INTRODUCTION

The United States (“U.S.”) took the lead at the beginning of the twenty-first century in the fight against human trafficking with a comprehensive and novel piece of legislation, the Trafficking Victims Protection Act (TVPA) of 2000.
Protection Act of 2000 (“TVPA”). The TVPA aims to protect trafficking victims, prevent trafficking, and prosecute traffickers domestically and internationally. The portion of the TVPA pertaining to foreign countries, the annual Trafficking in Persons Report (“TIP Report”), relies on the political and economic forces of the U.S. Although the TIP Report system has produced positive changes internationally, an examination of the system over the last decade suggests that an overhaul of the system is necessary. South Korea’s TIP report provides an excellent example of how the TIP system has fallen prey to political influence; employs weak analysis; utilizes confusing minimum standards; ignores a country’s socio-cultural background and continuing trafficking problems; discourages cooperation with other countries and international organizations; and offers no incentives for further improvement beyond the bare minimum standards. The TIP system’s treatment of South Korea highlights the flaws of the TIP Report and mirrors the experiences of numerous countries.

Part I provides a background of the global problem of human trafficking. Part II briefly introduces the root causes and ongoing effects of human trafficking. Part III explains the domestic and international parts of the TVPA and the TIP Report. Part IV focuses on South Korea as a model to show the weaknesses of the TIP Report system. Part V analyzes the dichotomy between reports of South Korea’s human trafficking problems and the TIP Report’s analysis of South Korea’s human trafficking situation. It also compares current South Korean legislation to the minimum standards of a “good anti-trafficking law,” as set forth in the TIP Report. Given the contradictions between the TIP Report’s observations and other reports on South Korea, part VI proposes specific revisions to the TIP Report system in an effort to develop into a more credible, reputable source and a persuasive policy tool.

This paper argues that the U.S. Department of State must make major changes to the TIP Report’s methodology by modifying its standards and tailoring its analysis to each country’s specific situation. The TIP Report’s analysis must be clear to all readers and supported by facts, isolated from the political and economic concerns of the U.S.

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Restructuring the TIP Report to address these issues serves as a better tool for the U.S. to persuade other countries to join the fight against trafficking.

I. HUMAN TRAFFICKING IS MODERN SLAVERY

“[T]rafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today.” Human trafficking violates an individual’s most essential human rights, including liberty, freedom, security of person, physical and mental integrity, and at its most extreme, the right to life. Victims are deceived into thinking they are beginning a better life but are instead tricked into a destructive life. Many trafficked persons are forced to work in harsh and dangerous conditions ranging from sweatshops, fields, or brothels in addition to the daily toil, physical abuse, and appalling living conditions. Victims endure verbal abuse and threats against not only themselves but their families as well. Because the traffickers perceive victims as commodities rather than people, they are not afforded any rights.

To exacerbate the problem, traffickers have financial incentives to continue their work because unlike a commodity-type business, trafficking is a low risk, high profit business with little capital investment that requires “people to be used repeatedly.” To put this in perspective, the estimated global annual profits made from human trafficking were $31.6 billion USD as of 2005. Of that total, 30.6 percent profited Asia and the Pacific. As of 2007, an estimated 2.5 million people were forced into labor, 56 percent of whom were in Asia and the Pacific. The clandestine

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8 Id.

9 Id.

10 Id.


12 Id.

13 Id.
nature of the trafficking business, however, makes it incredibly difficult to obtain accurate data. These estimates have a tendency to represent only reported or widely known cases and could very well be the tip of the iceberg.

The data demonstrates that traffickers target vulnerable populations—women, children, and the poor. An estimated eighty percent of trafficking victims are female, seventy percent of whom are trafficked for sex. Trafficking in persons is deeply rooted in poverty and inequality, in terms of gender, race, and age. Other factors that contribute to the prevalence of human trafficking include weak legislation, restrictive immigration policies, globalization of the sex industry, and participation by international criminal groups. Understanding the causes of human trafficking is vital to formulating an effective approach to fight trafficking.

The constant growth of human trafficking affects the entire globe. As an export and/or import country for trafficking, a country can immensely impact the problem of trafficking by allowing its citizens to become enslaved, fostering an environment with a high demand for trafficking. Thus, stopping modern slavery requires cooperation from all countries, international organizations, and non-governmental organizations (“NGOs”). Human trafficking is a complex problem within the umbrella of the human rights movement, as it involves


15 Id.


19 Id.


21 A country’s label as an export or import country depends on whether persons are being trafficked in or out of the country.

22 See generally GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, STRATEGIES AGAINST HUMAN TRAFFICKING: THE ROLE
different political contexts and geographical dimensions of the problem; ideological and conceptual differences of approach; the mobility and adaptability of traffickers; different situations and needs of trafficked persons; the inadequate legal framework; and insufficient research and coordination on the part of the actors involved – at the national, regional, and international levels.\(^{23}\)

The international community must be vigilant against the “breakdown of law and order during these times, [which] contributes to an environment in which trafficking flourishes.”\(^{24}\) Slavery should not be tolerated in our modern world.

II. THE TRAFFICKING VICTIMS PROTECTION ACT

A. The TVPA and its Definitions

The TVPA is the U.S.’ means of combating trafficking domestically and internationally.\(^{25}\) The TVPA’s enactment in 2000 was groundbreaking because no prior comprehensive federal law protected victims or prosecuted traffickers.\(^{26}\) The TVPA has evolved since its initial promulgation, with amendments in 2003, 2005, and 2008.\(^{27}\)

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\(^{24}\) Vega & Nelson, *supra* note 6, at 438.


takes a two-pronged approach to address trafficking: (1) it establishes domestic regulations to prevent and prosecute human trafficking in the U.S.; and (2) it collects, analyzes, and produces data about human trafficking worldwide.  

One of the most important elements of the TVPA is its broad definition of human trafficking, inclusive of sex and labor trafficking. Under the TVPA, forms of trafficking may include: sex trafficking, bonded labor, debt bondage among migrant laborers, involuntary domestic servitude, forced child labor, child soldiers, and child sex trafficking. "[A] person may be a trafficking victim regardless of whether they once consented, participated in a crime as a direct result of being trafficked . . . transported into the exploitative situation, or . . . simply born into a state of servitude." The comprehensive definition of a trafficking victim is necessary to keep the “atypical victims” from falling through the cracks.

The definition of sex trafficking, however, requires more detail because the TVPA distinguishes it from prostitution by choice. The TVPA defines sex trafficking as “a commercial sex act [that] is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” A commercial sex act is “any sex act on account of which anything of value is given to or received by any person.” Being tricked, coerced, or forced into prostitution also constitutes sex trafficking. The TVPA’s main concern is not the individual’s initial consent, but rather, whether the victim is captured in service either by psychological manipulation and/or physical means, such as physical abuse or literal entrapment. Prostitution by choice, on the other hand, does not qualify as human trafficking regardless of its legality or illegality. Overall, the TVPA maintains an expansive definition of human trafficking to include all types of servitude.

28 FRIEDRICH, MEYER & PERLMAN, supra note 29, at 5.
29 2010 TIP REPORT, supra note 2, at 8-11.
30 Id. at 8.
33 2010 TIP REPORT, supra note 2, at 9.
34 Id.
35 Id. at 8.
B. The Domestic Portion of the TVPA

The domestic portion of the TVPA serves as an example to the rest of the international community. Although the domestic version has its flaws, it utilizes the “3P” approach—“protecting victims, preventing trafficking, and prosecuting traffickers.” The TVPA aims to prevent trafficking in the U.S. through programs that promote public awareness of the dangers of trafficking and the protections the TVPA provides. It also offers social and legal services as a means of protecting victims. When possible, the federal government provides grants to state and local governments and NGOs to create, expand, and strengthen victim service programs. Qualified trafficking victims are also protected from deportation proceedings if in custody. Ultimately, the TVPA criminalizes trafficking and imposes strict penalties for trafficking violations.

C. The International Portion of the TVPA: The TIP Report

Equally important is the international portion of the TVPA, which also incorporates the “3P” goals of protecting victims, preventing trafficking, and prosecuting traffickers. The Office to Monitor and Combat Trafficking in Persons oversees the U.S.’ participation in the fight against human trafficking and partners with foreign governments to create and implement anti-trafficking tactics. The TVPA provides that the U.S. will withhold non-humanitarian, non-trade-related foreign assistance from any government that fails to both meet the minimum standards for eliminating trafficking and make significant efforts to comply with the TVPA. The TVPA produces an annual TIP Report containing lists of countries that: (1) comply with minimum standards; (2) have yet to

36 See generally Rieger, supra note 17 (critiquing the TVPA on sex trafficking victims in the United States).
43 U.S. DEP’T OF STATE, ABOUT US, supra note 41.
44 Id.
comply with such standards but make significant efforts to comply; and (3) do not comply or make significant efforts to comply. The U.S. uses the TIP Report as a diplomatic tool, encouraging other countries to fight against all types of human trafficking. The TIP Report gathers information from U.S. embassies, international organizations, NGOs, and private individuals to create a ranking system for the countries.

D. The Ranking Methodology of the TIP Report

The TIP Report ranks countries into three tiers, with Tier 1 being the highest, based on the respective government’s efforts to meet the minimum standards for eliminating trafficking. The ranking is primarily concerned with the government’s actions in combating trafficking and less concerned with the magnitude of trafficking problems, although it is also an important consideration. The minimum standards set forth by the TVPA are as follows: (1) whether the country has a law prohibiting human trafficking, including all forms of forced labor, and whether there is a punishment for the crime of human trafficking; (2) whether the punishment for sex trafficking, including child sex trafficking, is as severe as that for crimes such as sexual assault; (3) whether the punishment for trafficking is sufficient to deter traffickers and signals the magnitude of the crime; and (4) whether the government displays “serious and sustained” efforts to combat trafficking. Under the fourth minimum standard, the statute offers eleven guiding factors to be considered a “serious and sustained effort.” These factors focus on whether the government vigorously investigates and prosecutes traffickers, its educational measures, its international cooperation in prosecutions, and any reduction in demand.

In determining whether a respective government is making significant efforts to meet these minimum standards, the TVPA considers three factors:

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47 U.S. DEP’T OF STATE, ABOUT US, supra note 41.
48 2010 TIP REPORT, supra note 2, at 19.
50 2010 TIP REPORT, supra note 2, at 20.
53 Id.
(A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and

(C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.  

A country is thereby judged by objective and subjective factors—it objectively looks at a country’s “contribution” to human trafficking on a global scale, and it determines reasonable measures on a flexible basis depending on the government’s resources and capabilities. Although a Tier 1 rank is the highest, it does not signify that the country has few trafficking problems. It merely indicates that the government has recognized its trafficking problem(s), made strides towards addressing the issue, and met the minimum standards.  

A Tier 2 rank signals that the country’s government has not met the minimum standards under the TVPA but has demonstrated significant efforts to bring itself into compliance.  

A country can also land on the Tier 2 Watch List if the government falls under the Tier 2 category and at least one of the following factors is present: (1) the number of victims of severe forms of trafficking is significantly high or notably increasing; (2) the country fails to prove its efforts to combat trafficking in the previous year; or (3) the country’s efforts are based on a plan to engage in various anti-trafficking actions over the next year(s).  

The TVPA provides that a country placed on the Tier 2 Watch List for two consecutive years, which also does not qualify for a higher rank the following year, will be ranked as a Tier 3 country.  

Tier 3 countries do not meet the minimum standards and do not make any significant effort to comply with the TVPA.  

Tier 3 countries are subject to economic sanctions and the possibility of U.S. opposition to financial

55 2010 TIP REPORT, supra note 2, at 20.
56 Id. at 22.
57 Id. at 23.
58 Id. at 26.
59 Id. at 22.
60 Id. at 22.
assistance from international institutions. In theory, the TIP Report’s ranking is temporary and countries are encouraged to maintain and increase efforts to combat trafficking.

The TVPA has numerous strengths: its broad definition of trafficking, its creation of a baseline measure of trafficking internationally, and its ability to persuade foreign countries to create better anti-trafficking laws and policies. At the same time, the TVPA’s weaknesses should not go unnoticed, and this paper addresses the ways in which to approach those flaws.

III. Why South Korea?

South Korea’s TIP Report system exemplifies the TIP Report’s weaknesses. In many respects, South Korea represents the average country ranked by the TIP Report, as it is politically and economically stable. South Korea’s particularly close relationship with the U.S. seems to complicate the way the TIP Report analyzes South Korea and illuminates specific concerns about the TIP Report.

The world has witnessed South Korea blossoming into an independent and successful country, with tremendous economic and political achievements. Former South Korean President Lee Myung-bak noted that at the time of the Korean War, South Korea “was one of the most impoverished countries, with an annual per capita income of less than $40 USD. In 2009, [South Korea] became a member of the Organization for Economic Cooperation and Development’s Development Assistance Committee, the first aid recipient to become a donor in only one generation.” South Korea is now secure enough to undertake legal and social reforms regarding human trafficking and human rights in general. As a developed country, South Korea has no major upheavals

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61 Id. at 26.
62 Id. at 29.
64 Since the 1960s, South Korea’s economy has grown tremendously to become a high-tech industrialized economy. In 2004, South Korea joined the trillion-dollar club of world economies and is among the world’s twenty largest economies. Id.
66 See generally David I. Steinberg, U.S. Policy and Human Rights
that would distract it from satisfying the TVPA’s minimum standards. But South Korea’s system illustrates that the TVPA’s international goals are not being met and exemplifies specific flaws in the TIP Report.

A. The Blood-Forged Alliance

South Korea’s close ties with the U.S., born out of the Korean War, have been called the blood-forged alliance. In an effort to stop the spread of communism across Asia, the U.S. lost 137,250 lives. In 1954, the Republic of Korea-U.S. Mutual Security Agreement solidified this bond, ensuring that each country would come to the aid of the other in the event of outside aggression. The core element of the countries’ relationship is the threat of North Korea, albeit different motivations for deterrence of North Korean military action. As major economic partners, the military alliance between the two countries is further strengthened, as evidenced in the 2007 signing of the Republic of Korea-United States Free Trade Agreement (“KORUS FTA”). Though this relationship may sound mutually beneficial, it is at the cost of South Korea’s vulnerability to U.S.


69 EMBASSY OF THE REPUBLIC OF KOREA IN THE USA, supra note 70.

70 BAJORIA & LEE, COUNCIL ON FOREIGN RELATIONS, supra note 72.

71 Id.; See also Steinberg, supra note 69, at 176-79.

Continuing tensions with North Korea will require U.S. military assistance in South Korea to some extent. The power dynamics in the relationship between South Korea and the U.S. also impact the attitude towards human trafficking and the nature of the TIP Report’s findings.

Undoubtedly, the U.S. greatly influences South Korea, including South Korea’s trafficking policies. U.S. forces on South Korean soil may be a large part of the trafficking problem. Because the U.S. military lies at the heart of South Korea’s trafficking issues, South Korea’s TIP Report could be easily skewed with the inherent conflict between an accurate report on the issues and the U.S.’ economic and political concerns. Although South Korea is highly capable of combating trafficking if it so chooses, the U.S. concurrently has the power to pressure South Korea to take those actions. The U.S. appears to enable South Korea’s stagnant attitude in developing effective anti-trafficking policy.

B. Socio-Cultural Background

Beyond South Korea’s international relationships, an internal examination of its legal policies is incomplete without examining its political, cultural, and social background. South Korea has lasting remnants of its roots as a homogeneous, patriarchal, and Confucian society, which impacts South Korean’s societal view of women and issues affecting women. In turn, these societal factors impact the enforcement of human trafficking laws in South Korea.

South Korea’s ethnic uniformity is one of its core values. South Korea is “a country where[,] until recently[,] people were taught to take pride in their nation’s ‘ethnic homogeneity’ and where the words ‘skin color’ and ‘peach’ are synonymous.” Such ethnic homogeneity develops

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74 Id.
75 Steinberg, supra note 69, at 179.
76 See infra section C for an explanation of the U.S. military’s role in South Korea’s sex trafficking industry.
79 Choe Sang-Hun, South Koreans Struggle with Race, N.Y. TIMES,
into discrimination against non-ethnic Koreans and consequently, a lack of protection for trafficked women who are not ethnically Korean. The racial element in trafficking has been described as undeniably present though not glaringly obvious. The United Nations has also recognized that race is a factor in human trafficking in two ways: (1) the targeted countries from which women are trafficked and (2) the treatment of trafficked persons in the destination country. Traffickers target victims either because of a high demand in the destination country for a particular race or ethnicity or because discrimination has left particular racial or ethnic groups vulnerable.

Race may be the more subtle aspect of trafficking in persons, but gender is a major issue. In Korean culture, Confucianism strictly defines relationships and roles for men and women. Confucianism established a patriarchal society in South Korea, with males as the head of the household, resulting in a “structure [that] tended to maintain separate and unequal roles for women.” Most women were taught to be obedient wives and highly devoted to their children. The definition of sexuality for women was reproduction. For a small number of women, entertaining men and allowing their bodies to be used for sexual recreation was the definition of sexuality. This social structure establishes South Korea as a society that accepts prostitution as a necessary evil, creating a culture that views women as inferior to men. In turn, this may also lead to the diminished importance of sex trafficking and existing and future trafficking legislation.

These cultural precepts often lead to criticisms of South Korea as a society with gender inequality that enables a disrespectful and violent

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81 Id.


83 Id.


85 Id.

86 Id.

87 Palley, supra note 85, at 1140.
sexual culture against women.\textsuperscript{88} History also reflects this gender imbalance, specifically that women of low socio-economic status perform sexual labor either out of economic necessity or a state structure that considers women “as pawns of national security” in skewed international relations situations.\textsuperscript{89} Gender, race, and economics are certainly a huge part of human trafficking in South Korea, as in other countries.

C. Trafficking Issues\textsuperscript{90}

The story of “Lana,” a woman trafficked to South Korea, depicts the life of a woman whose dreams were shattered, one of many stories that give life to the problem of human trafficking. “Lana” left the Kyrgyz Republic with the intention of getting away from a life of slaving away in a shoe factory for a mere $20 USD a month. Instead, she found a different type of slavery in South Korea, in which she was forced to sell sex to American servicemen. With less than $20 a month and no passport, Lana remains fearful and indebted to her new “bosses.” Her “bosses” promised her that she would make $2,000 in the first six months but instead, she had to perform a daily dance routine to earn money, luring military men into buying her fruit drinks and then leaving the club to have sex with these men at a nearby hotel.\textsuperscript{91}

Sex trafficking is particularly rampant near U.S. military bases in South Korea.\textsuperscript{92} The U.S. has maintained military presence in South Korea since 1945, following the end of World War II and Japanese colonial rule.\textsuperscript{93} Recently, former prostitutes in South Korea organized against

\textsuperscript{88} Soh, supra note 89, at 174.

\textsuperscript{89} Id.; See also Sang-Hun, supra note 82.

\textsuperscript{90} This paper focuses on sex trafficking victims immigrating to South Korea and does not examine the sex trafficking trade out of South Korea to foreign countries.


\textsuperscript{93} Hughes, Chon & Ellerman, supra note 99, at 3-4; See generally Katherine H.S. Moon, Sex Among Allies: Military Prostitution in the U.S.-Korea Relations (Columbia Univ. Press 1997) (gives further background on how South Korean prostitutes served the U.S. military in
former South Korean leaders, past government regimes, and the U.S. military, accusing them “of taking a direct hand in the sex trade from the 1960s through the 1980s.” The South Korean government is aware of its long-standing trafficking problems but has accepted the situation and has in fact aided in the expansion of the sex industry in the past.

Meanwhile, South Korean citizens have profited from American military presence through the sex trafficking industry. During the 1950s to 1970s, South Korean and U.S. forces agreed to establish “entertainment” areas near military bases, called kijichon, or military camp towns. In the decades following, the euphemisms varied in an effort for the trafficking industry to go underground. Rather than working in brothels, women began to work as “bar girls, hostesses, entertainers, and juicy girls.” “Juicy bars,” in particular, perpetuate South Korea’s human trafficking problems. The juicy bar system consists of:

[women from the Philippines] and other . . . [non-Koreans] brought to South Korea by brokers as ‘entertainers.’ The brokers then rent the women out to bars, priced depending on the girl’s ‘talents’ or attractiveness and the bar’s needs. There, they flirt with and kiss soldiers and tourists, in an attempt to keep them buying the girls expensive juice drinks. If a girl sells her quota of juice drinks in the evening, all is usually well. But if she [does not, she is] expected to make up the difference. And her only means of doing that is prostitution.

This arrangement only benefits the soldier and in effect, the military, thereby discouraging the military from actually changing this system. To compound the problem, U.S. military police have been filmed protecting the bars and brothels, rather than taking action against the U.S.

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94 Sang-Hun, supra note 82.
95 Id.
96 Hughes, Chon & Ellerman, supra note 99, at 4.
97 Id.
98 Id.
servicemen who frequent them.\textsuperscript{100} Other reports have also noted that the bar owners and military police have good relationships.\textsuperscript{101}

Although some women may appear happy or to have free will in their daily activities, investigations into this industry have confirmed “that the women ‘are all indentured servants, modern-day sexual slaves’”\textsuperscript{102} who have their passports taken; who are locked in their rooms; who cannot make phone calls; who are threatened with violence; and who are given very little money for food.\textsuperscript{103} The women are held captive by the chains of debt and their potentially illegal status if they entered the country fraudulently or their legal status has expired.\textsuperscript{104} U.S. servicemen are thus supporting the very industry that the TVPA is supposed to protect—trafficking of foreign women and their sexual slavery.

During the early 1900s, most prostitutes were Korean women. When the South Korean economy boomed in the 1990s, Korean women had legitimate working opportunities, and traffickers sought vulnerable and desperate women from countries with depressed economies and/or few opportunities for women.\textsuperscript{105} Filipina, Southeast Asian, and Eastern Europeans replaced Korean women as prostitutes.\textsuperscript{106} Recruits from the Philippines actively seek poor young women in the countryside and offer advance payments to their parents for their “work” abroad and other incentives.\textsuperscript{107}

Most foreign women come to South Korea legally, with E-6 entertainment visas, or illegally, with false documents.\textsuperscript{108} An E-6 visa requires women to prove their entertainer skills prior to their entry into the country.\textsuperscript{109} Since this is generally impossible, the trafficker will either bribe the testing center authorities or “send in skilled doubles to perform in order to get the needed certification for the woman to be able to go

\textsuperscript{100} Hughes, Chon & Ellerman, supra note 99, at 8.

\textsuperscript{101} Id. at 8.

\textsuperscript{102} Hughes, Chon & Ellerman, supra note 99, at 8 (internal citation omitted).

\textsuperscripts{103} Id.

\textsuperscripts{104} Id.

\textsuperscripts{105} Id at 5, 8.

\textsuperscripts{106} Id. at 5.

\textsuperscripts{107} Id. at 6.

\textsuperscripts{108} Hughes, Chon & Ellerman, supra note 99, at 6.

\textsuperscripts{109} Id.
abroad on an entertainer visa.\textsuperscript{110} Foreign women also enter through B-2 tourist/transit visas or C-3 visitor visas and then overstay their visit.\textsuperscript{111}

Though there are slight variations of how women enter the field of sex work, these women have similar stories—selling drinks and eventually turning to prostitution because they are unable to work their way out of debt. They find little relief from the Korean police or legal system, in general, face corruption, and/or generally fear deportation.\textsuperscript{112}

Personal stories of foreign women, trafficked into South Korea, illuminate the hardships that these women face daily and their struggle to gain their freedom back. Reydeluz D. Conferido, a former labor attaché of the Philippine Embassy in Seoul who also ran a shelter for rescued Filipinas in South Korea, described these women’s experiences of being

   isolated from familial support, social support, put in a dark place where she cannot understand the language, bullied, shouted at, scolded – how intimidating that can be for the woman so she can be forced into doing things that she doesn’t like, like giving up her passport, like going out to sell sex. This non-physical intimidation can be as threatening as a sword drawn. . . .\textsuperscript{113}

Conferido describes the non-physical barriers that trafficking victims encounter, particularly sex trafficking victims in foreign countries.

Sex trafficking is particularly alarming because of laws against prostitution in South Korea. Yet the sex trade has remained relatively untouched for the last decade.\textsuperscript{114} The horrifying part of the prostitute trade in South Korea is how the issue has adapted in legislation and found loopholes in the law by avoiding obvious red-light district activity and utilizing legitimate looking massage parlors or coffee shops.\textsuperscript{115}

Although the South Korean “red-light” district has physically diminished, more discreet manifestations of trafficking have increased.

\textsuperscript{110} Id.

\textsuperscript{111} International Organization for Migration, \textit{A Review of Data on Trafficking in the Republic of Korea} 26-35 [hereinafter \textit{IOM}] (describing the various ways women are trafficked into South Korea).

\textsuperscript{112} McMichael, \textit{supra} note 96.

\textsuperscript{113} Id.

\textsuperscript{114} Kloer, \textit{supra} note 106.

The International Organization for Migration ("IOM") found that as “more traditional red-light fronts close, more and more sex is being sold at massage parlors and coffee houses that front as legitimate businesses. Sex . . . is [also] being sold through cell phones, as spam messages that urge the cell phone owner to call back right away.”116 Because the law does not explicitly prohibit sexual acts beyond male-female sexual intercourse, those in the sex trade exploit that loophole by making money off of alternative sexual acts that exploit women.117

Due to the persistent manifestation of sex trafficking in South Korea in 2010, the Korean Ministry of Gender Equality and Family held a meeting that gathered experts in the field, including academics, activists, and government officials.118 These experts agreed that the law had the momentum of its early years and that prostitution and the sex trafficking industry generally continues to thrive.119 Although South Korea has implemented trafficking policies, these policies starkly contrast with actual practices, as seen in lenient law enforcement, the involvement of government officials in the sex trade, and the high prevalence of violence against women.120 If a pimp bribed a police officer, for instance, the officer will ignore the woman’s allegations or turn her allegations against her.121 As a result, traffickers take advantage of the system. If a trafficker does not have to worry about police intervention or knows that the interference will be minimal, there is essentially nothing stopping the trafficker’s from continuing business. The chief of the female crimes division at the National Police Agency, Kwak Chang-yong, concedes that the sex trade is financially successful because the fines involved are minimal.122 The sex industry in Korea is extremely profitable, with profit estimates at $26 trillion won ($22 billion USD) in 2002.123 This industry alone contributed to five percent of South Korea’s gross domestic product


117 Weaver, supra note 128.


119 Id.

120 Id.

121 Id.

122 Id.

123 Weaver, supra note 128.
The profitability of this industry is a huge motivation behind South Korea’s little action against trafficking.

In contrast, the U.S. does not have such a strong economic interest in protecting the industry but took small steps to address this issue. In 2002, Fox News aired a broadcast taken from a hidden camera showing U.S. servicemen in South Korea and their interactions with trafficked women, mostly Filipina or Russian, while military patrol stood nearby. A reporter found that many of these women had been “lured with promises of good jobs, then forced to work as bar hosts and prostitutes.”125 On May 31, 2002, Congress requested an investigation into the news report.126 In an initial report, “Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I – United States Forces in Korea,” the Inspector General of the Department of Defense concluded that there were deficiencies in the anti-trafficking efforts by the Department of Defense, but “forceful and effective anti-human trafficking measures” would begin the process of remedying trafficking issues.127 Congress responded to this report, proposing a phase two report that would establish new policies under the Department of Defense.128 The report’s suggestions for the U.S. forces in South Korea was not very successful, leading Congress to decide that an entire position should be devoted to developing and enforcing trafficking policies. In response to the prevalence of prostitution in South Korea and concern for U.S. troops stationed in South Korea, the U.S. Congress also introduced H.R. 5195 in 2010.129 H.R. 5195 sought to create a position within the Office of the Secretary of Defense for a director of anti-

124 Id.


127 Id.


trafficking policies,\textsuperscript{130} who would be responsible for implementing trafficking policies, but this was never passed.\textsuperscript{131}

Although Congress has acknowledged the U.S. military’s role in the South Korean sex trafficking industry, both the South Korean government and the TIP Report fell short in addressing this long-standing problem. Such ignorance begs the question of the role of politics in creating the TIP Report and the U.S. military interests involved.

D. \textit{South Korean Trafficking Laws and Other Efforts}

South Korea’s publicized sex trafficking problems have led to the enactment of some legislation addressing trafficking issues, albeit solely on sex trafficking. The Act on the Punishment of Acts of Arranging Sexual Traffic (“Punishment Act”)\textsuperscript{132} and the Act on the Prevention of Sexual Traffic and Protection, etc. of Victims Thereof (“Prevention Act”) are the main trafficking laws in South Korea.\textsuperscript{133} The Punishment Act’s purpose “is to root out the sexual traffic, the acts of arranging sexual traffic, and the human traffic aimed for sexual traffic and to protect the human rights of victims of the sexual traffic.”\textsuperscript{134} The Prevention Act seeks “to prevent sexual traffic, protect victims of sexual traffic and persons who have sex with people in exchange for money, and support their self-reliance.”\textsuperscript{135}

These sex trafficking laws do not explicitly criminalize child or labor trafficking. Instead, the prosecution of child and labor trafficking relies on statutes such as the Criminal Act, Juvenile Protection Act, Juvenile Sex Protection Act, Act on Additional Punishment for Specific Crimes, and Child Welfare Act.\textsuperscript{136} The prosecution of labor trafficking involves the Labor Standards Act, which prohibits employers from “[forcing] a worker to work against his own free will through the use of violence, intimidation, confinement[,] or by any other means [that]

\begin{itemize}
  \item \textsuperscript{130} H.R. 5195 § 1(a).
  \item \textsuperscript{131} H.R. 5195 § 1(b).
  \item \textsuperscript{132} Act on the Punishment of Acts of Arranging Sexual Traffic, Act No. 7196, Mar. 22, 2004, art. 1 (S. Kor.).
  \item \textsuperscript{133} Act on the Prevention of Sexual Traffic and Protection of Victims Thereof, Act No. 7212, March 22, 2004, art. 1 (S. Kor.).
  \item \textsuperscript{134} Act on the Punishment of Acts of Arranging Sexual Traffic, art. 1.
  \item \textsuperscript{135} Act on the Prevention of Sexual Traffic and Protection of Victims Thereof, art. 1.
  \item \textsuperscript{136} IOM, supra note 126, at 61-77 (providing the text for all of the relevant statutes).
\end{itemize}
unjustly restrict mental or physical freedom.”¹³⁷ Under the Labor Standards Act, both employers and workers must mutually agree to employment conditions.¹³⁸ Although the act can be used to prosecute labor trafficking, it is clearly not designed for that purpose. In totality, prosecuting trafficking involves a tangled web of statutes that may be unclear to the average person.

On a larger scale, South Korea has not demonstrated a true commitment to combat human trafficking due to its lack of international commitments to human trafficking treaties. The TIP Report compiles data regarding the countries’ involvement with five international treaties.¹³⁹ Of these treaties, South Korea signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons (“Palermo Protocol”) but has yet to ratify it as of 2010.¹⁴⁰ South Korea has ratified: (1) the International Labour Organization (“ILO”) Convention 182 (Elimination of Worst Forms of Child Labor); (2) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, and (3) the Optional Protocol to the Convention on the Rights of the Child in Armed Conflict.¹⁴¹ However, it has not ratified ILO Convention 29 (Forced Labor) and ILO Convention 105 (Abolition of Forced Labor).¹⁴² It is significant that South Korea has not ratified one of the best known treaties in the field of human trafficking, the Palermo Protocol, as well as any conventions regarding labor trafficking. As discussed previously, stopping human trafficking requires international cooperation and that is achieved in part by universal ratification of important human trafficking treaties.

In examining the history of South Korea’s “crackdowns” on prostitution, the government has taken alternative actions to combat

¹³⁷ Labor Standards Act, Act No. 5309, Mar. 13, 1997, art. 6 (S. Kor.).
¹³⁸ Id. at art. 3.
¹⁴⁰ Id. at 362.
¹⁴¹ Id.
¹⁴² Id.
prostitution but loses support quickly. For instance, in 2000, the government appointed a female police chief in one of Seoul’s oldest prostitution districts as a strategy to rout the rot of prostitution, with the full help and aid of the government. Yet, two months later, the crusade resulted in nothing and eventually shriveled away. In 2004, the government hired another female police officer to be the leader of ending prostitution in Seoul. Again, the appointment failed to produce any significant changes. Although support programs for trafficking victims were created under the second officer’s leadership, it did not meet the demands of specific groups, such as women with children, teenagers, or disabled women. Overall, these actions do not effectively prosecute traffickers or protect victims.

The international community has also witnessed South Korea’s defensive attitude towards trafficking issues and an unwillingness to cooperate. History demonstrates that the South Korean government needs to take a different approach that goes beyond glossy campaigns, and instead, focus on actual practices that protect victims and fight against prostitution and sex trafficking. South Korea’s failed practices demonstrate a pattern of artificial efforts to fight trafficking, despite the TIP Report’s positive analysis of South Korea’s efforts.

IV. RANKING V. REALITY

A. The Tier 3 Embarrassment: Analyzing the Rankings

A review of the TIP Report’s rankings shows its failure to reflect the legal and factual circumstances in South Korea that affect its rankings. In 2001, the first TIP Report ranked South Korea as a Tier 3 country and classified it as a source and transit country for human trafficking. The


144 Id.

145 Id.

146 Id.

147 Id.

148 Ji-yoon, supra note 131.

149 After the release of the 2001 TIP Report, the South Korean government prepared a response to its Tier 3 ranking. IOM, supra note 126, at 49-54.

150 2001 TIP REPORT, supra note 7, at 97.
TIP Report found that South Korea did little to address trafficking issues despite being “a leader in the region on human rights and democracy generally.”\textsuperscript{151} The TIP Report partly based South Korea’s ranking on its lack of trafficking laws and lack of support from the South Korean government with respect to trafficking victims or NGOs supporting these victims.\textsuperscript{152} To compound the problem, trafficking victims who entered the country illegally were treated as immigration violators and subsequently deported.\textsuperscript{153} Ultimately, South Korea merited a Tier 3 rank, as it did not meet the minimum standards to fight trafficking nor did it make efforts to comply with such standards.

One year later, South Korea jumped to a Tier 1 ranking, and the report classified it as a source, transit, and destination country rather than just a source and transit country as it had been previously.\textsuperscript{154} Contrary to the 2001 TIP Report, the 2002 report found South Korea to be in full compliance with the standards combating trafficking, “including making serious and sustained efforts to eliminate severe forms of trafficking in persons with respect to law enforcement, protection of victims, and prevention of trafficking.”\textsuperscript{155}

Although the report noted that South Korea did not have a trafficking law, the report praised South Korea’s laws that prosecuted traffickers.\textsuperscript{156} In contrast to the previous year, South Korea’s government now protected victims by funding programs and domestic NGOs operating shelters for trafficking victims.\textsuperscript{157} The TIP Report also found increased law enforcement efforts ranging from the establishment of the Joint Task Force on Trafficking in Persons to the Interagency Committee for Countermeasures to Prevent Trafficking in Persons, judicial and law enforcement training, and cooperation with other governments for purposes of extradition. The report acknowledged the government’s public awareness campaigns on sex trafficking, including booklets, posters,

\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{155} Id.
\textsuperscript{156} The TIP Report also found that “a number of provisions in the Criminal Code and the Act on Additional Punishment for Specific Crimes were used to prosecute traffickers in more than 100 cases in 2001.” Id.
\textsuperscript{157} Id.
media presentations, and study camps for youth. These changes reflect a shift in South Korea’s attitude towards trafficking, but its motives were not pure. In a sense, the TIP Report succeeded because it embarrassed South Korea by ranking it a Tier 3 country and pressured it to change its policies to avoid future political repercussions.

Although South Korea may have made immense progress in addressing trafficking issues, that fact alone does not warrant the Tier 1 classification. The government had to comply with the minimum standards, which meant making certain changes in their laws to conform to such standards. South Korea also had to create a comprehensive anti-trafficking law and add stronger protections for victims, especially against deportation.

Despite the lack of changes, the 2003 TIP Report again concluded that South Korea fully complied with the minimum standards. The report found that the South Korean government acknowledged and “[undertook] comprehensive efforts to prevent [trafficking], protect victims, and prosecute traffickers,” but South Korea still lacked an anti-trafficking law. Again, there is no way that South Korea could have fully complied with the minimum standards without any type of anti-trafficking legislation.

The 2005 TIP Report named South Korea as having the International Best Practices in “cracking down on prostitution and trafficking.” The TIP Report highlighted South Korea’s response to a petition by a million Korean women, which resulted in the passage of two laws in 2004 that aimed to eliminate the commercial sexual exploitation of females. The report found that these laws “not only stiffened penalties for trafficking and prostitution, established support mechanisms and facilities for victims, and provided for public awareness and education campaigns, but also reflected the input of the NGO community and the

158 Id.
160 Id.
161 Id.
162 See infra section B for a full analysis of why South Korea did not meet the minimum standards under the TVPA.
164 Id.
government agencies charged with responsibility for enforcement.” For the first time, South Korea finally adopted anti-trafficking legislation in response to the cries of trafficked women. But these laws still fail to meet the minimum standards required by the TVPA, which the next section will examine.

The TVPA’s criteria provide that a Tier 1 rank is named to a country only when it complies with the minimum standards set forth by the TVPA. Despite South Korea’s strides, it still fails to meet the minimum standards. South Korea gained its upgrade in tier rankings prior to passing any significant anti-trafficking laws. As of 2011, South Korea has yet to introduce any comprehensive trafficking legislation that addresses both sex and labor trafficking. Nevertheless, South Korea’s Tier 1 status remains stable despite the flaws in its legal system and the continual sex trafficking problems.

B. Meeting the Minimum Standards

A major issue to consider in evaluating South Korea’s efforts to combat sex trafficking is whether it has complied with the four minimum standards under the TVPA. As discussed earlier, the four minimum standards set forth by TVPA are as follows: (1) whether the country has a law prohibiting human trafficking, including all forms of forced labor, and whether there is a punishment for the crime of human trafficking; (2) whether the punishment for sex trafficking, including child sex trafficking, is as severe as that for crimes such as sexual assault; (3) whether the punishment for trafficking is sufficient to deter traffickers and signals the magnitude of the crime; and (4) whether the government displays “serious and sustained” efforts to combat trafficking. Also under the fourth minimum standard are eleven guiding factors to satisfy the definition of a “serious and sustained effort.”

A thorough analysis of these minimum standards reveals that South Korea does not seem to have met any of these requirements. First, although it has criminalized sex trafficking in the Punishment and Prevention Acts, South Korea does not have a general law prohibiting human trafficking, including forced labor trafficking. The 2002 TIP Report stated that it met this requirement, but only an extremely liberal interpretation of this minimum standard would consider South Korea as having satisfied this element. There are laws, such as the Child Welfare

\[165\] Id.

\[166\] One of the minimum standards is that a government should prohibit severe forms of trafficking in persons. 22 U.S.C. § 7106(a)(1) (2010).


and Labor Standards Acts, that can be used to prosecute different forms of trafficking, but this does not equate to a comprehensive law against human trafficking, such as the TVPA.

Second, South Korea has not made the punishment for sex trafficking as severe as the crime of sexual assault. The Punishment Act prescribes punishment only up to ten years imprisonment for any person who violates one of four specific provisions on sex trafficking,\(^{169}\) while sexual assault crimes in South Korea generally result in life imprisonment or five years imprisonment at a minimum. The differences in punishment certainly do not seem commensurate.\(^{170}\)

Third, South Korea has yet to satisfy the requirement that punishment for trafficking deter traffickers and represents the magnitude of the crime primarily because its statutes do not directly prohibit non-sexual trafficking. Traffickers may easily find loopholes in the laws because the statutes are used after-the-fact to punish certain actions by traffickers, not the act of human trafficking itself, which perpetuates the problem.

Fourth, the government must display serious and sustained efforts to combat trafficking to meet the TVPA’s standards. Again, South Korea has trouble satisfying this element because of its lack of efforts to improve anti-trafficking statutes and its ongoing problems with trafficking near military bases. Under this factor, the TVPA looks at “whether the government of the country has made serious and sustained efforts to reduce the demand for commercial sex acts.”\(^{171}\) But because South Korea’s government has done little to stop the trafficking demand by the U.S. military, commercial sex acts have not been reduced.

Ultimately, South Korea has not satisfied the TVPA’s minimum standards. To meet such standards, South Korea’s government must pass legislation that prohibits trafficking in all forms\(^ {172}\) and display serious and sustained efforts to eliminate severe forms of trafficking under the TVPA’s standards.\(^ {173}\) The TIP Report’s ignores these issues and in turn, its own minimum standards. To give South Korea a Tier 1 rank reveals the flaws in its methodology.

\(^{169}\) Act on the Punishment of Acts of Arranging Sexual Traffic, art. 18.

\(^{170}\) Act on the Punishment of Sexual Crimes and Protection of Victims, Act No. 10261, Apr. 15, 2010, art. 5-10 (S. Kor.).


\(^{172}\) The TVPA is an example of a statute that prohibits trafficking in all forms.

C. Flaws with the Trafficking Laws

An examination of South Korea’s statutes in light of the TIP Report’s guidelines for anti-trafficking laws reveals that the existing legal structure is weak and perpetuates its sex trafficking problems. The 2010 TIP Report includes guidelines as to what constitutes a “good” trafficking law. These guidelines include six principles: (1) a broad definition of “coercion” that covers its many manifestations in modern forms of slavery; (2) a well-articulated definition of “trafficking” that facilitates effective law enforcement and prosecutorial responses and allows for the collection of meaningful data; (3) a mechanism of care provided to all suspected victims of trafficking through which they have the opportunity to access basic services; (4) explicit immigration relief for trafficking victims, regardless of past legal status, and relief from any penalties for unlawful activities committed by victims as a direct result of trafficking; (5) specific protections for child victims of trafficking to ensure a responsible chain of custody and the best interests of the child in providing services to them; (6) explicit provisions to ensure that identified victims have access to legal redress (e.g., obtaining financial compensation for the trafficking crimes committed against victims).

An analysis of South Korea’s current laws in light of these six guiding principles demonstrates that South Korea has not created a “good” trafficking law and has thus not met the minimum standards under the TVPA. In every respect, South Korea has skirted its responsibility to create effective legislation that would protect victims, prevent trafficking, and prosecute traffickers. Although South Korea’s current legislation has yet to provide adequate definitions of “coercion” and “trafficking” or specific protections for child victims, it has taken baby steps towards offering victims basic services, immigration relief, and legal aid.

Under the first principle, South Korea has not provided a broad definition of “coercion.” The Punishment Act includes all relevant definitions under the Prevention and Punishment Acts but does not clearly define “coercion.” The closest language to the definition of coercion is “controlling and managing any persons by means of deception and force or other similar means.” But this still fails to articulate a definition of “coercion.” Thus, South Korean laws inherently lack a broad definition of “coercion.”

Under the second principle, the law should contain a well-articulated definition of “trafficking” that will facilitate effective law

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174 2010 TIP REPORT, supra note 2, at 13.
175 Id.
enforcement and prosecutions of traffickers. The Punishment Act solely punishes “sexual traffic,” which is defined as having sexual intercourse or performing similar sexual intercourse “in return for providing and receiving money and goods as well as property interest or for promising the provision and receipt of money and goods as well as property interest for unspecified persons or acting as their counterparts.” 177 The Punishment Act defines “human traffic aimed for sexual traffic” as “the act of controlling and managing persons by means of deception and force or other similar means for the purpose of getting them to perform the sexual traffic or the obscene act.” 178 South Korea’s statutes do not provide a definition of human trafficking that encompasses all forms of compelled services and only defines sex trafficking.

Under the third principle, current laws should provide basic services, immigration relief, and legal aid. However, South Korea does not meet this suggested guideline. The Prevention Act provides that state and local governments establish supporting institutions such as: (1) a general supporting institution; (2) a juvenile supporting institution; (3) a supporting institution for foreign women; and (4) a rehabilitation supporting center. 179 A general supporting institution is one that “provides victims, etc. of sexual traffic with accommodations and meals for not more than one year and supports their self-reliance.” 180 A “good law” should provide victims with access to basic services, including shelter, food, medical care, psycho-social counseling, legal aid, and work authorization. 181 South Korea’s laws provide domestic victims, not foreign women, with shelter, food, medical care, counseling, and legal aid. 182 A supporting institution for foreign women, however, “provides foreign women who are victims, etc. of sexual traffic with accommodations and meals for not more than three months . . . and helps them return to their homelands.” 183 Clearly, providing shelter and food for only three months to foreign victims is a lower standard than the unspecified time for domestic victims. Because most of South Korea’s trafficking victims are foreign women, the assistance should be focused on this group, and they should receive equal treatment. Furthermore, these victims do not receive work authorization as suggested by the guidelines.

177 Id.
178 Id.
179 Id.
180 Id.
181 2010 TIP REPORT, supra note 2, at 13.
182 Act on the Prevention of Sexual Traffic and Protection of Victims Thereof, art. 7.
183 Id. at art. 5.
Fourth, South Korea’s laws do not adhere to the guideline that suggests providing immigration or legal relief to trafficking victims for penalties resulting from unlawful trafficking activities. The Prevention and Prosecution Acts, the two main anti-trafficking laws in South Korea, do not provide explicit or implicit immigration relief. The Prevention Act assists victims in returning home.\textsuperscript{184} The Punishment Act contains a special section for foreign women to report a foreign woman found to be a victim of sex trafficking. The Punishment Act also prevents a compulsory departure order from being issued and postpones other immigration proceedings.\textsuperscript{185} There is no actual relief from being deported, however, and it is only a postponement. This reflects South Korea’s homogeneous society, as the law leans toward sending the women back to where they came from, regardless of the impact on the woman, rather than providing means for the woman to continue to reside in South Korea. Openness to minorities versus exclusiveness of minorities is an important factor that needs to be considered in the TIP Report. As is, current laws do not provide any explicit immigration relief and only postpone the foreign women’s departure.

The guideline also recommends that victims have relief from penalties associated with unlawful activities committed by victims as a direct result of trafficking. The Punishment Act provides that victims of sex trafficking will not be punished for the sexual acts they committed.\textsuperscript{186} The law satisfies this by not punishing victims, which is an important part of protecting trafficking victims.

Under the fifth principle, child victims are not protected in ways that would ensure that there is a responsible chain of custody or priority placed on the best interests of the child. The Prevention Act creates a juvenile supporting institution that provides child victims “with accommodations and meals for not more than one year and supports their self-reliance through enrollment in school, education, etc.”\textsuperscript{187} However, there is no overarching system that looks after the best interests of the child.

As for the sixth and last factor of the TIP Report’s guidelines, South Korea’s laws do not contain explicit provisions ensuring that victims have access to legal redress to receive financial compensation for the crimes committed against them. The Prevention Act only provides that

\begin{flushright}
\textsuperscript{184} Id. at art. 7.
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\begin{flushright}
\textsuperscript{185} Act on the Punishment of Acts of Arranging Sexual Traffic, art. 11.
\end{flushright}

\begin{flushright}
\textsuperscript{186} Id. at art. 6.
\end{flushright}

\begin{flushright}
\textsuperscript{187} Act on the Prevention of Sexual Traffic and Protection of Victims Thereof, art. 5.
\end{flushright}
NGOs make requests to legal aid institutions for financial support.\textsuperscript{188} Victims have to depend on NGOs providing legal services to receive any type of redress for damages or unpaid wages. To obtain financial and legal assistance, victims of trafficking must face a complex web of statutes.\textsuperscript{189}

As demonstrated, there is no “good trafficking law” in South Korea, as defined in the TIP Report, even if the laws are combined. Admittedly, “the lack of specific legislation against trafficking in persons is arguably the most serious obstacle in countering the crime.”\textsuperscript{190} Oftentimes, anti-human trafficking legislation only addresses trafficking in women and children because of older conceptions that human trafficking only involved women and children being forced into prostitution.\textsuperscript{191} Such legislation ignores the trafficking of men for exploitation on the labor market and leaves it to be addressed by existing labor laws.\textsuperscript{192} This strategy directly circumvents the idea of a comprehensive anti-trafficking law that makes clear to traffickers that every form of trafficking will not be tolerated and penalties will be severe across the board.

As of 2011, South Korea has yet to introduce any comprehensive trafficking legislation that addresses both sex and labor trafficking. Its trafficking laws solely focus on sex trafficking and leave labor trafficking to be addressed under the Labor Standards Act. A comprehensive trafficking law would make it easier for domestic and international victims of trafficking to take full advantage of protections. South Korea’s upgraded tier status granted prior to the enactment of comprehensive trafficking laws demonstrates the TIP Report’s flawed ranking methodology. A basic analysis of South Korea’s current laws reveals its narrow understanding and limited scope of trafficking laws.

V. RECOMMENDATIONS

The fight against human trafficking is at risk of becoming a business-as-usual, white-noise, show-and-tell instrument for politicians . . . [], creating a sense that this kind of slavery will be with us forever, and there is nothing we can

\textsuperscript{188} Id. at art. 7.

\textsuperscript{189} Without express provisions directed at traffickers, prosecutors may find it very difficult to charge traffickers under a “web” of statutes. This is another reason a comprehensive and explicit anti-trafficking law is recommended, as it could increase the number of convictions.

\textsuperscript{190} U.N. GIFT, Quantifying Human Trafficking, supra note 13, at 6.

\textsuperscript{191} Id.

\textsuperscript{192} Id.
do about it, and the people that can to do something about it have other motives than ending slavery.\footnote{193}

The TIP Report’s methodology may be improved in six ways: (1) factoring in socio-cultural backgrounds of countries; (2) accounting for continual trafficking problems; (3) eliminating confusing minimum standards; (4) encouraging countries to improve their trafficking standards after achieving Tier 1 status; (5) eliminating political influence; and (6) increasing collaboration between countries.

A. Factoring in socio-cultural backgrounds

First, the TIP Report should consider a country’s unique socio-cultural background and its influence on legislation and law enforcement in its analysis. South Korea’s male-dominated society may not always take prostitution seriously, which can affect the enforcement of sex trafficking laws. The trafficking problem is exacerbated with South Korea’s long-standing racial homogeneity and unsympathetic attitude towards the plight of foreign women. For example, the distinction in the Prevention Act between foreign and domestic women reflects an imbalance in the treatment of foreign women and a preference for helping Korean women. The TIP Report’s analysis should examine the role of:

- patriarchal structures which encourage and promote the demand for and the commercialization of women’s and children’s bodies;
- cultural practices and social-relation structures which violate the human dignity of women and are inherently exploitative and humiliating;
- the denial of equal status to women in the access to property and their attainment of economic independence and the attendant feminization of poverty.\footnote{194}

By factoring in a country’s socio-cultural background, the TIP Report develops a complex and fully informed analysis of a country and its progress on addressing trafficking issues. It is ignorant for the U.S. to assume that every country can be viewed the same, considering the different legal and political systems.


Additionally, it is important that the TIP Report consider the context of the trafficking issues in each country. Treating every country’s problems in the same manner does a disservice to the country and the system as a whole. A country’s cultural and social background and its economic standing, to a lesser extent, are important considerations when analyzing its human trafficking woes. Some countries are motivated to institute trafficking measures for fear of economic sanctions by the U.S., which questions the genuine nature of government efforts to combat trafficking.\textsuperscript{195} It is possible that “the specter of TIP sanctions causes some governments (of developing countries, in particular) to develop their anti-trafficking programs based entirely on what they perceive to be the expectations of the TIP Office.”\textsuperscript{196} When countries are “[f]ocused on fulfilling these externally-imposed standards [by the TIP Report], these governments fail to conduct their own, context-specific assessment of the needs on the ground, and overlook or ignore the recommendations of local NGOs.”\textsuperscript{197} It is important that the TIP Report motivate a country to employ the most effective strategies to address its unique trafficking problems and socio-cultural background, rather than use ineffective, “cookie cutter” solutions.

The TIP Report should allow for more flexibility in terms of applying Western human rights concepts in the context of non-Western societies.\textsuperscript{198} Traditional cultural values in non-Western societies can conflict with human rights values, leading some to “defend or justify the infringement of human rights as consistent with the ‘Asian way.’”\textsuperscript{199} The U.S. must walk a thin line in bringing together its idea of human rights into a non-Western culture\textsuperscript{200} and must at least acknowledge a country’s culture and its impact on the development of human rights and its laws and institutions to provide a complete analysis.

B. Accounting for Continual Trafficking Problems

Second, the TIP Report should take into account any continuing or long-standing trafficking problems within a country. Unless the TIP Report actually evaluates the effectiveness of anti-trafficking measures rather than merely reporting on such measures, it will continue to be a

\begin{footnotes}
\footnotetext{195}{Chuang, supra note 3, at 464-65.}
\footnotetext{196}{Id. at 490.}
\footnotetext{197}{Id.}
\footnotetext{198}{HYUNG-KON KIM, THE IDEA OF HUMAN DIGNITY IN KOREA: AN ETHICO-RELIGIOUS APPROACH AND APPLICATION 36-37 (2007).}
\footnotetext{199}{Id. at 38.}
\footnotetext{200}{Id.}
\end{footnotes}
“superficial checklist.” For example, the TIP Report did not acknowledge South Korea’s little progress in addressing the ongoing problem with trafficking in the U.S. military bases and surrounding towns, even though the U.S. took specific actions to investigate the matter. In 2003, a report by the Department of Defense’s Inspector General verified “earlier [media] stories about military personnel engaging in activities that promoted and facilitated trafficking activities near U.S. bases” in South Korea. Despite this information, South Korea’s Tier 1 ranking remains unaffected and the TIP Report has yet to raise the trafficking problem near U.S. military bases in South Korea in its analysis.

Although South Korea has promulgated sex trafficking laws, the country’s major human trafficking problem is sex trafficking near military bases. A meaningful evaluation of South Korea’s anti-trafficking measures would have revealed that South Korea’s laws have failed to reduce sex trafficking in these areas. This demonstrates that the TIP Report needs to develop a mechanism to not only identify continual trafficking problems but also penalize a country for making little progress with a specific, long-standing trafficking issue. Perhaps the TIP Report should consider demoting a country’s ranking for failure to address a long-standing issue within a five year time period. Inserting a time requirement would motivate and pressure countries, like South Korea, to address these issues directly.

C. Eliminating Confusing Minimum Standards

Third, the TIP Report needs to clarify its minimum standards and sharpen its analysis of each country. The TIP Report’s analysis of South Korea demonstrates that it must undertake a more intense review of a country’s laws. Countries should not be allowed receive Tier 1 rankings without anti-trafficking legislation, as in the case of South Korea. Under current requirements, it is unclear whether the minimum standards require one comprehensive piece of anti-trafficking legislation or whether having different statutes to prosecute trafficking is sufficient. This ambiguity has led to a “lack of conceptual clarity as to the standards used for assessing and comparing country performance.” The TVPA should expressly require that countries enact a comprehensive anti-trafficking law instead of a pile of statutes that address trafficking in different forms. Additionally, more explicit and detailed standards need to be developed to avoid a leap in the ranking system, as with South Korea.

As it stands, the TIP Report does not clearly explain how a country meets minimum standards and the factors that determine a Tier 1

201 Chuang, supra note 3, at 477.
202 Parsons, supra note 142, at 576.
203 Id. at 476.
Time and time again, the TIP Report failed to support the assertion that South Korea met the minimum standards with specific examples, conducting superficial analyses. The TIP Report’s lack of evidence in supporting its Tier 1 rankings is common, as this is the case in the United Kingdom, Sweden, and Germany, where there are no laws targeting trafficking for non-sexual labor trafficking. Because of the ambiguity in the trafficking standards, Tier 1 countries arguably are not required to adopt a comprehensive anti-trafficking law and can rely on an assortment of laws criminalizing different forms of trafficking. The TIP Report contradicts its purpose when it ranks countries in the highest tier without that country’s satisfaction of the minimum standards. At a minimum, the TIP Report must refine its standards and utilize them so as to provide transparency on the requirements for a Tier 1 ranking.

D. Encouraging Countries to Improve Trafficking Standards

Fourth, the U.S. should encourage more improvement from a country after it achieves a Tier 1 status. The TIP Report requires governments to demonstrate annual progress in their efforts to combat trafficking. The U.S. must find a way to ensure that countries avoid complacency and utilize the rankings as intended, demoting a country’s rank when merited and promoting a country when deserved. More importantly, developing additional factors to become a Tier 1 country motivates countries to continue improving its standards.

E. Eliminating Political Influence

Fifth, the TIP Report needs to eliminate the stain of political influence. Currently, the TIP Report “risks casting the impression that the TIP Report rewards the [U.S.’] friends and punishes its enemies.” The TIP Report needs to present more objective assessments by utilizing data or statistics about the country’s trafficking problems and its improvements to explain a country’s ranking. The close relationship of the U.S. and South Korea questions the motivations underlying its Tier 1 status over the last decade. Particularly, it indicates that being a U.S. ally can be an unspoken positive factor in a country’s ranking. The politicization of the TIP Report is evidenced in the TIP Report’s continual ignorance of the U.S. military base sex-trafficking issues in South Korea. U.S. interests in

204 Chuang, supra note 3, at 440.
205 Id. at 478.
206 Id.
207 U.S. DEP’T OF STATE, ABOUT US, supra note 41.
208 Chuang, supra note 3, at 475.
South Korea over the last decade seem to take precedence over TVPA guidelines.209

Lessening the influence of politics means that the priorities and individual motives of the U.S. are second in line to ensuring dignity and freedom for all human beings. The TIP Report becomes useless to the U.S. and the international community if it selectively reviews a country’s anti-trafficking initiatives based on its relationships and instead, focuses on what it wishes to see in the respective country. The inconsistent standards and assessments “[have] compromised [the TIP Report’s] credibility and effectiveness as a tool to influence government behavior.”210 The elimination of even the slightest hint of politicization is crucial to a more objective and legitimate TIP Report.211

F. Increasing Collaboration Between Countries

Sixth, the TIP Report should require countries to network with other governments and international organizations in order to collaborate on best practices to address trafficking. Tier 1 countries will serve as examples to lower ranked countries, using their experience to help other countries formulate strategies to combat trafficking internationally. For example, South Korea could work with the U.S. and countries from which the trafficked women originate, such as the Philippines or Russia, as part of a collaborative effort to gradually eliminate trafficking. Providing limited financial support to anti-trafficking NGOs and being open to the suggestions of these independent, on-the-ground organizations is also important in the process because most often, these organizations are the most informed and effective at combating trafficking. The TIP Report should offer an incentive if a country undertakes such a collaborative approach.

The TIP Report needs a major overhaul. The longer the TIP Report continues to be seen as unreliable, confusing, and biased, the less effective it will be. The TIP Report can continue to be used by the U.S. as a persuasive tool in combating trafficking issues internationally, but it must rigorously examine its functions.

209 McMichael, supra note 96.

210 Id. at 474.

CONCLUSION

Since 2001, the TIP Report has compiled data that is inherently difficult to collect and helped influence many countries’ implementation of anti-trafficking policies. To continue to stand as a reputable source of information and influence international policies, it must improve its methodology. An examination of reports on South Korea shows exactly how rankings are disconnected from the country’s actual situation at the time the reports are written. My recommendations aim to change the TIP Report process, so that the politicization of the report decreases; a country’s unique socio-cultural context is considered; and an evaluation of the TIP Report’s ranking standards be conducted.

At the core of this examination is an attempt to determine how the TIP Report can be more effective in persuading other countries to introduce or improve its anti-trafficking laws. Until the TIP Report’s guidelines are transparent and respected, countries will continue their involvement in the trafficking industry. The U.S. can certainly do more to strengthen the TIP Report and to strengthen its own anti-trafficking actions and interactions with other countries. If the U.S. ignores its own capability to eradicate domestic and international trafficking, it is not only hypocritical to criticize other countries for not doing more, but it also sets a bad example. The time has come for the U.S. to step up to the plate by reforming the TIP Report process and lead the rest of the world in combating trafficking, as it did ten years ago.