying causes, including poverty; (4) gender inequality; (5) demand for trafficking for the purpose of sexual exploitation; (6) age of consent; (7) inequalities resulting from Canada's immigration policy; (8) coordination and cooperation; (9) protection, including training and awareness for law enforcement; (10) victim services and programs; (11) the temporary resident permit; (12) a comprehensive definition of trafficking victims; (13) prosecution, including resources for police and education and training for prosecutors and judges; and (14) a conclusion, which ultimately requests government response. *See generally id.*

130. *Id.* at 9.

131. *Id.* at 18. The Federal Interdepartmental Working Group on Trafficking in persons (IWG) was established in 1999. Press Release, The Future Group, The Future Group Applauds House of Commons Standing Committee Report on Human Trafficking (Feb. 27, 2007), available at <http://tfgwebmaster.web.aplus.net/wwwthefuturegrouporg/id47.html>. The IWG is co-chaired by the Departments of Justice and Foreign Affairs. Canadian Dep't of Justice, Interdepartmental Working Group on Trafficking in Persons (IWGTIP), <http://www.justice.gc.ca/eng/fs-sv/tp/iwgtip-gtitp.html> (last visited Oct. 16, 2008). The partners in the IWG are numerous and include: Canada Border Services Agency (CBSA), Canadian Heritage (PCH), Canadian International Development Agency (CIDA), Canadian Security Intelligence Service (CSIS), Citizenship and Immigration Canada (CIC), Foreign Affairs Canada (FAC), Health Canada (HC), Human Resources and Social Development Canada (HRSDC), Indian and Northern Affairs Canada (INAC), Justice Canada, Passport Office, Privy Council Office (PCO), Public Safety and Emergency Preparedness Canada (PSEPC), and Royal Canadian Mounted Police (RCMP). *Id.*

132. CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 1. The Committee supports the definition contained in the United Nations Protocol. *Id.* at 3. However, the Committee considers that definition to be weakened by its lack of clarity with respect to what constitutes sexual exploitation. *Id.* For that reason, it wishes to clarify that prostitution and pornography are forms of sexual exploitation, wherever they occur. *Id.*

133. A dissenting opinion in the Canadian Report of the Standing Committee on the Status of Women 2007 considered that the recommendation made regarding the issue of prostitution was "hasty" and supported by "insufficient documentation,"

The Canadian Standing Committee on the Status of Women recommended that the federal government review the temporary resident permit (TRP) process for victims of trafficking and establish a mechanism other than humanitarian grounds and refugee status through which confirmed victims of trafficking could seek permanent status in Canada.¹³⁴ In its review of the TRP for victims of trafficking, the Committee concluded that the federal government should increase the length of the initial TRP to 180 days, amend the TRP to provide victims with the ability to work, and ensure that the TRP provides that a victim's basic needs will be met during the 180-day period.¹³⁵ These needs include, but are not limited to, housing and access to health and social services.¹³⁶

In addition to the reporting mechanisms elaborated in Parts III.F and III.G, *supra*, the United States also monitors and reports on trafficking in human beings by holding congressional hearings on the subject. Broadly speaking, in the United States, congressional oversight may be defined as the supervision of all federal agencies and their programs and activities.¹³⁷ Conducting investigative and legislative hearings is one facet of congressional oversight. The

stating that, "in our opinion . . . criminalizing the purchasing of sexual services would not solve the problem. On the contrary, this could increase the risk of assault relating to these practices, which are already dangerous enough." *Id.* at 58. The majority of witnesses appearing before the Committee maintained that, by dealing with the clients of prostitution, human trafficking for the purpose of sexual exploitation can be countered. *Id.* at 13. A number of witnesses urged the Committee to acknowledge that prostitution is the driving force behind trafficking. *Id.* The following excerpt of the testimony reflects this position:

Human trafficking is one of the consequences of the prostitution system. Institutionalization—in other words, legalizing sex markets—boosts procuring activity and organized crime, but most importantly, it legitimizes gender inequality. Consequently, if Canada wants to stop trafficking in human beings and to protect trafficking victims, it seems urgent that we examine those who motivate it: Canadian prostituting clients. It also seems important to understand and to analyze prostitution and trafficking as related phenomena and forms of violence against women. Trafficking and the prostitution industry exist because men want to buy the bodies of women and young girls. Prostitution is a form of sexual slavery that allows trafficking to flourish and to grow.

Id. at 13–14. In 2005, the TVPRA required additional information to be submitted in the U.S. on sex trafficking and unlawful commercial sex acts in the United States, noting a lack of reliable data. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), § 201(a), 22 U.S.C. § 7112(a)(1) (2006). The TVPRA 2005 addresses prostitution for the first time as a separate issue from trafficking. *Id.*

134. CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 40.

135. *Id.*

136. *Id.*

137. FREDERICK M. KAISER, CONGRESSIONAL OVERSIGHT 1 (2006), available at <http://www.fas.org/sgp/crs/misc/97-936.pdf>.

source of Congress's power in this context is implicit in the U.S. Constitution.¹³⁸ This investigatory and supervisory capacity is an inherent power of Congress, which, as a representative assembly, enacts the public law. Moreover, the express constitutional powers of Congress, such as appropriating funds and enacting laws, require Congress to know the details of federal programs and policies.¹³⁹ Not only does congressional oversight serve as a check on the Executive, but its investigatory function can also lead to the development of new law within the Legislature.

A number of congressional committees in both houses of the U.S. Congress regularly hold hearings on trafficking in human beings.¹⁴⁰ Representative Chris Smith described the origins of such hearings:

When I held the first hearing on human trafficking as Chairman of the Subcommittee on International Operations and Human Rights back in 1999, only a handful of countries had laws explicitly prohibiting the practice of human trafficking. Individuals who engaged in this exploitation did so without fear of legal repercussions. Victims of trafficking were treated as criminals and illegal immigrants and had no access to assistance to escape the slavery-like conditions in which they were trapped. Few seemed to be even aware that this modern form of slavery was taking place and even some of those who did failed to recognize it as a violation of fundamental human rights.¹⁴¹

The first hearing was limited to a discussion of the international sex trade in light of the Freedom from Sexual Trafficking Act that was

138. The Supreme Court has explicitly legitimized the oversight powers of Congress on several occasions. In *McGrain v. Daugherty*, the Court found that in investigating the administration of the Justice Department, Congress was considering a subject "on which legislation could be had or would be materially aided by the information which the investigation was calculated to elicit." *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927). When the Senate imposes general procedural requirements and prohibitions on its committees, as in Senate Rule XXVI, the Senate's standing committees have the authority to meet and hold hearings for the purpose of conducting legislative business. STANDING R. SENATE XXVI, available at <http://rules.senate.gov/senaterules/rule26.php>.

139. See JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS, *Congressional Oversight, in ORGANIZATION OF THE CONGRESS* (1993), available at <http://www.rules.house.gov/archives/jcoc2aq.htm>.

140. The U.S. Congress has held several hearings on trafficking in persons. See, e.g., *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery, Hearing Before the H. Comm. on Foreign Affairs*, 110th Cong. 1 (2007); *Germany's World Cup Brothels: 400,000 Women and Children at Risk of Exploitation Through Trafficking, Hearing before the Subcomm. on Africa, Global Human Rights and International Operations of the H. Comm. on International Relations*, 109th Cong. 8 (2006) [hereinafter *Germany's World Cup Brothels*]; *Modern Day Slavery: Spotlight on the 2006 "Trafficking in Persons Report," Forced Labor, and Sex Trafficking at the World Cup: Briefing and Hearing before the Subcomm. on Africa, Global Human Rights and International Operations*, 109th Cong. 8 (2006) [hereinafter *Modern Day Slavery*].

141. *Enhancing the Global Fight to End Human Trafficking, Briefing and Hearing before the H. Comm. on International Relations*, 109th Cong. 1 (2006).

proposed to address the problem of trafficking in persons.¹⁴² Following the passage of the Trafficking Victims Protection Act, which covered sex trafficking as well as labor trafficking, the U.S. Congress held hearings on related issues, including mail-order brides¹⁴³ and marriage-by-catalogue,¹⁴⁴ which led to the adoption of the International Marriage Broker Regulation Act.¹⁴⁵ A series of

142. The initial legislative response to trafficking was to focus on sex trafficking as opposed to labor trafficking. See *Trafficking of Women and Children in the International Sex Trade, Hearing before the Subcomm. on International Operations and Human Rights of the H. Comm. on International Relations*, 106th Cong. 3 (1999). As stated by Representative Chris Smith:

The problem with addressing all of these evils in one bill, the idea that one size fits all, is that they involve wide range of different situations which may call for an equally broad range of solutions. So we decided to start by attacking the most brutal form of trafficking

Id. Laura Lederer, concluding her testimony before the Committee, stated:

I can tell you from where I sit, many countries are looking for leadership from the United States. U.S. leadership is important not only because of our human rights role, but because it serves the American national interest. One of the hallmarks of the 21st century is going to be the emancipation of women worldwide, and the issue of commercial sexual exploitation of women and children is one of the last, unfortunately the last, even in the women's movement the last, of the issues, but definitely not the least, to be examined by our society. So your efforts, Mr. Chairman and Subcommittee Members, will put America on the right side of history as women gain power and dignity.

Id. at 40.

143. *Human Trafficking: Mail Order Bride Abuse, Hearing before the Subcomm. on East Asian and Pacific Affairs of the S. Comm. on Foreign Relations*, 108th Cong. 1 (2004). Michelle Clark testified on the necessity of regulating the mail-order bride business, stating that:

Without regulation, web-based matchmaking organizations can easily recruit women into prostitution rings. Some may charge potential brides exorbitant fees for matching them up with a husband, and then place them in debt bondage. The Council of Europe has recently pointed to the lack of regulation of the mail-order bride industry in its April 2004 Report on "Domestic Slavery: Servitude, Au Pairs and Mail-order Brides," and called for some type of regulation. The Council of Europe stated that "it is in the interest of the more serious agencies to accept some type of regulation . . . the persons responsible for a site should be clearly identifiable, users of the site should be forced to identify themselves, marriages should be kept track of, and an emergency contact number should be provided for when things go wrong. Agencies should also do a background check on the prospective bridegroom to check for a criminal record (e.g., domestic violence or procurement) when couples come close to marriage."

Id. at 21.

144. *Id.* at 15.

145. The International Marriage Broker Regulation Act was incorporated into the Violence Against Women Act of 2005. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 831(D), 119 Stat. 2960

hearings were held to examine U.S. efforts to combat trafficking in persons.¹⁴⁶ Upon receipt of the annual Trafficking in Persons Report, Congress looked into the status of trafficking in persons in foreign countries and debated the placement of countries in various tiers.¹⁴⁷ Special hearings were held on trafficking in Germany at the time of the World Cup in 2006.¹⁴⁸ As Representative Smith expressed in the hearing:

I would point out that of the approximately 400,000 prostitutes in Germany, it is estimated that 75 percent of those who are abused in these houses of prostitution are foreigners, and many of those same women are raped and cruelly mistreated. And if they could, they would leave. Add to that the approximately 40,000—that is one estimate—who are expected to have been brought in by force, fraud, or coercion—trafficked to be part of the houses of prostitution's offerings. The State Department gave Germany a Tier 1 rating again this year, and frankly, I think they missed the mark. I have raised that with Ambassador Miller on a number of occasions, and maybe he will speak to that during his testimony.¹⁴⁹

Another important hearing was held on trafficking in China.¹⁵⁰ Senator Sam Brownback highlighted the scope of the problem of trafficking in China by saying,

China is certainly not the only country dealing with the scourge of human trafficking, in fact, the State Department's 2005 Trafficking in Persons (TIP) Report details the trafficking situation in 150 countries. But what makes the tragedy of human trafficking in China all the more unjustifiable is that a good portion of the human trafficking in China is internal only to China, and is fueled by its own social policies. . . . I am talking about China's one-child policy This is an Orwellian policy that over the past 25 years has created a lost generation of daughters and wives—some say as many as 40–60 million by the end of this decade. The International Labor Organization states that the trends in trafficking in China are distinctive because most of it occurs for marriage or adoption. This gender imbalance means that women have become a commodity in China—a commodity that can be bought and sold. The TIP report notes that “significant numbers of Chinese women are trafficked internally for forced marriage.” We don't know the exact

(2006) (current version at 8 U.S.C. § 1101 (2006)). The Act imposes disclosure obligations on international marriage brokers so that foreign nationals may give informed consent to their marriages to a U.S. national. *Id.* § 833. The Act was held constitutional in *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1381 (N.D. Ga. 2007).

146. See, e.g., *Examining U.S. Efforts to Combat Human Trafficking and Slavery, Hearing before the Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Judiciary Comm.*, 108th Cong. 1 (2004).

147. U.S. STATE DEP'T REPORT 2001, *supra* note 114, at 5.

148. *Modern Day Slavery*, *supra* note 140; *Germany's World Cup Brothels*, *supra* note 140.

149. *Modern Day Slavery*, *supra* note 140, at 14.

150. *Combating Human Trafficking in China: Domestic and International Effort, Hearing before Cong.-Executive Commission on China*, 109th Cong. 1 (2006).

number of women who are sentenced to a life of degradation and servitude—but even one is one too many.¹⁵¹

The implementation of the Trafficking Victims Protection Act has been under constant scrutiny by the U.S. Congress. While the TVPA of 2000 recognized trafficking in persons as a specific offense for the first time and provided for the necessary protective measures to assist victims of trafficking, the Act was amended twice to enhance both prosecution and protection.¹⁵² In 2003, the TVPRA allowed, for the first time, a victim of trafficking to file a civil action seeking civil compensation.¹⁵³ It also amended the existing T-visa regulations to allow victims of trafficking under the age of 18 to apply for the visa without being required to comply with a reasonable request for assistance in the investigation and prosecution of cases of trafficking.¹⁵⁴ The 2003 Act also extended the T-visa to a victim's unmarried siblings under the age of 18.¹⁵⁵ In addition, in certifying victims of trafficking in persons, the Act made it possible for local and state, in addition to federal, law enforcement officials to support a statement of certification.¹⁵⁶ The TVPRA of 2003 enhanced prosecution by adding both foreign commerce¹⁵⁷ and trafficking in persons to the definition of racketeering activity as it relates to the Racketeering Influenced and Corrupt Organizations Act (RICO).¹⁵⁸ To further enhance prosecution, the TVPRA of 2005 provided for extraterritorial jurisdiction over certain trafficking offenses, including those committed by persons employed by or accompanying the U.S. government outside the U.S.¹⁵⁹ The TVPRA of 2005 for the first time included domestic trafficking in the Act in an effort to initiate programs to reduce demand for commercial sex acts in the United States.¹⁶⁰

Emphasizing U.S. laws on enhancement of prosecution of trafficking offenses and protection of trafficking victims and testifying in particular on the status of child protection laws in the United States, the Author has previously stated that

151. *Id.* at 54 (statement of Sen. Sam Brownback).

152. Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, § 102(b)(14), 114 Stat. 1464 (2000) (current version at 22 U.S.C. § 7101).

153. Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2881 (2003) (current version at 22 U.S.C. § 7103).

154. *Id.* § 4(b)(1)(A) (amending 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb)).

155. *Id.* § 4(b)(1)(B) (amending 8 U.S.C. § 1101(a)(15)(T)(ii)(I)).

156. *Id.* § 4(b)(2)(B) (amending 8 U.S.C. § 1184(n)).

157. *Id.* § 5(a)(2) (amending 18 U.S.C. § 1591(a)(1)).

158. *Id.* § 5(b) (amending 18 U.S.C. § 1961(1)(A)).

159. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) § 103(a), 18 U.S.C. §§ 3271–72 (2006).

160. *Id.* § 201(a), 42 U.S.C. § 14044.

[a] review of the United States' recent legislative enactments against the commercial sexual exploitation of children . . . reveals the existence of a comprehensive legal framework especially after the passage of the Trafficking Victims Protection Act of 2000 as reauthorized in 2003 and 2005, the Protect Act of 2003, the Children's Internet Protection Act 2000 and the Adam Walsh Child Protection and Safety Act of 2006. These laws reflect in my judgment, three main aspects, which I refer to as the three E's: expansion of criminal liability; extension of territorial jurisdiction; and enhancement of child protection.¹⁶¹

In the hearing held by the U.S. Senate Foreign Relations Committee to consider U.S. ratification of the UN Protocol on trafficking, an important issue was raised: whether the UN Protocol's approach to addressing prostitution will affect the anti-prostitution policy of the United States. The following answer was provided:

I would like to point out that the negotiating record sets forth several statements intended to assist in the interpretation of the definition of "trafficking in persons." One of those statements makes clear that the Protocol is without prejudice to how States Parties address prostitution in their respective domestic laws. Thus the practices and policy choices

161. *Protecting the Children: The Battle Against Child Pornography and Other Forms of Sexual Exploitation, Hearing before the Commission on Security and Cooperation in Europe*, 109th Cong. (2006) (statement of Mohamed Mattar, Executive Director, The Protection Project, Johns Hopkins School for Advanced International Studies). In explaining such enhancement, the Author stated that:

[T]he United States law enhances the protection of children who are victims of commercial sexual exploitation, and adopts a child-sensitive approach in several ways. A trafficked child is entitled to benefits under the Trafficking Victims Protection Act regardless of cooperation with law enforcement officials. A child victim of trafficking also has the right to civil compensation under the Trafficking Victims Protection Reauthorization Act of 2003. Moreover, a trafficked child may receive an immigration status that extends to his or her parents. In the event that a child's testimony is required, out of court testimony is allowed to avoid revictimizing the child.

Id. For other testimonies submitted by the Author, see *Examining US Efforts to Combat Human Trafficking and Slavery: An Assessment of the United States' Recent Legal Responses to the Problem of Trafficking in Persons on the Federal, State and International Levels, Hearing Before the S. Comm. on the Judiciary, Subcomm. on the Constitution, Civil Rights and Property Rights*, 108th Cong. (2004) (statement of Mohamed Mattar, Co-Director, The Protection Project, Johns Hopkins University), available at http://judiciary.senate.gov/hearings/testimony.cfm?id=1255&wit_id=3643; *The Role of the Government in Combating Trafficking in Persons—A Global Human Rights Approach, Hearing Before the H. Comm. on Government Reform, Subcomm. on Human Rights and Wellness*, 108th Cong. (2003) (statement of Mohamed Mattar, Co-Director, The Protection Project at Johns Hopkins University School of Advanced International Studies), available at <http://www.protectionproject.org/commentary/ctp.htm>; *Foreign Government Complicity in Human Trafficking: A Review of the State Department's 2002 Trafficking in Persons Report, Hearing before the H. Comm. on International Relations*, 107th Cong. (2002) (statement of Dr. Mohamed Mattar, Co-Director, The Protection Project, School of Advanced International Studies, Johns Hopkins University), available at http://commdocs.house.gov/committees/intlrel/hfa80288.000/hfa80288_of.htm.

related to prostitution of individual States in the United States are unaffected by this protocol.¹⁶²

IV. STATE REPORTS SUBMITTED TO THE UNITED NATIONS

A. *State Reports Submitted to the United Nations in Compliance with Article 18 of the CEDAW*

It has been argued that the State Department's Trafficking in Persons Report, which monitors the severe status of trafficking in foreign countries, is having a significant impact on the behavior of foreign governments. However, governments have also been responding to international prohibitions on trafficking under various international legal instruments regulating the phenomenon.

162. *Hearing on Law Enforcement Treaties: Treaty Doc. 107-18, Inter-American Convention Against Terrorism; Treaty Doc. 108-6, Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures; Treaty Doc. 108-11, Council of Europe Convention on Cybercrime; Treaty Doc. 108-16, U.N. Convention Against Transnational Organized Crime and Protocols on Trafficking in Persons and Smuggling of Migrants, Hearing Before the Comm. on Foreign Relations, 108th Cong. (2004) (statement of Bruce Swartz, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice).*

Through the exploitative vehicles of child pornography, prostitution, sex tourism and sex trafficking, demand is being fueled, requiring younger and younger, more inexperienced product. Evidence also shows strong links between each of the vehicles of exploitation. Legal pornographic websites link to illegal images of child exploitation, and pornographic images of children create demand for direct sexual contact with child victims. Perhaps what challenges us the most is helping to re-shape the culture and the language of our society which has allowed for the flourishing of victimization of vulnerable children.

*Protecting the Children: The Battle Against Child Pornography and Other Forms of Sexual Exploitation, Hearing before the Commission on Security and Cooperation in Europe, 109th Cong. (2006) (Report from the U.S. Mid-Term Review on the Commercial Sexual Exploitation of Children in America), available at http://csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=382&Region_id=0&Issue_id=69&ContentType=H.B&ContentRecordType=H&CFID=4017466&CFTOKEN=53005364; see also Linda Smith & Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, The Role of the UN, and Global Responses and Challenges*, 28 FLETCHER F. WORLD AFF. 155, 169-70 (2004).*

Despite the suggested existence of a link between the extent of trafficking and the legalization or decriminalization of prostitution, some countries consider legalizing prostitution or certain aspects of prostitution as a means of combating trafficking in persons. Although the demand for sexual services tends to be highest in the areas of legalized or decriminalized prostitution, there is still a significant amount of debate as to what the best legislative approach to prostitution should be to minimize trafficking in persons.

Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides that “State Parties shall take all appropriate measures including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁶³ CEDAW requires state parties to submit, every four years, to the Secretary-General of the United Nations a report on the legislative, judicial, administrative, or other measures they have adopted to implement provisions of the Convention, including Article 6.¹⁶⁴ For instance, in 2006, the combined sixth and seventh periodic report of Sweden stated: “According to the annual situation reports by the National Rapporteur on Trafficking in Human Beings, the prohibition of the purchase of a sexual service deters traffickers from establishing themselves in Sweden and functions as a barrier against trafficking in human beings.”¹⁶⁵ The report continued:

According to statistics from the National Council for Crime Prevention, 44 cases of trafficking in human beings and 94 cases of procuring were reported during 2005. During the same year, 460 persons were reported for having breached the provision prohibiting the purchase of sexual services. Between January 1999 and February 2006, more than 1,300 people were reported under the provision prohibiting the purchase of sexual services.

On 1 October 2004, the Aliens Act was amended and a new provision was added providing the possibility to issue time-limited residence permits to victims or witnesses of trafficking in human beings and other crimes. A time-limited residence permit can be issued to a victim of trafficking in human beings when it is deemed necessary in order to carry out a preliminary investigation or the main hearing in a criminal case. Developing on the complexity of the case, the permit may be extended upon application by a prosecutor. The permit has no upper

163. Convention on the Elimination of All Forms of Discrimination Against Women art. 6, Dec. 18, 1979, 1249 U.N.T.S. 13, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> [hereinafter CEDAW].

164. *Id.* art. 18.

States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect: (a) Within one year after the entry into force for the State concerned; (b) Thereafter at least every four years and further whenever the Committee so requests. 2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Id.

165. Comm. on the Elimination of Discrimination Against Women, *Combined Sixth and Seventh Periodic Report of States Parties: Sweden*, ¶ 153, U.N. Doc. CEDAW/C/SWE/7 (Sept. 14, 2006).

time limit. During their stay in Sweden, victims/witnesses are entitled to health care and medical attention, as well as financial aid.¹⁶⁶

Such reports may indicate, among other things, “factors and difficulties affecting the degree of fulfillment of obligations” under the Convention.¹⁶⁷ In fact, very few state reports submitted in

166. *Id.* ¶¶ 157–158; see also Comm. on the Elimination of Discrimination Against Women, *Sixth Report by States Parties: United Kingdom of Great Britain and Northern Ireland*, U.N. Doc. CEDAW/C/UK/6 (June 14, 2007). The UK outlined its own efforts to comply with Article 6:

This year, the UK became a signatory to the Council of Europe Convention on the Action Against Trafficking in Human Beings. This builds on the Government's strategy to combat human trafficking, by setting minimum standards of protection and support for victims of all forms of trafficking. It sets the future framework for enhancing our provisions for victims of sexual exploitation, (which largely affects women) and developing measures for victims of other forms of exploitation (such as trafficking for forced labor).

Id. ¶ 277. The report continued:

On 23 March 2006, the Government published a UK Action Plan on Human Trafficking (www.homeoffice.gov.uk/documents/human-traffick-action-plan), following a consultation last year. This outlines current measures and sets the direction for future work in the areas of prevention, enforcement/prosecutions and protection and assistance for adult and child victims. During the UK's Presidency of the European Union in 2005, the Government made combating trafficking in human beings one of its Justice and Home Affairs priorities. It drove forward work on a wide-ranging EU Action Plan on trafficking which was adopted unanimously in December 2005 by the Council of Ministers and was a major success of the UK Presidency.

Id. ¶ 278.

167. CEDAW, *supra* note 163, art. 18. The United Nations Manual on Human Rights Reporting Under Six Major International Human Rights Instruments of 1997 recommends that:

Reports should describe the extent of all these problems and the laws in effect dealing with most trafficking in women and with prostitution. Regarding the latter, it is important to specify whether prostitution as such is criminalized, or whether only the exploitation of prostitution of others is outlawed; what sanctions are imposed; and whether the laws are strictly enforced. Reports should also describe the penal provisions and the preventative and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described. Wherever possible, effective complaints procedures, remedies and compensation should be provided.

In addition to the legal situation, reports should indicate the extent of prostitution existing in the reporting State, including the prostitution or procurement of minors and whether there exists any so-called sex tourism. Comprehensive information on measures taken against pornography is requested. Reports should also address the question of violence against, and rape of, prostitutes. It is important to provide information on efforts to reintegrate prostitutes into society, in particular the availability of job training

compliance with Article 18 of CEDAW refer to any “difficulties.” One of the few states that has actually raised some of these difficulties is the Czech Republic, which stated in its 2004 report that

the existing definition only criminalizes trafficking for the purpose of sexual relations and thus does not address trafficking for other purposes, such as forced labour, slavery, practices similar to slavery or the removal of organs. The definition therefore does not conform to the internationally recognised definition of human trafficking as contained in the Protocol on Trafficking.¹⁶⁸

The Czech Republic report also recognizes that “there is practically no control of the street prostitution scene. With almost no exception prostitutes are run by pimps. Many of these women are undoubtedly trafficked, not only from abroad to the Czech Republic and vice versa, but also in the Czech Republic itself.”¹⁶⁹ The report states that “[t]he actual number of criminals involved in human trafficking (under section 246 of the Criminal Code) is difficult to monitor in police statistics, due to the fact that human trafficking is prosecuted according to a range of other provisions in the Criminal Code.”¹⁷⁰

B. State Reports Submitted to the United Nations in Compliance with Article 44 of the CRC

In accordance with Article 35 of the Convention on the Rights of the Child, state parties “shall take all appropriate national, bilateral and multilateral measures to prevent . . . traffic in children for any purpose or in any form.”¹⁷¹ The CRC requires state parties to submit to the Secretary-General of the UN, every five years, reports on the Rights of the Child that address “the measures they have adopted which give effect to the rights recognized”¹⁷² in the Convention and “the progress made on the enjoyment of those rights.”¹⁷³ The CRC specifically requires that reports made under the present article

and job-referral programmes. Health matters regarding prostitution also need to be addressed, in particularly the provision of health services and measures to prevent or combat AIDS.

U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS REPORTING UNDER SIX MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS 325–26, U.N. Doc. HR/Pub/91/1 (1997), available at http://www.unhcr.ch/pdf/manual_hrr.pdf.

168. Comm. on the Elimination of Discrimination Against Women, *Third Periodic Report of States Parties: Czech Republic*, ¶ 97, U.N. Doc. CEDAW/C/CZE/3 (Sept. 7, 2004).

169. *Id.* ¶ 109.

170. *Id.* ¶ 95.

171. Convention on the Rights of the Child art. 35, Nov. 20, 1989, 1577 U.N.T.S. 44 [hereinafter CRC].

172. *Id.* art. 44(1).

173. *Id.*

indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention.¹⁷⁴ Reports must “also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.”¹⁷⁵

Few states actually acknowledge shortcomings in fulfilling their obligations under the CRC. For instance, in its 2004 report, Albania explicitly recognized that although there was likely a problem regarding trafficking in children within its borders, it “ha[d] not been detected yet.”¹⁷⁶ In its 2001 report, Canada included a specific section on “Factors, Difficulties and Progress,” but only discussed progress.¹⁷⁷ Indeed, states usually either assert that there are no significant problems regarding trafficking of children or they minimize the problem. The 2000 report submitted by Cyprus on the implementation of Article 35 of CRC states that “[t]here [were] no incidents of sale of children in any form in Cyprus” and “[t]he reasons for not having instances of sale of children [were] attributed to the strong family structure of the Cypriot family and the legal provisions for the protection of children.”¹⁷⁸ These reports also emphasize legislative provisions regarding trafficking in children rather than the implementation of the legislation.

*C. State Reports That May Be Submitted in Compliance with
Article 32 of the United Nations Convention Against
Transnational Organized Crime and the United Nations
Protocol to Prevent, Suppress and Punish Trafficking in
Persons, Especially Women and Children*

Article 32 of the Parent Convention Against Organized Transnational Crime establishes “a Conference of Parties,” which is responsible for the periodic examination of the implementation of the Convention.¹⁷⁹ The provisions of the Convention apply to the Trafficking Protocol.¹⁸⁰

174. *Id.* art. 44(2).

175. *Id.*

176. Comm. on the Rights of the Child, *Initial Periodic Report of States Parties Due in 1994: Albania*, ¶ 523, U.N. Doc. CRC/C/11/Add.27 (Sept. 24, 2003).

177. Comm. on the Rights of the Child, *Initial Periodic Reports of States Parties Due in 1999: Canada*, ¶¶ 62–63, U.N. Doc. CRC/C/83/Add.6 (May 3, 2001).

178. Comm. on the Rights of the Child, *Second Periodic Report of States Parties Due in 1998: Cyprus*, ¶¶ 182, 185, U.N. Doc. CRC/C/70/Add.16 (Sept. 15, 2000).

179. Article 32 provides:

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article

While states may comply with the provisions of CEDAW and CRC in the context of trafficking, these provisions are limited to the prohibition of trafficking in human beings. They do not provide for the measures that states must take to combat the problem and protect the victims. The UN Protocol is the first comprehensive legal instrument that defines trafficking in persons and provides a multidisciplinary approach to the problem, including prevention, protection, prosecution and cooperation. Nonetheless, the Protocol addresses many issues inadequately,¹⁸¹ especially the immigration

(including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex I, art. 32, U.N. Doc. A/RES/55/25 (Nov. 15, 2000).

180. UN Protocol, *supra* note 117, art. 1.

181. See Mohamed Y. Mattar, Exec. Dir., The Protection Project, Johns Hopkins Univ. Sch. of Advanced Int'l Studies, Omissions and Gaps: From the United Nations Protocol to the Council of Europe Convention Against Trafficking in Human Beings, Remarks at Conference in Bologna, Italy entitled "From the United Nations Protocol to the Council of Europe Convention Against Trafficking in Human Beings: Recent Developments and New Challenges" (Mar. 25, 2006), available at http://www.protectionproject.org/commentary/un_protocol_gaps.html; see also Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975, 983-95 (2001).

status of a victim of trafficking,¹⁸² combating demand,¹⁸³ and the role of NGOs and other members of civil society.¹⁸⁴ The Protocol is also silent as to other important issues, particularly the identification of victims,¹⁸⁵ the status of the victim who commits a “trafficking-related offence,”¹⁸⁶ and a national monitoring mechanism.

D. A Call for Monitoring Measures to Combat Trafficking in Persons

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, published by the Office of the High Commissioner for Human Rights in 2002, call upon states to promote and protect human rights by “[e]stablishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies,

182. While the Protocol calls upon states to consider granting victims of trafficking a residency status, it does not make this obligation binding. UN Protocol, *supra* note 117, art. 7. The legislative guide to the Protocol explicitly states that:

[T]here is no obligation to legislate measures relating to the status of victims. However, in several countries where measures have been adopted for the temporary or permanent residence of victims of trafficking, such as Belgium, Italy, the Netherlands, and the United States of America, such measures have had a positive effect on victims coming forward to testify against traffickers and on non-governmental organizations encouraging victims to whom they provide services to report incidents to the government.

DIV. FOR TREATY AFFAIRS, U.N. OFFICE ON DRUGS & CRIME, LEGISLATIVE GUIDES FOR THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO, ¶ 68 (2005), *available at* http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf.

183. Under the UN Protocol, demand is addressed only as an issue of prevention in accordance with Article 9(5), unlike the Council of Europe Convention on Action Against Trafficking in Human Beings of 2005, which in Article 19 calls upon state parties to consider establishing as an offense “use of services which are the object of exploitation . . . with the knowledge that the person is a victim of trafficking in human beings.” Compare UN Protocol, *supra* note 117, art. 9(2), with Council on Europe Convention on Action Against Trafficking, May 16, 2005, Europ. T.S. No. 197 (not yet in force) [hereinafter COE Trafficking Convention].

184. The UN Protocol merely establishes an international obligation of cooperation with NGOs and other members of civil society that states must fulfill in adopting preventive and protective measures to combat trafficking. See UN Protocol, *supra* note 117, arts. 6, 9.

185. See generally *id.* Compare with Council on Europe Convention on Action Against Trafficking, which devotes Article 10 to the identification process and calls upon states not to remove victims of trafficking from their territories until the identification process is complete. COE Trafficking Convention, *supra* note 183, art. 10.

186. See generally UN Protocol, *supra* note 117. Compare with Article 26 of the Council of Europe Convention on Action Against Trafficking in Human Beings, which provides for the principle of non-punishment of the victims of trafficking. COE Trafficking Convention, *supra* note 183, art. 26.

programmes and interventions.”¹⁸⁷ The Guidelines further state that “[c]onsideration should be given to assigning this role to independent human rights institutions where such bodies exist,”¹⁸⁸ and calls upon states to consider

[m]onitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another.¹⁸⁹

The Guidelines also request that states turn a keen eye toward “[u]ndertaking, supporting and bringing together research into trafficking” and “[e]nsuring that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, ethnicity, and other relevant characteristics.”¹⁹⁰ The Guidelines state that “effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis.”¹⁹¹

As indicated, Article 32 of the Convention Against Transnational Organized Crime established a Conference of the Parties to improve the capacity of state parties to combat transnational organization crime and implement the requirements of the Convention.¹⁹² At its first session in September 2004, the Conference of the Parties asked the parties to submit reports on their compliance with the UN Protocol.¹⁹³ In its second session in October 2005, the conference of the parties discussed various issues, including the basic adoption of national legislation in accordance with the Trafficking in Persons Protocol; the examination of criminal legislation and difficulties encountered in the implementation of Article 5 of the Trafficking in Persons Protocol; the development of international cooperation and technical assistance to overcome difficulties identified in the implementation of the Trafficking in Persons Protocol; and the

187. U.N. Econ. & Soc. Council (ECOSOC), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, at 5, U.N. Doc. E/2002/68/Add.1 (May 20, 2002), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/CAF3DEB2B05D4F35C1256BF30051A003/\\$File/N0240168.pdf?OpenElement](http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/CAF3DEB2B05D4F35C1256BF30051A003/$File/N0240168.pdf?OpenElement).

188. *Id.*

189. *Id.* at 7–8.

190. *Id.* at 7.

191. *See id.*

192. U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex I, art. 32, U.N. Doc. A/RES/55/25 (Nov. 15, 2000); *see supra* note 179 and accompanying text.

193. Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, June 28–July 8, 2004, *Report on the Conference of the Parties to the United Nations Convention Against Transnational and Organized Crime on its First Session*, ¶ 49, U.N. Doc. CTOC/COP/2004/6 (Sept. 23, 2004).

exchange of views and experience regarding the protection of victims and preventative measures.¹⁹⁴

Issues related to the implementation of Article 6 (protection and assistance) and Article 9 (prevention) were not addressed in the Conference's first questionnaire.¹⁹⁵ A report based on fifty-six states' responses to the questionnaire indicated that there was a legislative movement toward criminalizing the act of trafficking in persons at the national level, in accordance with the definition contained in Article 3 of the Protocol.¹⁹⁶ The report advised that the information provided by states in response to the questionnaire on the implementation of the Protocol "demonstrated that in most states action had been undertaken with a view to ensuring the availability of" legislative tools to "deal with the complex phenomenon of trafficking in persons."¹⁹⁷ However, the report went on to say that "beyond the existence of a normative anti-trafficking framework at the national level," states must continue to work "to promote the consistency of national legislative responses with the concepts and requirements of the Protocol."¹⁹⁸

194. Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, Oct. 10–21, 2005, *Report on the Conference of the Parties to the United Nations Convention Against Transnational and Organized Crime on its Second Session*, at 10, U.N. Doc. CTOC/COP/2005/8 (Dec. 1, 2005). A number of states, including Moldova and Tajikistan, have indicated their need for institutional capacity and technical assistance. Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, Oct. 8–17, 2008, *Report of the Secretariat on the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime: Consolidated Information Received from States for the First Reporting Cycle*, ¶ 29, U.N. Doc. CTOC/COP/2005/3/Rev.2 (Aug. 25, 2008). France and Germany referred to their cooperation with the Organization for Security and Cooperation of Europe. *Id.* ¶¶ 31–32.

195. See generally Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, *Questionnaire on the Implementation of the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (July 28, 2004), available at http://www.unodc.org/pdf/ctocop_2005/quest_1-5_e.pdf.

196. Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, Oct. 10–21, 2005, *Implementation of the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime: Updated Information Based on Additional Responses Received From States for the First Reporting Cycle*, ¶¶ 11, 21, U.N. Doc. CTOC/COP/2005/3/Rev.1 (Aug. 8, 2006).

197. *Id.* ¶ 54.

198. *Id.* The report stated:

The Conference of the Parties may wish to consider ways of assisting countries in reviewing or further adjusting and streamlining their legal framework to that effect. In that context, the promotion and enhancement of technical

In October 2006, a second reporting cycle focused on states' compliance with other provisions of the Trafficking Protocol.¹⁹⁹ The report observed that the rate of responses received from states during the second reporting cycle of the Conference was lower than that of the first reporting cycle and acknowledged that

it is, of course, true that the adoption of recovery measures is not mandatory for states parties to the Trafficking in Persons Protocol because of the cost it entails and the fact that it refers to all states in which victims are found, regardless of the level of socio-economic development or availability of resources.²⁰⁰

But, the report encouraged compliance in this context:

States should also be aware of the direct benefits that such recovery measures can provide through enhancing the willingness of victims to testify and, thereby, enabling the prosecution of traffickers. Positive outcomes, which would otherwise be unlikely, include the prosecution of traffickers for other forms of organized crime and the seizure of financial assets.²⁰¹

Regarding the possibility of obtaining compensation, the report notes that “[t]he legislative framework establishing such mechanisms needs to be comprehensive enough to ensure full enforcement of the right of victims of trafficking in persons to seek, regardless of citizenship, adequate and appropriate remedies.”²⁰²

assistance activities, in particular in support of the efforts of developing countries and countries with economies in transition, to build the necessary capacity for fully and consistently incorporating the provisions of the Protocol into their domestic legal systems, should be in the forefront of future action and the relevant work and initiatives of the Secretariat in this field should be further strengthened.

Id. ¶ 54.

199. See generally Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, Oct. 8–17, 2008, *Report of the Secretariat on the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime: Consolidated Information Received from States for the Second Reporting Cycle*, U.N. Doc. CTOC/COP/2006/Rev.1 (Sept. 9, 2008). It included a consideration of “matters related to assistance to and protection of victims of trafficking in persons” (Article 6) and the “status of such victims in receiving States” (Article 7); the repatriation of victims of trafficking in persons (Article 8); border measures (Article 11); security and control of documents (Article 12); and the legitimacy and validity of documents (Article 13); and the value of identifying indicators for forced labor. *Id.* ¶¶ 1, 36, 41, 43, 46.

200. *Id.* ¶ 14.

201. *Id.*

202. *Id.* ¶ 25.

V. INTERNATIONAL REPORTING: A UNITED NATIONS
SPECIAL RAPPORTEUR

A. *Appointing a Special Rapporteur on Trafficking in Persons*

On April 19, 2004, the UN Commission on Human Rights appointed a special rapporteur to “focus on the human rights aspects of victims of trafficking, especially women and children.”²⁰³ The rapporteur was required to submit an annual report together with recommendations “on measures required to uphold and protect the human rights of the victims.”²⁰⁴

203. Comm’n on Human Rights, *Special Rapporteur on Trafficking in Persons, Especially in Women and Children*, § (a), U.N. Doc. E/CN.4/2004/110 (Apr. 19, 2004).

204. *Id.* § (b). The Commission recommended the following to the Economic and Social Council for adoption:

The Economic and Social Council, taking note of Commission on Human Rights decision 2004/110 of 19 April 2004, endorses the Commission’s decision to appoint, for a period of three years, a Special Rapporteur whose mandate will focus on the human rights aspects of the victims of trafficking in persons, especially women and children. The Council also endorses the Commission’s request to the Special Rapporteur to submit an annual report, commencing with the sixty-first session of the Commission, together with recommendations, on measures required to uphold and protect the human rights of victims. The Council further approves the Commission’s request to the Secretary-General to provide all the necessary resources for the effective fulfilment of the mandate of the Special Rapporteur.

Id. § (g). Ms. Sigma Huda of Bangladesh served as the first United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children. See Press Release, Comm’n on Human Rights, Chairman of Human Rights Commission Appoints Special Rapporteur on Trafficking in Persons (Nov. 1, 2004), available at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/F26D2F96DD15A461C1256F3F003E3252?opendocument>. When Ms. Huda was asked whether it is possible to require countries to report to the United Nations under Article 32 of the Organized Crime Convention, she answered:

Well, this is a recommendation that could come from me, definitely, on a mechanism that could be implemented to encourage reporting from states. Obviously, having a special rapporteur who is an independent expert, and who can question governments and the receipt of complaints about them, is quite a big step in making a country answer regarding what they are doing about combating trafficking. So I think that in the current situation, even though there is no reporting mechanism, having an independent expert is one kind of mechanism that is involved.

Interview, *Sigma Huda, U.N. Special Rapporteur on Trafficking in Persons, Especially Women and Children*, 2007 PROTECTION PROJECT J. HUMAN RTS. & CIV. SOC’Y 59, 68 [hereinafter *Huda Interview*]. According to Ms. Huda, the mandate of the UN Special Rapporteur, which was established on April 19, 2004, is to “look at the human rights of the victim of trafficking, [at] the dignity of the victim, and at what kind of treatment the victim is getting once the victim has been recovered in either the receiving, transit, or even the sending state.” *Id.* at 59. Ms. Huda also explained that

The UN Special Rapporteur on Trafficking in Persons has published multiple reports and mission-specific addenda.²⁰⁵ These reports focus on specific issues, including trafficking for the purpose of forced marriage, integration of the human rights of women, and the gender perspective in cases of trafficking in women and demand.²⁰⁶ The Special Rapporteur relies on country visits, participation in meetings, conferences and training courses, questionnaires, communications to governments and other actors, and press

[t]he enormity of this problem led the United Nations to decide that it should be addressed as a separate human rights violation issue, and as such, the mandate was created. Though the mandate came out of a law-and-order framework prevalent at the time, when trafficking was being looked at as a law-and-order problem, the United Nations felt that it was also a human rights issue in the sense that victims of trafficking must be recognized as victims of trafficking and, therefore, that they should not be treated as undocumented, illegal, irregular, or smuggled migrants. There exists a basic difference between migration and trafficking.

Id.

205. *E.g.*, The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council," delivered to the Human Rights Council*, U.N. Doc. A/HRC/4/23 (Jan. 24, 2007) [hereinafter Special Rapporteur Jan. 2007 Report]; The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and a Gender Perspective: Summary of Cases Transmitted to Governments and Replies Received*, U.N. Doc. E/CN.4/2006/62/Add.1 (Mar. 27, 2006); The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and a Gender Perspective, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006) [hereinafter Special Rapporteur Feb. 2006 Report]; The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and the Gender Perspective: Mission to Bosnia and Herzegovina, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/2006/62/Add.2 (Nov. 30, 2005) [hereinafter Special Rapporteur Nov. 2005 Report]; The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and the Gender Perspective, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/2005/71 (Dec. 22, 2004) [hereinafter Special Rapporteur Dec. 2004 Report].

206. *See, e.g.*, Special Rapporteur Jan. 2007 Report, *supra* note 205, § 2 (trafficking for the purpose of forced marriage); Special Rapporteur Dec. 2004 Report, *supra* note 205 (integration of the human rights of women and the gender perspective). The reports discussed several countries, including Lebanon, Oman, Qatar, and Bosnia-Herzegovina. *See, e.g.*, The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council": Mission to Bahrain, Oman, and Qatar, delivered to the Human Rights Council*, U.N. Doc. A/HRC/4/23/Add.2 (Apr. 25, 2007) (Oman and Qatar); Special Rapporteur Nov. 2005 Report, *supra* note 205 (Bosnia-Herzegovina); The Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and a Gender Perspective: Mission to Lebanon, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/2006/62/Add.3 (Feb. 20, 2006) (Lebanon).

statements and publications.²⁰⁷ The Special Rapporteur may receive information regarding violations of human rights in the context of trafficking as well as individual complaints.²⁰⁸

B. *Specific Recommendations Made by the Special Rapporteur*

A reading of the five reports submitted by the UN Special Rapporteur reveals concrete and detailed recommendations based upon a belief that “in spite of its overwhelming human rights dimension, trafficking continues to be treated as mainly a ‘law and order’ problem”²⁰⁹ and that “the human rights of trafficked persons should be at the heart of policies and programmes to combat trafficking and that such policies and programmes should be respectful of the human rights of the persons concerned.”²¹⁰ Specific recommendations include measures to prevent and combat forced marriages, including legislation stipulating a minimum statutory age for marriage and criminalizing demand for forced marriages and mail-order brides, a prohibition against child marriages, and a specific prohibition of forced marriages in criminal law.²¹¹ The Special Rapporteur also recommended imposing criminal sanctions on women involved in prostitution, implementing extraterritorial jurisdiction to prosecute—in particular—child sex tourism cases, and legislative reforms.²¹²

In a recent interview with The Protection Project, the UN Special Rapporteur on Trafficking in Persons explained her role:

My mandate covers all forms of trafficking, including practices similar to slavery and sexual exploitation and prostitution. It also talks about forced labor and forced marriages, so it is quite a wide mandate. Anything [that] is committed against the will of an individual—when control lies with a third party and you are not really free to do what you want and you are in a situation of exploitation—would fall within the definition of the Palermo Protocol.

...

So I guess if you see a distinction between sex trafficking and prostitution—as well as forced labor and forced marriage, which is also

207. See, e.g., Special Rapporteur Feb. 2006 Report, *supra* note 205, §§ 1–16 (describing the rapporteur’s activities during the year of 2005).

208. Office of the United Nations High Commissioner for Human Rights, The Special Rapporteur on Trafficking in Persons, Especially Women and Children: Individual Complaints, <http://www2.ohchr.org/english/issues/trafficking/complaints.htm> (last visited Oct. 16, 2008).

209. Special Rapporteur Dec. 2004 Report, *supra* note 205, ¶ 56.

210. *Id.* ¶ 57.

211. Special Rapporteur Jan. 2007 Report, *supra* note 205, § III.63.

212. Special Rapporteur Feb. 2006 Report, *supra* note 205, § III.C.93 (extraterritorial jurisdiction); see Special Rapporteur Jan. 2007 Report, *supra* note 205, § III.63 (recommendations to legislatures).

a slavery-like practice—and debt bondage, then I would also be looking at that. I will also be looking at the issue of prostitution, because one cannot deny that a woman (or a man or a boy) [is] often trafficked for the purpose of sexual exploitation. In most cases, we find that when a person is exploited or trafficked, he or she finds himself or herself in a situation where [he or she is] more vulnerable to prostitution. And the sex business is a very big, billion dollar business. I do think that the importance of discussing prostitution is crucial, as is the need to address the issue of forced labor. We often see that even lawful migrants can fall into a situation of being trafficked.²¹³

VI. MEASURING GOVERNMENT PROGRESS IN IMPLEMENTING THE “FIVE PS”: PREVENTION, PROTECTION, PROVISION, PROSECUTION, AND PARTICIPATION

A. *Enhancing the Role of NGOs in Reporting on the Scope of the Problem of Trafficking in Persons and the Appropriate Government Responses*

A reading of the various reports on the status of trafficking in human beings suggests that most of these reports do not cover the initiatives proposed or undertaken by NGOs. The Swedish Situation Report does not discuss the work of NGOs in any substantive way, but it does recognize their existence and relevance.²¹⁴ The Women’s Foundation, in particular, was mentioned as one of the actors involved in fighting trafficking in women in Sweden.²¹⁵ However, the reports would be more effective if they had examined the role of the NGO sector more closely and if recommendations had been made with the goal of linking the NGO sector with the implementation of government policy against trafficking in persons. Indeed, most recommendations addressed only government policies. NGOs were not included in the recommendations provided, and their role in policy making and implementation is only briefly mentioned.²¹⁶ It may be of value for the Special Rapporteur, when providing

213. *Huda interview, supra* note 204, at 60.

214. See Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services*, 10 VIOLENCE AGAINST WOMEN 1187, 1190 (2004) (“In Sweden, [the work against prostitution and trafficking in human beings] is undertaken not only by the Swedish government and public authorities but also by the women’s movement, the shelter movement, and other nongovernmental organizations (NGOs).”).

215. RIKSKRIMINALPOLISEN, TRAFFICKING IN WOMEN: SITUATION REPORT NO. 3, at 21 (2000) (Swed.).

216. *Id.*

recommendations toward improvements in government policy, to stress the need for a greater role for NGOs.²¹⁷

217. In the second reporting cycle of the United Nations of October 2006, “the majority of responding states confirmed the cooperation of the competent national authorities with non-governmental organizations and other elements of civil society to support mechanisms for the recovery of victims of trafficking in persons.” Conference of the Parties to the United Nations Convention Against Transnational Organized Crime, Oct. 9–18, 2006, *Implementation of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime: Information Received from States During the Second Reporting Cycle*, ¶ 21, U.N. Doc. CTOC/COP/2006/6 (Aug. 16, 2006). The United States noted that various services granted for victims of trafficking were rendered from the federal government to nongovernmental organizations. *Id.* Slovenia noted that “a non-governmental organization was tasked with implementing an inter-ministerial action plan on trafficking financed by the Government.” *Id.* The Canadian Committee on the Status of Women, in Recommendation 17, urged the federal government, in cooperation with the provinces and territories, to “establish a Canadian counter-trafficking in persons office in a central location where experts, support people, NGOs, police, prosecutors, and judges” could share expertise and best practices for combating both domestic and international trafficking in persons. CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 22. The Canadian report further recommended that information and best practices be “communicated to relevant offices and agencies who may not be active participants in the office,” and that NGOs be “encouraged to actively participate in the development and implementation of effective victim rehabilitation strategies.” *Id.*

Some states allow NGOs to be represented in their task forces or in other ministerial agencies responsible for the implementation of the government action plan to combat trafficking in human beings. For instance, the Romanian law on human trafficking states:

In order to combat trafficking in human beings efficiently, the public authorities and institutions . . . the non-governmental organizations (NGOs) and other representatives of the civil society shall engage, separately or in conjunction, as the case may be, in a sustained activity to prevent trafficking in human beings, especially women and children.

Law 678/2001 on the Prevention and Combat of Trafficking in Human Beings, art. 3 (2001) (Rom.), available at <http://www.legislationline.org/legislation.php?tid=178&lid=670&less=false>. “These programs will promote basic education and organize public awareness campaigns on the problem of trafficking and related issues.” Mattar, *supra* note 29, at 61 n.238.

The National Action Plan for Fighting Human Trafficking in the Republic of Azerbaijan provides for the participation of various agencies—“bodies of executive power, [NGOs], international partners and other bodies”—in the “implementation and coordination of the activity of these agencies by a National Coordinator” of main duties against trafficking. Law on Fight Against Human Trafficking § 6.2 (2005) (Azer.), available at <http://www.legislationline.org/legislation.php?tid=178&lid=3226>. In particular, this law provides:

The National Coordinator [on fighting human trafficking] shall establish necessary contacts with bodies of security, border service, police, prosecutor’s office, courts, state bodies and non-governmental organizations with an aim to carry out operation-search activity and criminal persecution in connection with the crimes connected with human trafficking more effectively.

Id. § 7.3; Mattar, *supra* note 29, at 419 n.238.

B. *Difficulties and Obstacles Facing a National Rapporteur in Reporting on the Status of Trafficking in Human Beings*

Information on trafficking in human beings is not always available, perhaps because attention to the problem has only developed recently. The Canadian Standing Committee on the Status of Women reports: “[W]e don’t have really good information in Canada, or systematic information, on the extent of the problem Organized crime does not publish annual reports, so it’s quite difficult to get a good sense of what it is.”²¹⁸ The DOJ’s August 2003 report also observed that “domestically, data can be fragmented and difficult to assemble.”²¹⁹ The report noted that the “U.S. Government’s efforts to collect additional data on trafficking in persons are limited, particularly in light of the fact that trafficking is currently almost exclusively a federal crime.”²²⁰

It is, therefore, particularly difficult to conduct a quantitative analysis of the issue of trafficking. Obtaining information regarding

In Croatia, NGOs are members of the National Committee for the Suppression of Trafficking in Persons. The Protection Project’s Report on Human Trafficking in Croatia, www.protectionproject.org/human_rights_reports/report_documents/croatia.doc (last visited Oct. 16, 2008). In Germany, NGOs are members of the National Working Party, which is responsible for coordinating efforts to combat trafficking. Press Release, Human Rights Comm., Human Rights Committee Welcomes Germany’s Creation of New Institutions to Protect Fundamental Freedoms, U.N. Doc. HR/CT/647 (Mar. 18, 2004). In Poland, La Strada is part of the Interministerial Task Group to Combat Trafficking in Human Beings. See U.S. DEPT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICE: POLAND (2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27858.htm>. In Serbia, nongovernmental organizations (Astra, Beosuport, the Victomological Society of Serbia) are members of the National Team of the Republic of Serbia for the Prevention and Suppression of Trade in People. Comm. on the Elimination of All Forms of Discrimination Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, ¶¶ 149, 152, U.N. Doc. CEDAW/C/SCG/1 (Oct. 17, 2006).

218. CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 23 (quoting Statement by Yvon Dandurand, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy (Oct. 3, 2006)).

Ms. Johnston from the Canada Border Services Agency confirmed the difficulties associated with obtaining information: “[The difficulty in obtaining] reliable and accurate information about the nature and extent of trafficking of persons within Canada . . . is attributable to several factors: the difficulty in identifying victims, differences in the reporting methods used, and the constantly shifting nature of trafficking activity itself”

Id. (quoting Statement by Kimber Johnston, Director General, Policy and Program Development Directorate, Canada Border Services Agency (Oct. 31, 2006)).

219. U.S. DEPT OF JUSTICE REPORT 2003, *supra* note 80, at 21.

220. *Id.*

the number of victims has always been a challenge in this context.²²¹ For instance, in the United States, it was estimated in 2000 that 50,000 victims, especially women and children, are trafficked into the United States each year.²²² In 2003, this number was reduced to between 18,000 and 20,000.²²³ And currently the official number of victims that are being trafficked into the United States is between 14,500 and 17,500.²²⁴

As indicated in the report of the Czech Ministry of Interior on trafficking in human beings, “[i]t is not easy to express statistically the exact scope of this problem, and therefore the estimates of the number of victims vary significantly.”²²⁵ In a similar vein, § 112(a) of the 2005 TVPA explicitly acknowledged that there was no “effective mechanism for quantifying the number of victims of trafficking on a national, regional, and international basis.”²²⁶ The 2005 TVPA proceeded to further acknowledge that “[n]o known studies exist that quantify the problem of trafficking in children for the purpose of commercial sexual exploitation in the U.S.”²²⁷

221. Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 BROWN J. WORLD AFF. 179, 181 (2003); cf. Todd Landman, *Measuring Human Rights: Principle, Practice, and Policy*, 26 HUM. RTS. Q. 906 (2004) (advocating specific procedures to meet the challenge of measuring human rights). Landman identifies four functions for measuring human rights: “(1) contextual description, monitoring, and documentation of violations; (2) classification of different types of violations; (3) mapping and pattern recognition of violations over space and time; and (4) secondary analysis that provides explanations for violations and policy solutions for reducing them in the future.” *Id.* at 909; see also Michael Stohl et al., *State Violation of Human Rights: Issues and Problems of Measurement*, 8 HUM. RTS. Q. 592 (1986).

222. Trafficking Victims Protection Act (TVPA) of 2000 § 102(b)(1), 114 Stat. 1466 (2000) (current version at 22 U.S.C. § 7101 (2006)).

223. FRANCIS T. MIKO, *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE 7*, (2004 version of a continuously updated report for the Congressional Research Service).

224. U.S. DEP’T OF JUSTICE REPORT 2004, *supra* note 83, at 5. The June 2004 United States Department of Justice Assessment of U.S. Government Activities to Combat Trafficking in Persons explained that “[d]ifferences in the two estimates reflect improvements in data collection and methodology rather than trends in trafficking.” *Id.* at 9. The DOJ has noted that the “U.S. government should conduct more research to determine an accurate figure for the scope of the trafficking problem in the United States, including both domestic and foreign victims.” U.S. DEP’T OF STATE, *ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS* 26 (2005).

225. CZECH REPORT, *supra* note 63, at 8. “Various international studies indicate that 700,000–2,000,000 persons are traded annually around the world, while 300,000–500,000 persons are traded annually within Europe.” *Id.*

226. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) § 104(c)(5), 22 U.S.C. § 7101 (2006).

227. TVPRA 2005 § 2(5). The DOJ September 2006 Report observed: “The [NIJ] is undertaking research that focuses on developing an empirically credible method which, given available data, may be used to generate transparent and reproducible estimates of the prevalence of human trafficking into the United States.” U.S. DEP’T OF

C. *After Reporting: What Authority Does a National Rapporteur Have to Implement Reform and Change Policies?*

The Dutch National Rapporteur made numerous specific recommendations in her First and Third Reports. The question is how well these recommendations were implemented by Parliament, the police, the Public Prosecution Service and organizations involved in sheltering, assisting, and representing the interests of trafficked victims. The Rapporteur made the insightful comment that “[p]roviding information to the government can be a means of creating a better basis for drawing up or amending policy, but what is important is the way in which policymakers actually use this information.”²²⁸

In her Third Report in 2005, the National Rapporteur expressed the need for a national action plan “to give real substance to all the good intentions” that had been expressed by the government in response to her First Report.²²⁹ In December 2004, the Dutch government issued its *Nationaal Actieplan Mensenhandel* (National Action Plan for Trafficking in Human Beings, or Action Plan).²³⁰ By means of this Action Plan, in which the government explicitly addressed all the recommendations made by the National Rapporteur in her First and Third Reports,²³¹ the government attempted to clarify which measures would most effectively combat trafficking in human beings.²³²

JUSTICE REPORT 2006, *supra* note 87, at 3. When discussing government-funded studies, the DOJ June 2004 Report noted that none of them “will provide a nation-wide estimate of the scope or magnitude of trafficking of persons into the United States or comprehensively address trafficking trends to and within the United States. Such analysis would be useful to understanding the scope and magnitude of trafficking in the United States.” U.S. DEP’T OF JUSTICE REPORT 2007, *supra* note 86, at 10. The DOJ September 2005 Report noted that the “U.S. government should conduct more research to determine an accurate figure for the scope of the trafficking problem in the United States, including both domestic and foreign victims.” U.S. DEP’T OF JUSTICE REPORT 2007, *supra* note 86, at 26. The DOJ September 2006 Report recommended that the U.S. government “undertake efforts to estimate more reliably the number of trafficking victims in the United States so that the Government can evaluate whether efforts to combat trafficking in persons is producing the results it seeks, to wit reducing the number of victims.” U.S. DEP’T OF JUSTICE REPORT 2006, *supra* note 87, at 15.

228. KORVINUS, THIRD REPORT, *supra* note 57, at 1.

229. *Id.* § 8, at 170.

230. KORVINUS, FOURTH REPORT, *supra* note 49, at 1.

231. *Cf. id.* (explaining that the National Action Plan was produced following the National Rapporteur’s third report).

232. *Cf. id.* (explaining that the National Action Plan was produced in response to the National Rapporteur’s recommendations to combat trafficking in human beings). On November 18, 2003 a General Parliamentary Consultation on Trafficking in Human Beings was held. KORVINUS, THIRD REPORT, *supra* note 57, § 1.7, at 9. The consultation covered the First and Second Report of the National Rapporteur and the government’s response to them. *Id.* The Minister of Justice and the Minister for Alien

D. *Research, Report, Review and Recommend: Incorporating the "Four Rs" in Defining the Role of a National Rapporteur in Monitoring the Status of Trafficking in Human Beings*

Defining the role of the National Rapporteur in terms of the four Rs—research, report, review, and recommend—synthesizes much of the information in this Article. There exists a need for extensive knowledge in the field of human trafficking that can only be obtained by adequate research. As expressed by the recent Norwegian Plan of Action to Combat Human Trafficking 2006–2009, “Efforts to combat human trafficking require insight and understanding. In order to safeguard the human rights of victims, it is essential that everyone involved has relevant knowledge and necessary competence in this field.”²³³ Consequently, the Norwegian Plan adopted the following measure: “In order to update knowledge of human trafficking and of national and international developments in this field, evaluations of the measures that have been implemented to combat human trafficking will be commissioned. New research will be encouraged.”²³⁴

Naturally, documenting the scope of the problem of trafficking requires research, data collection, and information gathering. Information gathering, interviews with victims, interviews with representatives of government organizations carrying out anti-trafficking programs, and interviews with NGOs working within the country to carry out anti-trafficking initiatives are all crucial to the research function.²³⁵ Based upon collected data, a National

Affairs and Integration were critically questioned, by the Standing Parliamentary Committee for Justice, on the progress made. *Id.* In December 2004, the government presented its action plan to the Lower House. KORVINUS, FOURTH REPORT, *supra* note 49, at 1.

233. JUSTIS-OG POLITIDEPARTEMENTET [MINISTRY OF JUSTICE & THE POLICE], STOP HUMAN TRAFFICKING: THE NORWEGIAN GOVERNMENT'S PLAN OF ACTION TO COMBAT HUMAN TRAFFICKING (2006–2009) 23 (2007) (Nor.), available at http://www.regjeringen.no/upload/kilde/jd/rap/2007/0001/ddd/pdfv/304170-stop_human_trafficking_0107.pdf.

234. *Id.* at 22.

235. *Cf.* CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 11.

The Committee recommends that the federal government support work on evidence-based research and data collection specific to aboriginal women and trafficking in persons, both on and off-reserve, and that the federal government commit to consulting with the Native Women's Association of Canada, the Assembly of First Nations, and Aboriginal police forces by September 2007 with respect to the best means for carrying out such research. The federal government must report the results of the consultations to the Standing Committee on the Status of Women.

Id. The State Reports to the United Nations have made several references to research that has been done and data that has been collected by various agencies on trafficking

Rapporteur should report on trafficking in human beings as a violation of human rights. The Rapporteur should report on the scope of the problem and on governmental responses. Monitoring human trafficking should include an analysis of the information reported, identifying information gaps, shortcomings, and areas of improvement. This evaluation requires both quantitative and qualitative analysis. A reading of the various reports raises the question of whether a National Rapporteur should refer to comparative models for potential solutions.

Utilizing findings from other countries to address similar issues in one's own country is often useful. For example, the Canadian Committee, in recommending that women in prostitution should not be punished and that "only the consumers of prostitution, the owners of the bawdy house and those who exercise control over these places should be subject to criminal sanctions,"²³⁶ relied upon the Swedish experience, where witnesses observed that human trafficking had declined in Sweden since the passage of the 1999 Act Prohibiting the Purchase of Sexual Services.²³⁷

It is also common practice for rapporteurs to refer to European standards when reviewing the situation of trafficking in their home countries. For instance, the Czech report, in evaluating the immigration status of victims of trafficking, refers to the Council of the European Union Directive of April 29, 2004, on the subject of the residence permit issued to third-world nationals who, whether victims of trafficking or the subject of an action to facilitate illegal immigration, cooperate with the proper authorities.²³⁸

in women. See United Nations Expert Group Meeting on International Migration and Development, July 6–8, 2005, Irena Omelaniuk, *Trafficking in Human Beings*, § 3, U.N. Doc. UN/POP/MIG/2005/15 (July 8, 2005). Arguably, research should fall within the jurisdiction of the National Rapporteur.

236. CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 15.

237. *Id.* at 14–15. For further examples, consider Recommendation 2, wherein the Dutch Rapporteur points out that "[i]n Belgium, where a wider THB concept has been in use for some time, a quarter of the victims of THB receiving support there can be regarded as victims of socioeconomic exploitation (other than exploitation in prostitution)." KORVINUS, FIRST REPORT, *supra* note 53, § 8.2, at 140. A recently published parliamentary study of various forms of modern-day slavery in France produced alarming findings that suggest that better statutory measures must be taken. See U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: FRANCE § f (2001), available at <http://www.state.gov/drl/rls/hrrpt/2001/eur/8253.htm>. There is little reason to assume that the situation in the Netherlands is any rosier. Illegal employment, which is fertile ground for exploitation, is common in the Netherlands in various market sectors. Netherlands Court of Audit, Tackling Illegal Employment: Summary of a Report, <http://www.rekenkamer.nl/cgi-bin/as.cgi/0282000/c/start/file=/9282200/modules/fghhcg8r> (last visited Oct. 16, 2008).

238. CZECH REPORT, *supra* note 63, at 22. The report also refers to the May 3, 2005, Council of Europe Convention on Action against Trafficking in Human Beings,

In addition to borrowing best practices from other systems, a National Rapporteur should inquire into whether government measures are in compliance with international legal standards for combating trafficking in human beings. Again, both the Czech report and the Canadian report followed such an approach.²³⁹ The Czech report recognized that “[t]he absent codification of criminal liability of legal entities in our legal order also presents an obstacle for signing the United Nations Convention Against Transnational Organized Crime and the [trafficking] protocols.”²⁴⁰ The report concluded that “accession to the Protocol[] is linked to adopting legal regulations which would enable [the state] to fully meet obligations stemming from the Protocol, i.e. particularly to adopting the new Penal Code . . . and other legal regulations which would solve the issue of responsibility of legal entities.”²⁴¹

Another method of review, assessment, and evaluation is measuring chronological progress—comparing current reports to previous reports and focusing on previous recommendations to ensure they were implemented and to generate ideas for improved implementation:

although it has not entered into force yet. *Id.* at 23. The report based on these European standards suggests:

The persons involved are always foreigners, nationals of third countries, to whom the offer of residence might present sufficient motivation to cooperate with bodies responsible for penal proceedings. These foreigners must always be informed about the possibility of obtaining the permit and they must be granted adequate time for consideration. The regulation should alleviate their difficult situation and help them to make a decision based on thorough weighing and knowledge of matter. Furthermore, these persons should be granted assistance, which would enable them to free themselves from the offenders and extricate themselves from high-risk environment. Residence permit should be granted for a period of at least six months.

Id. § 3.1, at 22–23. “Legal systems differ as to the basis of granting victims of trafficking a residency status” and as to the duration of such status. Mattar, *supra* note 29, § 4, at 398–99.

239. CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 13, 20; CZECH REPORT, *supra* note 63, at 22–23. The Canadian report follows this approach when measuring progress and monitoring efforts made by examining these efforts in light of international legal standards. For instance, demand was addressed in the report in accordance with Article 9(5) of the UN Trafficking Protocol, concluding that “Canada does not pay enough attention to this aspect of the equation.” CANADIAN SEXUAL EXPLOITATION REPORT, *supra* note 129, at 13. In inquiring into the degree of standards coordination between the government and NGOs, the Canadian report refers to article 9(3) of the UN Trafficking Protocol, which states that “[p]olicies, programmes and other measures established in accordance with [Article 9, Prevention of Trafficking in Persons] shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.” *Id.* at 20 (alteration in original) (quoting UN Protocol, *supra* note 117, § III art. 9.3).

240. CZECH REPORT, *supra* note 63, at 23.

241. *Id.*

One of the factors to be considered in determining whether a country is making significant efforts to bring itself into compliance with the minimum standards enumerated under the TVPA Section 108 is the progress in eliminating trafficking when compared to the previous year.²⁴²

As observed by the Dutch Rapporteur: “Broadly speaking, the report covers the same subjects as those discussed in the previous reports. This is necessary because one of the BNRM’s tasks is to make comparative analyses with earlier years.”²⁴³ The third Dutch report is effective in that it refers back to recommendations previously made and points out the cases where those recommendations remain outstanding as well as those cases where the recommendations were followed.²⁴⁴

As indicated, a National Rapporteur must have the discretion to make actionable recommendations. They must be specific, referring to areas of potential improvement, and they must be amenable to implementation. For instance, the National Agency against Trafficking in Persons of Romania has proposed a victim evidence fiche to improve monitoring and provide coherent and unitary statistics.²⁴⁵

242. Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), § 6(d)(3), § 108(b), 117 Stat. 2881 (2003) (current version at 22 U.S.C. § 7101–11 (2006)). Applying this factor, the DOJ September 2006 Assessment Report noted benefits to victims in the form of certification and eligibility letters issued to adults and to minors, respectively, between 2001 and 2005. See U.S. DEP’T OF JUSTICE REPORT 2006, *supra* note 87, § II.A.1. In 2001, there were 198 certificates and letters issued, compared with 99 in 2002, 151 in 2003, 161 in 2004, and 230 in 2005. *Id.* at fig. 4.

243. KORVINUS, THIRD REPORT, *supra* note 57, § 1.8, at 10.

244. See *id.* § 8, at 159 (explaining that current recommendations must be considered in the context of past recommendations and noting that unaddressed earlier recommendation will be reasserted); *id.* § 8, at 168–70 (explaining recommendations reiterated from an earlier report).

245. NATIONAL AGENCY AGAINST TRAFFICKING IN PERSONS, PROGRESS REPORT: FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS 7 (2006) (Rom.), available at http://anitp.mai.gov.ro/en/docs/progrese_nov_2006_en.pdf. The fiche system includes:

[Eighty] indicators related to citizenship, the environment where the victims come from, civil status, previous social and economic situation, trafficking period (way of recruitment and transportation, motive of the victim’s departure, type of exploitation, abuses suffered, violation of the person’s rights, if she/he was accused of any offence related to the trafficking situation, if she/he collaborated with the judiciary in the destination country), if the victim was assisted in the destination country, the assistance period (by whom was she/he referred, evaluation of the person’s needs, types of assistance offered, types of assistance accepted and received by the person, medical status, period of provided assistance), post-assistance period (if she/he was re-trafficked, social and professional status, if she/he is maintaining contact with the assistance centre, if she/he was involved in activities related to the exploitation period, monitoring reports).

The Dutch Action Plan evidences a degree of governmental response to the recommendations of the Dutch National Rapporteur. In Recommendation 2 of her First Report and Recommendation 1 of her Third Report, the Dutch National Rapporteur proposed an amendment to the Dutch Penal Code in order to bring Dutch legislation into compliance with the UN Trafficking Protocol.²⁴⁶ In response to the Dutch National Rapporteur's recommendations, on January 1, 2005, Article 250a of the Dutch Penal Code was replaced by Article 273a.²⁴⁷ This new provision criminalized new forms of trafficking. Whereas the previous section of the code addressed only exploitation in the sex industry, the new provision also criminalized exploitation of labor and removal of human organs.²⁴⁸

VII. CONCLUSION

The purpose of reporting on and monitoring trafficking in human beings is to promote the observance of internationally recognized standards of human rights, including the rights of victims of trafficking. It is, therefore, necessary to monitor national governments and induce them to take the necessary measures to protect victims of trafficking.

It is crucial that the reports cover the traditional three *Ps*: prevention, protection, and prosecution. However, while prosecution of cases is important, the focus must remain on the victim. To this end, the U.S. Department of Justice Annual Assessment Reports demonstrate the importance of a victim-centered approach—more so than other state reports, which often concentrate on the criminalization of trafficking. The Department of Justice reports dedicate the majority of their findings to recommending benefits and services for the protection of victims and raising awareness as a way to prevent vulnerable populations from becoming victims. It is

The fiche system was arranged with partner institutions and NGOs. *Id.* They agreed that each organization “would transmit the data in accordance with its responsibilities.” *Id.* The data from the fiche would then be “introduced in the IT centralized database for the evidence of the victims.” *Id.* This system was to be “operational no later than the last quarter of 2006.” *Id.* “[T]he reports of the regional centres are already being performed on the basis of the evidence fiche and the established indicators.” *Id.*

246. KORVINUS, FIRST REPORT, *supra* note 53, § 8(2); KORVINUS, THIRD REPORT, *supra* note 57, § 8.1.

247. A.L. DAALDER, PROSTITUTION IN THE NETHERLANDS SINCE THE LIFTING OF THE BROTHEL BAN 40 (2007). As of September 1, 2006, Article 273a was renumbered as Article 273f. *Id.*

248. Article 273a (273f) also increases the terms of imprisonment when the aforementioned acts result in serious physical injury, a threat to the life of another person, or death. *See id.* at 3, app. 2, §§ 5–6.

important to equip national institutions with the capabilities to deal with victims and offer benefits in areas such as immigration status, repatriation efforts, and health services.

The reports must also focus on all forms of trafficking, including, at a minimum, trafficking for forced labor and commercial sex. To tailor efforts to combat both types of trafficking, more reliable data is needed. Independent reporting bodies are likely to provide a more impartial assessment of the situation than government bodies because of their increased willingness to address internal weaknesses and the obstacles that governments face. Governments should, therefore, encourage the creation of such independent bodies with the involvement of NGOs, and they should create offices of National Rapporteurs, equipped with appropriate jurisdiction and resources to fulfill their mandates. The National Rapporteur should focus on the four *Rs*: researching, reporting, reviewing, and recommending effective and actionable changes in the fight against trafficking in human beings.

Most reports are silent on the methodology used and the sources of information upon which they rely in gathering information. Many reports tend to focus on the work of the police, thus analyzing trafficking in human beings as a crime-control problem that the state must confront, rather than as a threat to human security and dignity. Particularly sparse were any reports on labor trafficking—an area often neglected in the face of sexual exploitation. Even with regard to sexual exploitation, differing responses have emerged over how to address the issue of prostitution—an issue where a consensus remains elusive. Few reports mention the role for NGOs or other elements of civil society. They do not report on NGOs acting independently or in cooperation with the government. Thus, approaches to human trafficking suffer from ignoring a fourth *P*—participation. Many reports are also silent as to the issue of prevention. It is difficult to obtain an objective analysis of governmental action, especially when such reports are written by governmental agencies; any criticism that does exist is never more than “soft” criticism of current government action.

Based upon readings of the various reports on trafficking in human beings, this Article identifies a number of best practices that should be considered in establishing a reporting mechanism. In the Netherlands, a follow-up on the recommendations made by the Dutch rapporteur resulted in significant policy changes that had a noticeable impact on government measures to combat trafficking. In Canada, hearings on the status of trafficking by the Canadian Standing Committee on the Status of Women contributed to the all-inclusive approach followed in the report submitted by the committee. References to victims’ stories in the Swedish situation reports draw attention to the ultimate goal of reporting on human trafficking: to rescue and restore the victim of trafficking. Similarly, the U.S.

Department of Justice Reports have begun to shift their focus from criminalization and prosecution to protection and provision of services when measuring governments' progress in combating human trafficking.

Entrusting a particular agency of the government with the duty to report on human trafficking has the potential to limit the focus of the report to the activities of the particular agency. For any report to be effective, it must comprehensively address all forms and effects of trafficking, not just the substance of a particular agency. Again, although prosecution is important, priority must be given to the protection of the victim. The involvement of NGOs with government bodies must also be properly assessed. With regard to the National Rapporteur, it is imperative that research be an integral part of his work. In order to increase objectivity, an independent rapporteur may be preferable to a government agency when reporting on matters of trafficking in persons. Review, assessment and evaluation of government measures to combat the problem of trafficking in human beings require both a quantitative and qualitative analysis. In addition, comparative models are will be useful, and compliance with international legal standards must be taken into account.

Finally, many governments use one coordinating body to engage various government agencies in the government's efforts to combat trafficking in persons. To combat trafficking most effectively, a similar—but independent—agency is needed to report on these efforts and the appropriate government responses. While the coordinating body may also be responsible for reporting on human trafficking, this Article argues that an independently functioning reporting body is most desirable. Placing the distinction between the reporting and coordinating functions aside, the importance of coordination between the various government agencies involved in submitting reports, either to the government itself or to the United Nations, should not be underestimated. When dealing with the problem of trafficking in human beings, ineffective coordination results not just in lost time and money but in lost opportunities to rescue trafficking victims.
