

April 2013

Time for a Tune-Up: Retooling the 2012 TIP Report in Order to Better Meet International Legal Research Standards

Ashley Feasley

Follow this and additional works at: <https://scholarship.law.ufl.edu/fjil>

Recommended Citation

Feasley, Ashley (2013) "Time for a Tune-Up: Retooling the 2012 TIP Report in Order to Better Meet International Legal Research Standards," *Florida Journal of International Law*: Vol. 25: Iss. 1, Article 2. Available at: <https://scholarship.law.ufl.edu/fjil/vol25/iss1/2>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Journal of International Law by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

ARTICLES

TIME FOR A TUNE-UP: RETOOLING THE 2012 TIP REPORT IN ORDER TO BETTER MEET INTERNATIONAL LEGAL RESEARCH STANDARDS

*Ashley Feasley**

I.	INTRODUCTION	6
II.	THE TIP REPORT NEEDS TO IMPROVE ITS DATA COLLECTION AND SOURCE AVAILABILITY.....	8
	A. <i>The TIP Report Needs to Include Citations and Sources</i>	9
	1. Other International Organizations with Human Trafficking Databases are Improving Their Data Availability.....	10
	2. TIP Report's Lack of Sources is Inconsistent with the Fourth 'P' of the 4P Paradigm-Partnership.....	16
	B. <i>The TIP Report Needs to Better Document its Methodology</i>	18
	1. The TIP Report has Improved Upon its Methodology Before: Countries Selected for Reporting in TIP Report.....	18
	2. Information on Data Collection Methodology is Not Easily Accessible	21
III.	TIP REPORT NEEDS TO ADOPT THE PALERMO PROTOCOL HUMAN TRAFFICKING DEFINITION AND USE IT AS THE STANDARD FOR ITS DATA COLLECTION BECAUSE THE CURRENT TVPA TRAFFICKING DEFINITION SEPARATES SEX TRAFFICKING FROM OTHER FORMS OF TRAFFICKING	23
IV.	CONCLUSION.....	26

* Ashley Feasley is the Migration Policy Advisor at the U.S. Conference of Catholic Bishops and has taught migration law at Fordham Law School. Ms. Feasley thanks Mark Capaldi of ECPAT International for his professional assistance and her husband, Mike Hyland, for his support.

I. INTRODUCTION

In the past twelve years there have been a multitude of international and national legal frameworks created to combat human trafficking. The United States has been at the forefront of combating human trafficking domestically through the ratification of comprehensive domestic legislation regarding trafficking, the Trafficking Victims Protection Act (TVPA).¹ The TVPA has also had a large international impact as it authorizes the State Department to draft reports about whether nations are complying with “minimal standards”² to eliminate trafficking, in the form of the Trafficking in Persons (TIP) Report.³ The TVPA established the Interagency Task Force to Monitor and Combat Trafficking,⁴ which was tasked with monitoring countries’ compliance with the requirements of the TVPA protocol.⁵ The Task Force, along with the State Department, release the TIP Report, which assigns a tiered ranking to countries that is determined by each country’s progress toward meeting the “minimum standards for the elimination of trafficking” set forth in TVPA § 108.⁶ The State Department uses the annual TIP Report as a diplomatic tool to pressure foreign governments into action. Additionally, the TIP Report is also used as an international trafficking indicator.⁷

With the TIP Report, the United States has wielded great influence internationally: goading, coaxing and threatening nations to improve and in many instances draft from scratch domestic trafficking policies and cooperate internationally to implement these policies to address trafficking. The TIP Report’s contribution to the evolution of a global consensus on the nature of the problem of trafficking is indisputable. The “open threat” of a negative grade on the TIP Report has provided nations with impetus for national reforms, including the criminalization of trafficking and the opening of shelters and other victim assistance centers.⁸ While the TIP Report’s international influence is remarkable, for the TIP Report itself to remain a viable monitoring and evaluation tool, it needs to be overhauled. This Article suggests two main areas

1. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 §§ 7101(a), 7101(b)(1), 7101(b)(3) [hereinafter TVPA].

2. *Id.* §§ 104, 108(a), 108(b).

3. *Id.* § 104.

4. 22 U.S.C. § 7103(a).

5. See U.S. Dep’t of State, Victims of Trafficking and Protection Act of 2000: Trafficking in Persons Report (2001).

6. The TPVA’s minimum standards guidelines are in 22 U.S.C. § 7106(a).

7. U.S. Sec’y of State Hillary Rodham Clinton, Remarks on the Release of the 10th Annual Trafficking in Persons Report (June 14, 2010), *available at* <http://www.state.gov/secretary/rm/2010/06/143113.htm>.

8. ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 485 (2010).

where the TIP Report can be improved upon to enhance its legitimacy as an international anti-trafficking indicator. First, the TIP Report should augment its data collection and documentation efforts including citations and sourcing information in the country assessments. Secondly, as the TIP Report purports to report on the current situation of trafficking throughout the world, it should be more reflective of international legal norms related to trafficking. Accordingly, for the drafting of the TIP Report the United States should adopt the definition of trafficking stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (“Palermo Protocol”).⁹ Adopting the Palermo Protocol definition will give greater authenticity to the validity of the TIP Report as a legitimate international trafficking indicator and research source. Additionally, adopting the Palermo Protocol definition will help yield better and more accurate data collection, as it will minimize the TVPA’s prioritization of sex trafficking and anti-prostitution initiatives, as compared to labor trafficking, which predominately drive data collection and victim identification efforts in the TIP Report. While the TVPA provides the legal standard and requirements¹⁰ of the TIP Report, the TVPA legislation reflects American domestic trafficking priorities and preferences and does not reflect universal international legal norms concerning human trafficking. Accordingly, the TIP Report should be more reflective of international legal standards such as the Palermo Protocol, which goes beyond the U.S. domestic focus on sex trafficking and prostitution.

The TIP Report has had a strong impact on combating international trafficking and encouraging institutional reform, and has admittedly improved from the first TIP Report issued in 2001. However, as the global fight against human trafficking has further developed in the last twelve years, the TIP Report has not fully developed alongside, particularly falling behind in its approach to data collection regarding human trafficking. The U.S. inability to adopt international human rights legal norms for its international trafficking reporting efforts, and opaque documentation and data collection practices has muddled the authority of the TIP Report as the leading international indicator of human trafficking. This Article aims to highlight that the TIP Report is a good and internationally credible monitoring tool, however the resources and research methods used to create the TIP Report need to be

9. U.N. General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, art. 3(a) (Nov. 15, 2000), available at <http://www.unhcr.org/refworld/docid/4720706c0.html> [hereinafter Palermo Protocol].

10. See TVPA §§ 104, 108–10.

made more transparent in order for the TIP Report to continue to be considered a reliable international data source on human trafficking.

I decided to write on this topic due to the difficulties I encounter in my work compiling country monitoring and evaluation reports on the status of commercial sexual exploitation of children (CSEC) for ECPAT International.¹¹ In drafting these reports one of the goals is to evaluate an individual country's recent progress or lack thereof in combatting CSEC. One of the most difficult obstacles faced in the drafting of these reports is finding accurate information, particularly accurate sources and statistics to use. The TIP Reports were and continue to be an important source of information for this process. The prominence of the TIP Report in my own research and in all international legal work on trafficking certainly highlights the value of the TIP Report as an important resource and a tremendous political force in the fight against global trafficking. However, upon greater inspection, many other practitioners and I have begun to notice that the TIP Reports sometimes contain inaccuracies, and there is no way of determining or testing the legitimacy of the information because of the lack of sources, citations or footnotes throughout the TIP Report. The frustration I encountered over this fact made me think: why are the TIP Reports considered a legitimate international data resource if they contain no sources to which information could be attributed? Where does the TIP Report get its information exactly? Why is the information provided by the TIP Report not always easily incorporated into international legal research on trafficking? This is not an article that examines the social research methods of the TIP Report. It is an Article that attempts to discuss high-level difficulties with the TIP Report in its current form, and inconsistencies I see in the TIP Report as a research tool and international indicator of human trafficking. The TIP Report is a valuable tool in raising awareness of human trafficking, but it needs to improve to remain relevant in this capacity.

II. THE TIP REPORT NEEDS TO IMPROVE ITS DATA COLLECTION AND SOURCE AVAILABILITY

The TIP Report needs to become more transparent in its documentation and sourcing in order to remain a viable international

11. ECPAT International is a global network of organizations and individuals working for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes. The ECPAT International Secretariat is the administrative and coordinating unit of ECPAT International and is based in Bangkok, Thailand. ECPAT International creates Agendas for Action (A4As) which are monitor and evaluation reports about the state of CSEC in countries.

report that measures the progress countries make toward eliminating human trafficking. The TIP Report's contribution to the evolution of a global consensus on the need to address human trafficking has been "indisputable."¹² Despite these accomplishments, however, the TIP Reports are controversial and have been the subject of consistent criticism.¹³ One of the most enduring criticisms has been that the empirical basis of the TIP Reports and their findings are unclear and demonstrate serious concerns with regards to the quality of the data and the methodology used in analyzing the data.¹⁴

A. The TIP Report Needs to Include Citations and Sources

There is no documentation given in any TIP Report published from 2001-2012. No citations or sources are given for any of the facts that are listed in the individual country narratives, the Victim Stories section, the Topics of Special Interest, nor in the Methodology sections.¹⁵ While

12. GALLAGHER, *supra* note 8, at 485.

13. See, e.g., Ayla Weiss, *Ten Years of Fighting Trafficking: Critiquing the Trafficking in Persons Reports Through the Case of South Korea*, 13 ASIAN-PAC. L. & POL'Y J. 304 (2012); T.K. Logan et al., *Understanding Human Trafficking in the United States*, 10 TRAUMA, VIOLENCE, & ABUSE: REV. J. 3 (2009); Jacqueline Berman, *The Left, The Right and the Prostitute: The Making of U.S. Anti-trafficking in Persons Policy*, 14 TUL. J. INT'L & COMP. L. 269, (2006); Joyce Koo Dalrymple, *Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451 (2005).

14. See U.S. Government Accountability Office, *Human Trafficking: Better Data, Strategy and Reporting Needed to Enhance UN Anti-Trafficking Efforts Abroad* 2-4 (July 2006), available at <http://www.gao.gov/new.items/do6825.pdf> [hereinafter 2006 GAO Report]; Anne T. Gallagher, *Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the U.S. Trafficking in Persons Reports* 3 (Dec. 2010), available at http://works.bepress.com/anne_gallagher/16.

15. The below citations are TIP Reports that range from 2001-2012 and can be referred to as TIP Reports as a whole with the referenced years after: U.S. Dep't of State, *Trafficking in Persons Report* 4 (2001), available at <http://www.state.gov/j/tip/rls/tiprpt/2001/index.htm>; U.S. Dep't of State, *Trafficking in Persons Report* 8 (2002), available at <http://www.state.gov/j/tip/rls/tiprpt/2002/index.htm> [hereinafter TIP Report 2002]; U.S. Dep't of State, *Trafficking in Persons Report* 14 (2003), available at <http://www.state.gov/j/tip/rls/tiprpt/2003/index.htm> [hereinafter TIP Report 2003]; U.S. Dep't of State, *Trafficking in Persons Report* 30 (2004), available at <http://www.state.gov/j/tip/rls/tiprpt/2004/index.htm> [hereinafter TIP Report 2004]; U.S. Dep't of State, *Trafficking in Persons Report* 30 (2005), available at <http://www.state.gov/j/tip/rls/tiprpt/2005/index.htm> [hereinafter TIP Report 2005]; U.S. Dep't of State, *Trafficking in Persons Report* 29 (2006), available at <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> [hereinafter TIP Report 2006]; U.S. Dep't of State, *Trafficking in Persons Report* 12 (2007), available at <http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm> [hereinafter TIP Report 2007]; U.S. Dep't of State, *Trafficking in Persons Report* 12 (2008), available at <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm> [hereinafter TIP Report 2008]; U.S. Dep't of State, *Trafficking in Persons Report* (2009), available at <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> [hereinafter TIP Report 2009]; U.S. Dep't of State, *Trafficking in Persons Report* (2010), available at <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm> [hereinafter TIP

those involved in the human trafficking field, including the State Department, have repeatedly mentioned the covert and ambiguous nature of human trafficking as a leading reason for the lack of definite figures of the number of trafficking victims globally and domestically,¹⁶ it seems that this is not a legitimate reason for the U.S. State Department to not include any source documentation in any TIP Report ever published.

1. Other International Organizations with Human Trafficking Databases are Improving Their Data Availability

The U.S. Government Accountability Office (GAO) criticized the TIP Report's data collection in 2006 when it released a report which questioned the methodology and reliability of official U.S. State Department figures.¹⁷ The GAO Report reviewed the status of U.S. international efforts to combat trafficking in persons, and in doing so examined (1) the estimates of the extent of global trafficking in persons, (2) the government's strategy for combatting trafficking in persons abroad, and (3) the State Department's process for evaluating foreign government's anti-trafficking efforts.¹⁸ It concluded that the quality of the existing country level data varies due to limited availability, reliability and comparability¹⁹ and that the "U.S. government has not yet established an effective mechanism for estimating the number of [human trafficking] victims or for conducting ongoing analysis of trafficking related data that resides within various government [entities]."²⁰ To this point, a 2010 Congressional Research Service paper, *Trafficking in Persons: U.S. Policy and Issues for Congress*, (2010 CRS Paper) stated that the figures provided by other international organizations with comparable global trafficking databases are unlikely to be any more accurate.²¹ This claim made by the CRS is untrue. The 2006 GAO Report conducted an extensive analysis of the global human trafficking databases developed and maintained by the other international organizations including the International Organization for

Report 2010]; U.S. Department of State, *2011 Trafficking in Persons Report - United States of America* (June 27, 2011), available at <http://www.unhcr.org/refworld/docid/4e12ee393c.html> [hereinafter TIP Report 2011]; U.S. Dep't of State, *Trafficking in Persons Report* (2012), available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm> [hereinafter TIP Report 2012].

16. See 2006 GAO Report, *supra* note 14, at 3.

17. See *id.*

18. *Id.* at 2.

19. *Id.*

20. *Id.* at 3.

21. Liana Sun Wyler & Alison Siskin, *Trafficking in Persons: U.S. Policy and Issues for Congress*, CONG. RES. SERV. 3 (Feb. 18, 2010), available at <http://fpc.state.gov/documents/organization/139278.pdf>.

Migration (IOM), the International Labor Organization (ILO) and the United Nations Office on Drugs and Crime (UNODC) as well as the State Department's TIP Report.²² In the 2006 GAO Report, the U.S.'s human trafficking data collection was characterized as "fragmented," and the IOM's database was described as "providing [a] useful systematic profile of victims and traffickers across countries."²³ Since 2006, other international organizations with comparable human trafficking databases have been revamping their respective trafficking reports and documents to include citations, sources and extensive sections on data collection and methodology.²⁴ A brief explanation of each report below will illustrate the changes made with regard to documentation and data collection.

a. International Labour Organization: The ILO 2012 Global Estimate of Forced Labour

The ILO publishes and collects data on all forms of human trafficking, but it particularly focuses on forced labor issues. Recently the ILO worked to improve its data collection, methodology, and transparency by including sourcing in its major report which addresses the global status of forced labor.²⁵ The report examines the global status of forced labor of adults.²⁶ In 2012, the ILO issued a major report on human trafficking that addressed the ILO's most recent global estimate

22. See 2006 GAO Report, *supra* note 14. The International Organization for Migration (IOM) is a multilateral organization that works with migrants and governments to respond to international migration challenges. See *id.* at 2. The International Labour Organization is a U.N. agency that promotes human and labor rights. *Id.*; see also *Special Action Programme to Combat Forced Labour*, Int'l Labour Org., <http://www.ilo.org/sapfl/lang--en/index.htm> (last visited Oct. 19, 2012). U.N. Office on Drug and Crime is a U.N. agency that assists Member States in combating drugs, crime, and terrorism. 2006 GAO Report, *supra* note 14, at 2. See also UNODC on Human Trafficking and Migrant Smuggling, U.N. Office on Drug & Crime, <http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menuside> (last visited Oct. 19, 2012).

23. See 2006 GAO Report, *supra* note 14, at 10.

24. See INT'L LABOUR ORG., ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS AND METHODOLOGY 11 (2012), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf; see also *IOM Case Data on Human Trafficking Global Figures & Trends*, INT'L ORG. FOR MIGRATION 3-6 (Feb. 2012), available at <http://ranisvoice.org/assets/media/report/IOM-Global-Trafficking-Data-on-Assisted-Cases-2012.pdf>; *Global Report on Trafficking in Persons*, UNODC, Feb. 2009, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

25. Press Release, New ILO Global Estimate of Forced Labour: 20.9 Million Victims, Int'l Labour Org. (June 1, 2012), available at http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_182109/lang--en/index.htm.

26. See *ILO 2012 Global Estimate Summary*, Int'l Labour Org. 4 (June 1, 2012), available at http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_181953/lang--en/index.htm.

of forced labor and included improved data collection and explanation of the report's social research methodology in the form of the Global Estimate of Forced Labour: Results and Methodology.²⁷ The Global Estimate of Forced Labour: Results and Methodology is a companion report to the ILO's 2012 Global Estimate of Forced Labour Factsheet, Questions and Answers Related to Labour Figures, and other corresponding documentation. The Global Estimate of Forced Labour and its corresponding documentation is similar in its overall organization to the post-2009 TIP Reports, which also are comprised of several different corresponding articles and pieces of information which make up the whole TIP Report.²⁸ While the Global Estimate of Forced Labour document suite does not assess the status of forced labor in every individual country, as the TIP Report does with its annual country reports, it does include a detailed methodology section, and citations and sourcing throughout the report.²⁹ The Global Estimate Report, most notably, has an extensive description of the methodology and a detailed discussion on information accuracy and sourcing. For the calculations in the Global Estimate of Forced Labour Report, as well as the 2012 Global Estimate of Forced Labour Results and Methodology, the ILO developed a revised methodology in collaboration with a peer review group, which was comprised of four experts in the subject of forced labor and human trafficking.³⁰ The peer review group format is the same approach used by the ILO for its 2005 Global Estimate for Forced Labor, but the 2012 Global Estimate "incorporates certain improvements derived from ILO's own experience in the period since 2005, . . . the availability of new primary data sources, feedback received from external experts on the 2005 methodology, and suggestions made by the ILO's statistical consultants and the peer reviewers."³¹ The ILO's changes have been noted by the TIP Report/State Department itself. In the 2009 TIP Report, the State Department used data provided by the ILO for the global scope of human trafficking figures.³² Additionally, the U.S. Department of Labor commended the ILO for the "transparency of its research process and for its commitment to improving survey methodologies to estimate

27. See *id.*; see also INT'L LABOUR ORG., *supra* note 24, at 4.

28. *Compare Trafficking in Persons Report*, U.S. Dep't of State (2010), <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm>, 2011 *Trafficking in Persons Rep. United States of America*, U.S. Dep't of State (June 27, 2011), <http://www.unhcr.org/refworld/docid/4e12ee393c.html>, and *Trafficking in Persons Report*, U.S. Dep't of State (2012), <http://www.state.gov/j/tip/rls/tiprpt/2012/>.

29. See *ILO Global Estimate of Forced Labour: Results and Methodology*, Int'l Labour Org. (2010), <http://www.ilo.org/wcmsp5/groups/>.

30. *Id.* at 11.

31. *Id.*

32. Gallagher, *supra* note 14, at 381.

hidden and vulnerable populations.”³³

b. U.N. Office of Drugs and Crime: The Global Report on
Trafficking in Persons

The UNODC issues a report entitled the *Global Report on Trafficking in Persons* (UNODC Global Report).³⁴ The most recent edition is from 2009. Like the TIP Report, the UNODC Global Report contains an analysis on the state of human trafficking in every country.³⁵ Unlike the TIP Report, the UNODC Global Report does not rank the countries in a comparative matrix/tier system for their cooperation, or lack thereof, in the fight against human trafficking, instead focusing on the country data aggregately. The UNODC Global Report extensively discusses the type of data collection that occurs in the drafting process of its report and also lists and discusses the four headings that were used in the gathering of human trafficking information: (1) the legislative and administrative framework; (2) the criminal justice response; (3) the victim services; and (4) data on the markets that absorb human trafficking victims and data on the at-risk populations in the countries of origin.³⁶ The UNODC Global Report also includes the data indicators that it used to compile information for the report. For example, the UNODC Global Report states that the:

(1) Number of offences of “trafficking in persons” recorded by the police or the criminal justice system by year; (2) Number of persons arrested or identified as suspects of “trafficking in persons” by the police or the criminal justice system by gender and year; (3) Number of persons against whom prosecution was commenced for “trafficking in persons” by gender and year; and (4) Number of persons convicted at first instance for “trafficking in persons” by gender, citizenship, type of exploitation committed and year,

are all indicators for the criminal justice headings³⁷ that “may be particularly relevant for cross-national data collection and exchange.”³⁸

While the UNODC Global Report covers all countries individually,

33. Press Release, Int’l Labour Org., The U.S. Department of Labour Commends the ILO for its Global Estimate of Forced Labour (June 5, 2012), available at http://www.ilo.org/sapfl/News/WCMS_182302/lang--en/index.htm.

34. UNODC GLOBAL REPORT ON TRAFFICKING IN PERSONS (S. Chawla et al. eds., 2009), available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

35. *Id.*

36. *Id.* at 71.

37. *Id.* at 72.

38. *Id.*

like the TIP Report, the volume of information available for each country is not uniform. For example, the UNODC Global Report has minimal information (approximately one to two paragraphs) listed on the state of human trafficking in Algeria, and has approximately two pages on the state of human trafficking in Nigeria, including numerous graphs and numerical figures.³⁹ Every one of the graphs included in the UNODC Global Reports individual country reports has a corresponding source and citation.⁴⁰ The UNODC Global Report on Trafficking in Persons is the most similar in format to the TIP Report, and it includes citations, sources and extensive information about the data collection process.

c. International Organization for Migration: IOM 2011 Case Data on Human Trafficking: Global Figures and Trends

The IOM's 2011 Case Data on Human Trafficking: Global Figures and Trends (IOM 2011 Report), published in February 2012, is a compilation of information on all human trafficking cases overseen by the IOM in 2011 that have been assisted by the U.S. State Department.⁴¹ The IOM database includes human trafficking cases that have been identified through the IOM's Assisted Voluntary Return and Reintegration, Resettlement, and Family Reunification Programs.⁴² The IOM 2011 Report details the methodological approach that it uses to collect the data which includes: (1) the IOM MIMOSA-based Human Trafficking database and (2) the sister core variable approach.⁴³ Additionally, the IOM 2011 Report details how the human trafficking information in the report is collected: primarily through screening interviews and assistance and aid interviews.⁴⁴ These interviews use the IOM Screening and Assistance Questionnaires which cover four main overarching sections: (1) the profile of the victim of trafficking; (2) the human trafficking process; (3) exploitation; and (4) response to the victims.⁴⁵ The IOM 2011 Report does not contain any individual country narratives or updates, but instead has aggregate trafficking information broken down by region, gender, age and type of

39. The UNODC Global Report on Trafficking in Persons reviews the countries according to region. *See id.* at 79, 105–06.

40. *See generally id.*

41. IOM 2011 CASE DATA ON HUMAN TRAFFICKING: GLOBAL FIGURES & TRENDS 3 (Anvar Serojtdinov ed., 2012), available at <http://ranisvoice.org/assets/media/report/IOM-Global-Trafficking-Data-on-Assisted-Cases-2012.pdf> [hereinafter IOM 2011 CASE DATA ON HUMAN TRAFFICKING].

42. *Id.*

43. *Id.*

44. *Id.* at 3–4.

45. *Id.*

trafficking.⁴⁶ The data included in the IOM 2011 Report contains sources, although most of the sources are self-referential.⁴⁷ Interestingly, this particular report is created with assistance from the U.S. State Department and includes information that is used in the TIP Report. However, it is not formally cited by the TIP Report as a source, nor is the information collection and methodology information included in the TIP Report Methodology section.⁴⁸ That the U.S. State Department assists in creating the IOM Report, which includes a much more detailed methodology and information section than what is published in the current TIP Report, illustrates that commitment to improved data collection within the TIP Report is possible.

As illustrated, the IOL, IOM, and UNODC are making efforts to improve their data collection, and documentation and methodology information. Many limitations related to the documentation of sources remain, such as the UNODC's uneven country reporting exhibited in the UNODC Global Report. While some of the sources listed in these reports are self-referential (in particular the IOM 2011 Report), by including sources and documentation there are possibilities for researchers to look up these additional sources for more context and information. Currently this is not possible with the TIP Report.

It is important to note that the TIP Report is the only report of its kind that is delivered annually. The reports issued by the ILO and the UNODC are not annual reports,⁴⁹ and the IOM Report is created with help from the U.S. State Department and does not report on individual country assessments.⁵⁰ This illustrates: (1) the enormity of the U.S. government and the State Department's task in issuing the TIP Report annually; and (2) why the TIP Report is considered a leading and legitimate international human trafficking indicator. But the lack of documentation in the TIP Reports diminishes that accomplishment and the legitimacy of the TIP Report. By being the only government in the world that has taken on international reporting and monitoring of each country's commitment to fighting human trafficking, the United States has opened itself up to questions about its data collection and its authority to issue such a report. Many scholars have articulated their disappointment given that few countries have the same commitment to attacking and monitoring human trafficking as the United States. Coupled with the resources to act on that commitment, "one would expect that data in the United States would be equal or superior to other

46. *Id.* at 3.

47. *See, e.g., id.* at 8 fig.1.

48. *Id.* at 3 n.3

49. *See* INT'L LABOUR ORG., *supra* note 24; *see also* UNODC GLOBAL REPORT ON TRAFFICKING IN PERSONS, *supra* note 34.

50. IOM 2011 CASE DATA ON HUMAN TRAFFICKING, *supra* note 41, at 3.

countries. Needless, there is little basis for confidence in U.S. local figures.”⁵¹ To counter such criticisms, the TIP Report needs to augment its data collection efforts so that they are on par with the other organizations that have major global human trafficking databases.

2. TIP Report’s Lack of Sources is Inconsistent with the Fourth ‘P’ of the 4P Paradigm-Partnership

In addition to the lack of citations, the TIP Report has consistently not credited any particular source used in compiling the TIP Report. The 2012 TIP Report states that the TIP Report was prepared “using information from U.S. embassies, government officials, nongovernmental and international organizations, published reports, news articles, academic studies, research trips to every region of the world, and information submitted to tipreport@state.gov.”⁵² This statement itself or a similar version is present in every one of the 12 published TIP Reports.⁵³ Also, there is no information specifically crediting and identifying particular cooperating organizations in the TIP Report Methodology sections. The State Department maintains that diplomatic posts and domestic agencies report on the global human trafficking situation based on thorough research that includes “meetings with a wide variety of government officials, local and international NGO representatives, officials of international organizations, journalists, academics, and survivors.”⁵⁴ It is likely the State Department consulted many of the prominent, high-level international organizations that work on human trafficking issues, such as UNICEF and ILO, and the State Department admittedly uses the information provided by the IOM in its Global Reports on Trafficking⁵⁵ to complete research. This omission of sources is difficult to overcome. But it can be corrected by examining the websites of these international organizations. However, the omission of local NGOs and other sources that likely provide specific information for the individual country narratives is not something than can be easily discovered or replicated by researchers without extensive knowledge of human trafficking NGOs in every country. As a result, the omission of local on-the-ground NGOs and other analogous sources exposes a glaring deficiency in the TIP Report’s data collection and sourcing

51. David Feinberg, *Trafficking in Numbers: The Social Construction of Human Trafficking Data* [hereinafter *Trafficking in Numbers*], in *SEX, DRUGS, AND BODY COUNTS* 56 (Peter Andreas & Kelly M. Greenhill eds., 2010).

52. U.S. Dep’t of State, *Trafficking in Persons Report “Methodology and Tier Placements”* (2012), <http://www.state.gov/documents/organization/192587.pdf>.

53. See TIP Reports 2001-2012, *supra* note 15

54. U.S. Dep’t of State, *supra* note 52.

55. IOM 2011 CASE DATA ON HUMAN TRAFFICKING, *supra* note 41.

efforts. It is important to highlight local NGOs that are working to help create these reports and highlight particular situations in the countries. Local NGOs as well as all organizations who participate in the TIP Report participation need to be identified because the identification of these sources works to encourage partnerships and cooperation in the global fight against human trafficking. Greater transparency about the sources that the State Department collects data from and works with to draft the TIP Report country narratives will help give the TIP Report greater credibility as an international legal source and indicator of human trafficking. Additionally, listing the global partners used to draft the TIP Report will simultaneously promote the “fourth P,” partnership, of the U.S. State Department’s 4P paradigm of prevention, protection and prosecution and partnership in the fight against human trafficking.⁵⁶ While the State Department has made great efforts to highlight the importance of cooperation and collaboration in the global fight against human trafficking,⁵⁷ it chooses to not name the sources and partners it works with throughout the world to prepare the reports. In mentioning the importance of partnership in the drafting of the TIP Report, the State Department even lists examples of possible collaboration or partnerships⁵⁸ without mentioning the names of the actual partners. It

56. See, e.g., Hilary Rodham Clinton, Introduction to 2010 TIP Report, *available at* <http://www.state.gov/documents/organization/142980.pdf>. The State Department has employed a “3P” paradigm—prevention, protection, and prosecution—which continues to serve as the fundamental international framework used by the United States and the world to combat contemporary forms of slavery. See *Partnerships*, U.S. Dep’t of State, <http://www.state.gov/j/tip/4p/partner/index.htm> (last visited Oct. 19, 2012). Announced by Secretary of State Clinton in 2009, the “fourth P”—partnership—serves as a pathway to progress in the effort against modern slavery. *Id.* This message has evolved to highlight Secretary Clinton’s focus on promoting partnerships at the regional level, public-private public partnerships between communities and businesses, as well as the development of collaborative task human trafficking forces. *Id.*

57. “Combating human trafficking requires the expertise, resources and efforts of many individuals and entities. It is a complex, multi-faceted issue requiring a comprehensive response of government and nongovernment entities in such areas as human rights, labor and employment, health and services, and law enforcement. It requires partnerships among all of these entities to have a positive impact. Partnerships augment efforts by bringing together diverse experience, amplifying messages, and leveraging resources, thereby accomplishing more together than any one entity or sector would be able to alone.” *Id.*

58. In the 4Ps—Partnership Statement on the TIP Report/State Department website, the State Department mentions three examples of possible collaboration:

- Task forces among law enforcement agencies that cooperate to share intelligence, work across jurisdictions, and coordinate across borders;
- Alliances between governments and business associations that seek to craft protocols and establish compliance mechanisms for slavery-free supply chains; and,
- Regional partnerships among nations, such as the anti-human trafficking efforts of the Organization of American States (OAS) or the European Union

would greatly aid the efforts of the State Department to expand upon the Partnership aspect of the TIP Report as well as the TIP Reports' legitimacy as an international indicator of human trafficking if the names and sources of the other partners were disclosed.

B. The TIP Report Needs to Better Document its Methodology

Many criticisms about the accuracy of the TIP Reports have centered on the fluctuations in the TIP Reports' estimates of the number of trafficked individuals in the United States and global and methodological inconsistencies.⁵⁹ This Article does not attempt to revisit the debates about the statistics on the number of trafficked victims worldwide and domestically, but instead aims to suggest overall improvement areas in the use of the TIP Report as an international human trafficking research source. The TIP Report does not include enough information describing its methodology. Additionally, the type of social research method used in creating the TIP Report is not even mentioned within the body of the TIP Report. The methodology section could actually be the area where the State Department makes the most improvements to the TIP Report. The TIP Report has improved its methodology regarding how the countries that were reported were actually selected. While the State Department did change its methodology relating to how it selected countries to report on, there has been little improvement with regards to the State Department openly disclosing the research methodology it uses within the Report itself.

1. The TIP Report has Improved Upon its Methodology Before: Countries Selected for Reporting in TIP Report

The original 2001 TIP Report only covered the status of anti-trafficking efforts of certain countries and did not explain in specific detail how those countries were selected. The 2001 TIP Report states the State Department used a "rigorous methodology" to decide which countries to report on, but gave no further information.⁶⁰ From 2001-2008, the TIP Report covered only "those countries determined to have a significant number of victims of severe forms of trafficking."⁶¹ The methodology for determining which countries were selected was a two-

(EU).

Id.

59. See, e.g., Johnny McGaha & Amanda Evans, *Where Are The Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239 (2009).

60. U.S. Dep't of State, *Trafficking in Persons Report 2001 Methodology* 4 (2001), available at <http://www.state.gov/j/tip/rls/tiprpt/2001/index.htm>.

61. *Id.* Introduction.

step process which consisted of (1) a focus on whether a country had a “significant number” of severe trafficking victims and then (2) once it was determined that the country at issue had a “significant number of victims” ranking the country in a specific tier as mandated by the TVPA.⁶² “Step 1,” determining whether a country would be on the list of countries to be reported on depended on whether or not the country was a “country of origin, transit, or destination for a significant number” of trafficked victims.⁶³ In order to support a finding that the country had a “significant number of victims” the State Department required “credible reporting” and “only numbers [of victims] in the hundreds or higher were considered significant.”⁶⁴ The 2001-2008 TIP Reports selected countries to report based on the “significant number” threshold of countries having “100 or more severe trafficking victims.”⁶⁵

The determination of which countries were to be reported based on the “significant number of victims” methodology was problematic. First, the decision that only certain countries would be subject to the TIP Report reporting made the selections appear, at least initially, politically-motivated and arbitrary.⁶⁶ Secondly, the use of the phrase “countries with a significant number of victims of severe trafficking” was unclear. Without any additional information provided, “100 victims” seemed to be a number that did not take into account the aggregate population of a country or the number of trafficking victims as compared to the overall population. In short, the number itself was arbitrary and benefitted countries with larger populations.

Additionally, the use of this phrase was misleading because there was no definition or criteria to identify a “victim” that would comprise one of the 100 victims that would make the “significant amount” that would initiate reporting on the specific country within the TIP Report. There is a definition of “Trafficking Victim in the United States” in TVPA § 107 (b)(1)(e), but there is no additional clarification as to what is an international victim of severe trafficking for the purpose of the 2001-2008 TIP Reports.⁶⁷ Without any legislative guidelines or

62. See TIP Reports 2001-2008, *supra* note 15.

63. *Id.*

64. *Id.*

65. *Id.*

66. For an analysis of how the country selections for the 2001-2008 TIP Reports could be viewed by scholars as politically motivated, see David Feingold’s discussion of the TIP Report’s placement of Laos in the 2006 TIP Report. Feingold, *Trafficking in Numbers*, in *SEX, DRUGS, AND BODY COUNTS*, *supra* note 51, at 64–65.

67. While an argument can be made that TVPA § 107(b)(1)(c), which defines trafficking victims in America could be applied to trafficking victims in international settings, the definition is not applicable to all international trafficking victims. Section 107(b)(1)(c) contains two requirements for being certified a victim:

definitions, being a victim of severe trafficking could mean a variety of different things: that the person was certified by a foreign government or governmental program as being a victim; that the person was certified by an NGO as a victim; that the person was certified by a U.S. governmental program or partnership as a trafficking victim; that the person received victim status upon agreeing to assist in the prosecution of a trafficker; or that there was a conviction of a trafficker related to the victim's cooperation. Accordingly, this description was too vague to be a measuring unit that determined whether a country would be included in the TIP Report.

Perhaps Congress and the State Department realized this as well, because in 2008, the TVPA Reauthorization amended this language in the TVPA, and the 2009 TIP Report began using a new standard to decide what countries were to be included in the annual report.⁶⁸ Section 106(1) of the 2008 TVPA Reauthorization Act struck the language requiring a "significant number" of victims of severe trafficking.⁶⁹ The 2009 TIP Report included reports on "countries of origin, transit, or destination for trafficking victims."⁷⁰ The 2010 Report improved upon 2009 Report, and included every country without mention to specific criteria.⁷¹ The 2010 TIP Report was also the first Report to include a country narrative on the United States.⁷² The decision was supported by NGOs worldwide.⁷³ Since 2010, the U.S. TIP Report has reported on all countries' status in the fight against human trafficking. The TIP Report's evolution in its methodology for

For the purposes of this paragraph, the term "victim of a severe form of trafficking in persons" means only a person—(i) who has been subjected to an act or practice described in section 103(8) as in effect on the date of the enactment of this Act; and (ii)(I) who has not attained 18 years of age; or (II) who is the subject of a certification under subparagraph (E).

TVPA § 107(b)(1)(E). Section 107(b)(1)(E) refers to certification process by the federal government for victims of severe trafficking who live in the U.S. and are cooperating with the government. Thus, while foreign children who were designated victims of severe trafficking could plausibly be identified by § 107(b)(1)(c) it is clear that foreign adult victims of severe trafficking were not meant to be included in TVPA § 107(b)(1)(c).

68. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 9* (2009), available at <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm>.

69. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. Res. 7311, 110th Cong. (2008) (enacted), § 106(1), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h7311ih.txt.pdf [hereinafter 2008 TVPA Reauthorization].

70. U.S. DEP'T OF STATE, *supra* note 68, at 9.

71. *Id.* Introduction & Methodology.

72. *Id.*

73. See, e.g., *U.S. Ranked on Human Trafficking Report for First Time* (June 15, 2010), available at <http://www.humantrafficking.org/updates/875>.

the selection of countries to be reported on reflects its flexibility as an international indicator of human trafficking, and gives anecdotal evidence that the State Department has been receptive to improving upon its methodology in the past and that it hopefully will augment more standards and methodological points of the TIP Reports in the future.

2. Information on Data Collection Methodology is Not Easily Accessible

While the State Department's changes to the TIP Report's country selection process resulted in a more transparent methodology, information on how data is collected and utilized remains a weak point for the reliability and integrity of the TIP Report. Since the inception of the TIP Report, the reliability of the data collected and processed by the TIP Report has been called into question,⁷⁴ yet no single TIP Report contains a detailed description of the methodology that was used to organize, track and disseminate the data collected.⁷⁵ While more recent TIP Reports, such as the ones from 2010-2012, claim to reflect a more rigorous methodology, it is unclear to even established human trafficking experts how the new information "operates in practice and to what extent it influences the direction of country assessments."⁷⁶ Moreover, the GAO criticized the lack of availability of information on the TIP Report methodology in its 2006 Report, stating that in a human trafficking workshop in November 2005, the State Department provided a one page overview of its methodology, which allowed for only a very limited peer review.⁷⁷ In researching this Article and examining the twelve TIP Reports, I did not come up with more than basic information about the data collection methodology. I only discovered the type of social research method that was used in preparing the TIP Report through my research and examination of law review articles, books, and the UNESCO Trafficking Statistics Report.⁷⁸

The UNESCO Trafficking Statistics Project (Project) examined the accuracy of the social science research methodology and data used in the TIP Reports, and the ILO, IOM, and UNODC human trafficking

74. See, e.g., 2006 GAO Report, *supra* note 14, at 10; Feingold, *Trafficking in Numbers, in SEX, DRUGS, AND BODY COUNTS*, *supra* note 51; McGaha & Evans, *supra* note 59, at 239; Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 345 (2007).

75. See TIP Reports 2001-2012, *supra* note 15.

76. Gallagher, *supra* note 14.

77. 2006 GAO Report, *supra* note 14, at 13.

78. Gallagher, *supra* note 14; McGaha & Evans, *supra* note 59, at 239.

reports and databases.⁷⁹ The Project determined that the TIP Report data was collected and collated using the Monte Carlo method of simulation.⁸⁰ The Monte Carlo method provides the basis for the numbers in the TIP reports, including the estimated figure for number trafficked globally.⁸¹ This method replaces unknown or missing data by making use of plausible values for unknown information, basically creating estimates of the unknown information.⁸² The UNESCO Trafficking Statistics Project claimed that the TIP Report estimation using this method would depend on several quantitative criteria, such as age and sex, while neglecting other important qualitative criteria such as “knowledge of migration network,” and “cultural factors.”⁸³ While the Monte Carlo methodology is legitimate, the problem with its use in the TIP Report is that the TIP Report does not include any examples of its qualitative criteria, or the weighting it gives to these factors.⁸⁴ Given that the current TIP Report publishes country assessments on every country in the world, certain country and even regional differences should be accounted for, and it is not known whether these differences are addressed in this data collection and methodology.⁸⁵ While admittedly the methodologies used by other international organizations that have comparable human trafficking databases, namely the ILO, IOM, and UNODC, have flaws,⁸⁶ these organizations are beginning to include the methodologies and make them available for professional scrutiny.⁸⁷ While no methodology is perfect, including increased information about the methodology within the TIP Report itself would allow for greater transparency and comparison and would enable a

79. UNESCO, TRAFFICKING STATISTICS PROJECT: DATA COMPARISON SHEETS, TRAFFICKING ESTIMATES, at 8 n.1, *available at* <http://www.unescobkk.org/culture/cultural-diversity/trafficking-and-hiv-aids-project/projects/trafficking-statistics-project/data-comparison-sheet/>.

80. The Monte Carlo simulation is a computerized mathematical technique that performs risk analysis by building models of possible results by substituting a range of values for any factor that has uncertainty. It then calculates results over multiple repetitions, each time using a different set of random values from the probability functions. MARKVO CHAIN, MONTE CARLO IN PRACTICE (Walter R. Gilks et al. eds., 1996) [hereinafter MARKVO].

81. UNESCO, *supra* note 79. It is important to note that none of the TIP Reports published thus far include information about the actual social research methodology used to collate and analyze data. *See also* TIP Reports 2001-2012, *supra* note 15.

82. MARKVO, *supra* note 80, at 1-2.

83. UNESCO, *supra* note 79.

84. *Id.*; *see also* TIP Reports 2001-2012, *supra* note 15.

85. *See, e.g.,* Ayla Weiss, *Ten Years of Fighting Trafficking: Critiquing the Trafficking in Persons Report Through The Case of South Korea*, 13 ASIAN-PAC. L. & POL’Y J. 304, 315 (2012). The author states that the TIP Reporting does not adequately take into account a country’s socio-cultural background and other related factors.

86. UNESCO, *supra* note 79.

87. *See* INT’L LABOUR ORG., *supra* note 24, at 11-13.

better assessment of the strengths and weaknesses of the TIP Report data collection.

III. TIP REPORT NEEDS TO ADOPT THE PALERMO PROTOCOL HUMAN TRAFFICKING DEFINITION AND USE IT AS THE STANDARD FOR ITS DATA COLLECTION BECAUSE THE CURRENT TVPA TRAFFICKING DEFINITION SEPARATES SEX TRAFFICKING FROM OTHER FORMS OF TRAFFICKING

In addition to augmenting its sourcing, documentation and data collection processes, the United States should adopt the definition of human trafficking set forth in article 3 of the Palermo Protocol as the standard definition of trafficking for TIP Reports data collection and reporting purposes.⁸⁸ The Palermo Protocol definition of human trafficking is an internationally accepted human rights norm⁸⁹ that the United States and 150 other countries worldwide have ratified.⁹⁰ Adopting the internationally accepted definition of human trafficking will help the TIP Report gain credibility as a legitimate international legal source. The other organizations that have comparable global human trafficking databases all use the definition of trafficking found in the Palermo Protocol.⁹¹ Accordingly adopting the accepted international legal definition would make data collection and methodology comparisons of the other comparable reports more legitimate and useful. The TVPA and Palermo Protocol human trafficking definitions are different enough that they affect the type of trafficking data collected. As described in detail below, these differences between the two definitions are structural and compromise the legitimacy of the TIP Report as a viable international research tool and a global human trafficking indicator.

Since the inception of the TIP Reports, the definition of human trafficking used in the report has come from the TVPA. The definition is important because it is the guideline as to what will be considered

88. See Palermo Protocol, *supra* note 9, art. 3(a). The Palermo Protocol is a protocol to the Convention against Transnational Organized Crime. Ratification of the Palermo Protocol commits states to the prevention of and fight against human trafficking in persons, protecting and assisting victims of trafficking, and promoting cooperation among states.

89. See, e.g., GALLAGHER, *supra* note 8.

90. U.N. TREATY COLLECTION, PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (New York, Nov. 2000). For a list of ratifications, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en. The United States ratified the Palermo Protocol on November 3, 2005.

91. See 2006 GAO Report, *supra* note 14, at 13 tbl.2.

human trafficking and determines what type of data will be collected. Under section 104(a) of the TVPA, the TIP Report is to report on and describe the extent and nature of “severe forms of trafficking.”⁹² Section 103(8)(A)-(B) defines “severe forms of trafficking in persons” to be:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁹³

The definition of human trafficking under article 3(a) of the Palermo Protocol defines trafficking as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹⁴

While both the definition of severe forms of human trafficking in the TVPA § 103(8)(A)-(B) and the definition of trafficking found in article 3(a) of the Palermo Protocol are broad in their scope, these definitions are fundamentally different in their approaches to identifying and defining sex trafficking and sex trafficking victims. The TVPA, by separating sex trafficking from other forms of human trafficking in the TVPA, prioritized the treatment and handling of sex trafficking. This policy preference can be observed in the domestic debate over the definition of human trafficking in the TVPA in 2000 when U.S. policymakers prioritized sexual exploitation of women and children over various forms of labor trafficking.⁹⁵

Accordingly, TVPA § 103(8)(A) separates the treatment of sex

92. TVPA § 104(a).

93. *Id.* § 103(9) defines “sex trafficking” as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. *Id.* § 103(8) (A)-(B).

94. Palermo Protocol, *supra* note 9, art. 3(a).

95. TVPA § 103(8)(A).

trafficking from other forms of human trafficking, whereas article 3(a) of the Palermo Protocol addresses all forms of trafficking together.⁹⁶ The TVPA also places a requirement of fraud, force, or coercion for an act of sex trafficking to be considered a severe form of human trafficking.⁹⁷ Under the TVPA, “sex trafficking” is simply “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”⁹⁸ Without the “force, fraud, or coercion” requirement, sex trafficking is not considered a “severe form” of human trafficking.⁹⁹ In essence, under the TVPA definition, a reported incidence of sex trafficking must be effected through “force, fraud, or coercion” or the act must be perpetrated upon a person “who has not attained 18 years of age” to qualify as a “severe form of trafficking” regulated by the TVPA and reported in the TIP Report.¹⁰⁰ Coercion under the TVPA is defined as

threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.¹⁰¹

Only severe forms of human trafficking are included among the minimum standards for the elimination of trafficking required of countries by the TVPA for the TIP Reports, and only these forms of trafficking are included in the TIP Report data collection.¹⁰²

In contrast to the “force, fraud, coercion” requirement of the TVPA, Palermo Protocol section 3(a) implies an act of sex trafficking can occur if an individual was sexually exploited through a relationship or was particularly vulnerable and/or was encouraged to engage in sexual acts not through force or fraud or coercion, but simply against their own volition.¹⁰³ An example would be a young man or woman who is engaged in a romantic relationship with another older or more powerful or experienced person, who woos this person and then encourages this person to engage in sex acts with others.¹⁰⁴ In this hypothetical, the

96. *See id.*

97. *Id.* § 103(8)(A).

98. *Id.* § 103(9).

99. *Id.*

100. *Id.* § 103(8).

101. *Id.* § 103(2).

102. *Id.* § 104.

103. *See* Palermo Protocol, *supra* note 9, art. 3(a).

104. This hypothetical describes a growing trend of “loverboys” who are older romantic partners who engage in sexual and romantic relationships with children or young adults and then encourage or force them into sexually exploitative situations. This phenomenon is well

older, more dominant partner does not force, coerce or deceive the younger partner into having sex with others, but instead emotionally manipulates or encourages them to engage in this behavior. Under the ILO, IOM, and UNODC databases and reports, this scenario is an incidence of sex trafficking that would be documented, while for the TIP Report, this does not count as a severe form of human trafficking and would not be documented or included in a country narrative. The difference in the definitions of human trafficking, particularly as they relate to sex trafficking creates discrepancies in the data collection and collating of information within the TIP Report. By using the TVPA definition, and not the Palermo Protocol definition, the TIP Report is reflecting American domestic interests and standards instead of international legal standards in a report that purports to be an international human trafficking indicator.

IV. CONCLUSION

The U.S. effort to combat human trafficking on a global scale has revolutionized the international response to human trafficking. The U.S. TIP Reports are unmatched in their scope and ambition with an annual publication that assesses anti-trafficking measures in every country in the world and in their potential to demand, threaten, and expect the meaningful implementation of anti-trafficking policy measures in every government. At the same time, the potential of the TIP Report to be the undisputed international indicator of human trafficking is being wasted by compromised data collection, inadequate documentation, and ideological policies that are in direct contradiction to international legal norms related to human trafficking. It is not too late for the TIP Report to augment its data collection and documentation efforts, as well as improve its methodological information. While jettisoning the human trafficking definition so carefully articulated in the TVPA seems extreme, it is important to remember that the TIP Report is supposed to be an international legal document. "Certainly it is difficult for the international lawyer to be overly enthusiastic about an external compliance mechanism that rejects established international legal rules in favor of an internally generated yardstick for measuring the performance of all States."¹⁰⁵

documented in Northern Europe. *See, e.g.,* R. LAWSON ET AL., FRA: THEMATIC STUDY ON CHILD TRAFFICKING, EU AGENCY FOR FUNDAMENTAL RIGHTS 14 (2008).

105. GALLAGHER, *supra* note 8, at 486.