

THE FORGOTTEN WOMEN: A LOOK AT LEGISLATIVE OVERSIGHT IN HUMAN TRAFFICKING TO FUND TERRORIST ORGANIZATIONS

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Section I- Introduction

This paper will argue the vulnerabilities and gaps of current human trafficking legislation regarding women being trafficked to fund extremist groups through kidnapping for ransom and recruiting props to fund and further the organization's agenda. Current protocols and acts since 2000, domestically through the Trafficking Victims Protection Act of 2000 and internationally through United Nations protocols, categorize human trafficking as either only labor or sex trafficking. These defined boxes exclude entire populations of victims who are being trafficked. Human trafficking globally is estimated to be 77.5% sex and labor trafficking combined and 22.5% being other forms of trafficking.¹ Therefore, 22.5% of human trafficking victims globally are exploited for other reasons outside of sex and labor trafficking, which leaves the traffickers outside of prosecutorial reach because there is insufficient legislative enforcement and discussions to encompass their ways of trafficking. So, almost one in five victims of trafficking worldwide are not included or protected by any form of current human trafficking legislation. For this statistic to published by the United Nations Office on Drugs and Crime, shows the UN must be aware of this community that is overlooked. However, even after having this information, the United Nations has not updated or amended its prime human trafficking legislation.

In this paper, terrorist groups and current legislation will be discussed in section two. Next, the connection of these groups, legislative oversights, and how this combination allows kidnapping for ransom to fund terrorist groups to continue will be discussed in section three.

¹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 15 (2022), https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf.

Lastly, prevention measures that need to be taken to close the gaps, the delegation of responsibility, and plans for action in the future will be discussed in section four.

Section II- Tried and Failed Inclusive Legislation

The United States Department of Defense defines terrorism as “the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.”² Before the attack on the World Trade Center, the West’s approach to terrorism was that it was a problem only for lesser developed countries. Terrorism was not a problem that the West had to deal with, so it was indifferent to conflicts in other regions of the world.³ On September 11, 2001, however, this all changed. Terrorism had come to the West, and it had no choice but to act against terrorism. Because of this action, a flurry of legislation was enacted to combat combating terrorism worldwide.⁴ This paper will examine legislation and action from 2000 to the present as the approach to terrorism evolved during this time, as did investigations into funding these organizations.

Terrorist groups require funding for local conflicts, travel, recruiting, training, planning and executing attacks, and maintaining networks and communications.⁵ When compared, organized crime and terrorist organizations overlap slightly in accumulating monetary resources. Both groups threaten and force business owners and residents to pay for ‘protection.’⁶ Both

² Arizona National Guard, *Various Definitions of Terrorism*, <https://dema.az.gov/sites/default/files/Publications/AR-Terrorism%20Definitions-BORUNDA.pdf> (last visited Nov. 14, 2022).

³ ARABINDA ACHARYA, *TARGETING TERRORIST FINANCING: INTERNATIONAL COOPERATION AND NEW REGIMES* 103 (2009).

⁴ *Id.*

⁵ *Id.* at 25.

⁶ EVERARD PHILLIPS, *THE BUSINESS OF KIDNAP FOR RANSOM IN THE FACES OF TERRORISM* 193 (David Canter, 2009).

groups utilize drugs, money laundering, illicit goods, and other crimes.⁷ Moreover, kidnapping for ransom is conducted by both groups. However, the motivations behind the kidnappings differ. Organized crime syndicates kidnap to intimidate rivals, set an example, send a message, or promote a political agenda. Meanwhile, terrorist organizations kidnap for ransom to keep the operations going, not as a supplemental source of income but as a significant source of funds.⁸ Conveniently, kidnapping for ransom simultaneously exploits the State's inability to protect its citizens and control the terrorist organizations; thus, the government is de-legitimized to its citizens.⁹ Suppose the ransom is not paid for the kidnapping victims. In that case, they may be moved into another role to benefit the terrorist organization, such as being a combatant, forced marriage to entice recruits, or sold to other groups for further exploitation. Worldwide kidnappings accounted for 6.9% of terrorist attacks until 2016.¹⁰ In 2016, this percentage increased to 15.8%, amounting to a total number of 8,584 victims.¹¹ Former Special Agent of the U.S. Treasury, John Cassara, said in a House of Representatives subcommittee hearing on Terrorism Funding, "[s]ome experts believe kidnapping for ransom is our most significant terrorist financing threat today."¹² Four terrorist groups who have gained international notoriety for kidnapping for ransom to fund their organizations are Boko Haram in Nigeria, Al-Qaeda in several countries, the Islamic State of Iraq and Syria (ISIS), and Abu Sayyaf in the Philippines.

⁷ *Id.* at 190.

⁸ ACHARYA, *supra* note 3, at 49.

⁹ PHILLIPS, *supra* note 6, at 203-04.

¹⁰ *Module 16: Linkages between Organized Crime and Terrorism*, U.N. OFF. ON DRUGS AND CRIME (Mar. 19, 2019), <https://www.unodc.org/e4j/en/organized-crime/module-16/key-issues/kidnapping-for-ransom-and-terrorism.html> [hereinafter *Module 16*].

¹¹ *Id.*

¹² *Terrorist Financing: Kidnapping, Antiquities Trafficking, and Private Donations: Hearing Before the H. Comm. of Foreign Aff. Subcomm. on Terrorism, Nonproliferation, and Trade, 114th Cong. (2015).*

However, this list is not an extensive list of terrorist organizations that have monopolized kidnapping for ransom.

Boko Haram started in 2009 but gained international attention in 2014 when it kidnapped 276 girls from a school in the village of Chibok in Northern Nigeria.¹³ This kidnapping of young girls at school started an international outcry and the #bringbackourgirls media campaign. The international pressure resulted in eighty-two girls from the Chibok kidnapping being released or escaping.¹⁴ However, as of March 2021, 112 girls remain unaccounted for.¹⁵ Boko Haram has claimed responsibility for the kidnappings of schoolboys and other citizens too, but this essay will focus on for this essay, the women and girls who have been victims.

Between 2008 and 2014, Al-Qaida and its subordinate organizations reported gathering at least \$125 million in ransom from kidnappings.¹⁶ In a hearing before the subcommittee on Terrorism, Nonproliferation, and Trade of the House Committee on Foreign Affairs, chairman Ted Poe stated, “ISIS made nearly \$50 million [in 2014] from kidnapping for ransom. Some estimates put kidnapping for ransom as high as 20 percent of ISIS’ revenue.”¹⁷ Additionally, Abu Sayyaf (ASG) in the Philippines garnered \$35 million in ransom from kidnappings between

¹³ Stephani Busari, *Several remaining missing Chibok schoolgirls escape from Boko Haram*, CNN (Jan. 29, 2021, 12:07 PM), <https://www.cnn.com/2021/01/29/africa/nigeria-chibok-girls-escape-intl>.

¹⁴ Philip Obaji Jr., *Boko Haram Won’t Stop Targeting Schools in Nigeria*, FOREIGN POL’Y (Mar. 23, 2021, 4:06 PM), <https://foreignpolicy.com/2021/03/23/boko-haram-nigeria-kidnappings-school-children/>.

¹⁵ *Id.*

¹⁶ *Module 16, supra* note 10.

¹⁷ *Terrorist Financing: Kidnapping, Antiquities Trafficking, and Private Donations: Hearing Before the H. Comm. of Foreign Aff. Subcomm. on Terrorism, Nonproliferation, and Trade*, 114th Cong. (2015) (statement of Rep. Ted Poe, Chairman, Subcommittee on Terrorism, Nonproliferation, and Trade).

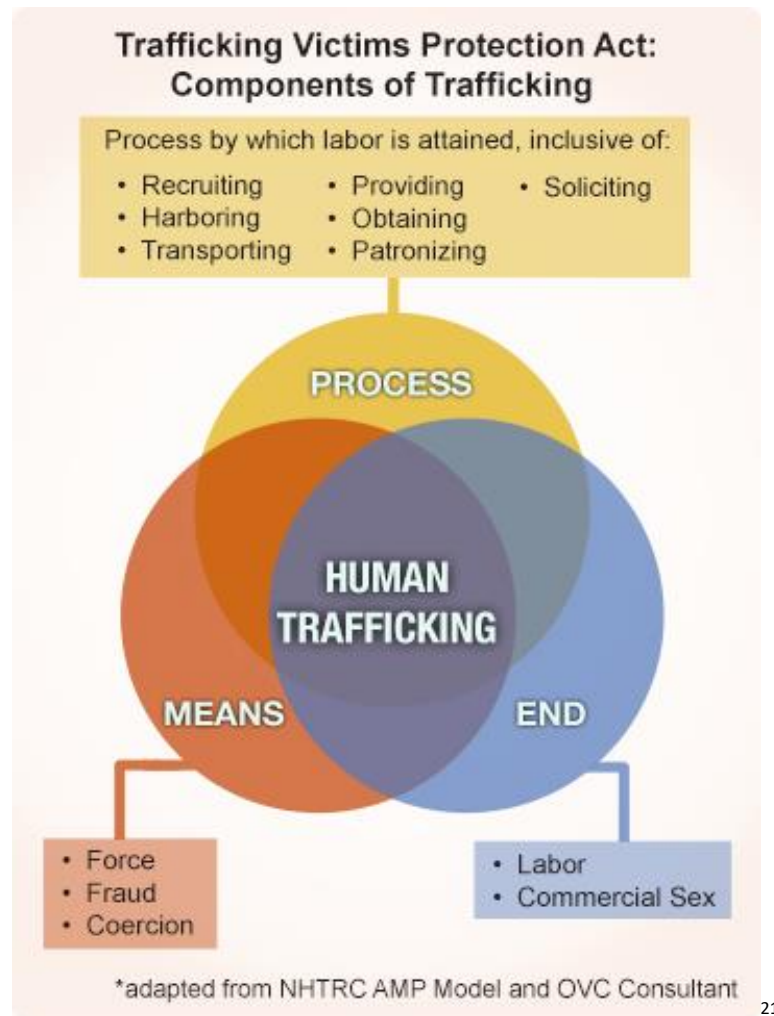
1992-2008.¹⁸ ASG relies on kidnapping for ransom for over 90% of its funding.¹⁹ Over \$500 million of global income is estimated to be derived from kidnapping for ransom.²⁰

1. The Victims of Trafficking and Violence Protection Act of 2000

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ PHILLIPS, *supra*. note 6.



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The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) was enacted by the 106th Congress of the United States of America for the purpose “[t]o combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude.”²² However, this legislation fails victims of human trafficking within the first few sections. For example, early in the act, §103(8) defines “severe forms of trafficking in persons” as “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to

²¹ Office for Victims of Crime, *Human Trafficking Task Force e-guide*, JUSTICE DEP’T, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/14-human-trafficking-laws/> (last visited Jan. 17, 2023).

²² Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 [hereinafter TVPA of 2000].

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.”²³ This definition is carried throughout the rest of the act when referring to severe human trafficking. Additionally, the act expands on the definitions for commercial sex act in §103(3) as “any sex act on account of which anything of value is given to or received by any person.”²⁴ Involuntary servitude in §103(5) as “a condition of servitude induced by means of— (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.”²⁵ Debt bondage in §103(4) is “the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”²⁶ While the previous definitions encompass several forms of human trafficking, they all fall within the umbrellas of sex and labor trafficking. The kidnapping of women and girls for ransom to fund a terrorist organization is a specific kind of trafficking that does not automatically fall within these two definitions. Suppose a kidnapping victim’s family cannot afford the ransom to free their loved one. In that case, the female victims may be moved into a category of sex or labor trafficking within the organization. First, however, there needs to be legislation that prevents the

²³ *Id.* §103(8), 114 Stat. 1464, 1470.

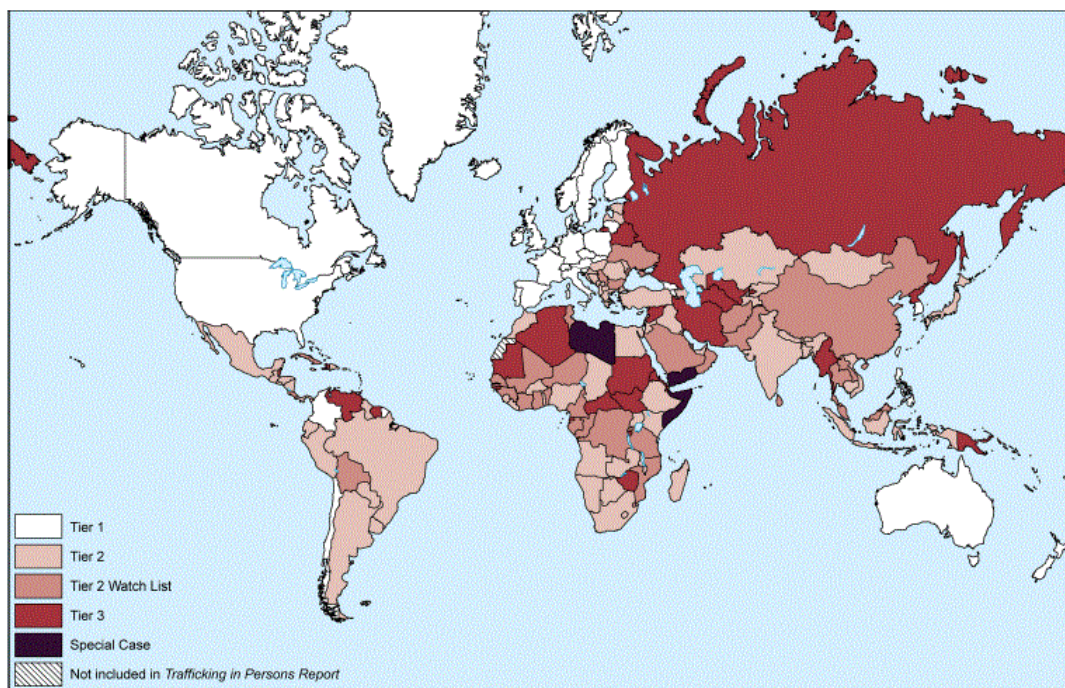
²⁴ *Id.* §103(3), 114 Stat. 1464, 1469.

²⁵ *Id.* §103(5), 114 Stat. 1464, 1469.

²⁶ *Id.* §103(4), 114 Stat. 1464, 1469.

kidnapping from initially occurring. When a victim is in a category that current legislation encompasses, they have already endured abuse, trauma, and fear. These definitions limit the scope of human trafficking that action is being taken against and exclude several classes of victims from receiving protection and recovery benefits.

§110(b) of the TVPA establishes that the Secretary of State is responsible for providing Congress with an annual report on a country's progress and efforts in eliminating trafficking as defined in the TVPA, which is only sex and labor trafficking.²⁷ The annual reports, rank countries in three tiers based on their efforts to meet the minimum standards for eliminating trafficking. Below is a map from the U.S. Government Accountability Office released in 2016 demonstrating which countries are ranked at which tiers.



Sources: GAO analysis of Department of State's 2016 Trafficking in Persons Report (data); Map Resources (map). | GAO-17-56

Note: For special cases, the Trafficking in Persons Report discusses a country's government's efforts to address trafficking, but does not provide a tier ranking for the country.

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²⁷ *Id.* §110(b), 114 Stat. 1464, 1482.

²⁸ *Human Trafficking: State Has Made Improvements in Its Annual Report but Does Not Explicitly Explain Certain Tier Ranking or Changes*, U.S. GOV'T ACCOUNTABILITY OFF. (Dec. 5, 2016), <https://www.gao.gov/products/gao-17-56>.

Tier one countries are countries that meet the minimum standard and whose governments comply with such standards. Next, tier two are countries where the minimum standards apply, and these countries are making significant efforts to comply but still need to meet standards.²⁹ The third tier is countries where the minimum standards apply but do not comply and are not making efforts to comply.³⁰ In the annual report submitted on February 4, 2022, only forty-five countries were included, and several regions of the world were omitted entirely, including the Middle East.³¹

The TVPA lays out its enforcement strategy to end human trafficking, protect victims, and pressure countries to meet the minimum standards in §110.³² The solution to deter trafficking and pressure countries to follow the minimum standards is to withhold non-humanitarian, nontrade-related foreign assistance to governments that do not comply with the minimum standards for eliminating human trafficking provided in the Secretary of State's annual report. TVPA §103(7) elaborates that nonhumanitarian, nontrade-related foreign assistance is limited to any assistance under the Foreign Assistance Act of 1961 with some exceptions. The exceptions to the limited assistance are disaster relief assistance; antiterrorism assistance; assistance for refugees; humanitarian and other developmental assistance; and narcotics-related assistance.³³ While sounding decent in theory, this still allows governments who knowingly and willingly do not make efforts to deter the kidnapping for ransom of terrorist organizations within their borders

²⁹ *Id.* §110(b)(1)(B), 114 Stat. 1464, 1482.

³⁰ *Id.* §110(b)(1)(C), 114 Stat. 1464, 1482.

³¹ U.S. DEP'T OF STATE, REPORT TO CONGRESS ON 2022 TRAFFICKING IN PERSONS INTERIM ASSESSMENT PURSUANT TO THE TRAFFICKING VICTIMS PROTECTION ACT (Feb. 4, 2022), <https://www.state.gov/report-to-congress-on-2022-trafficking-in-persons-interim-assessment-pursuant-to-the-trafficking-victims-protection-act/>.

³² TVPA of 2000, *supra* note 22, §110, 114 Stat. 1464, 1482.

³³ *Id.* §103(7), 114 Stat. 1464, 1469.

to receive trade aid and have relations with the United States with no consequence. The TVPA was reauthorized in 2003, 2005, 2008, and 2013. Evaluations of these reauthorizations are as follows:

a) Trafficking Victims Protection Reauthorization Act of 2003

The 108th Congress of the United States of America reauthorized and amended the TVPA of 2000. The reauthorization act begins with Congress's findings since the enactment of the TVPA in 2000. The findings include an admission that additional research is needed to "fully understand the phenomenon of trafficking in persons and to determine the most effective strategies for combating trafficking in persons."³⁴ The findings also admit that corrupt foreign law enforcement authorities undermine efforts to investigate and prosecute trafficking. Additionally, the findings call for a more utilized international law enforcement effort to train, enforce, and prosecute human trafficking crimes.³⁵ These findings are fundamental for the fight against all human trafficking to succeed. Accordingly, beneficial amendments to progress the prevention of human trafficking were added, such as §5(a)(2-3), §6(d)(1-2), §6(g)(1), §7(1)(B), and §7(3)(1)(B).³⁶

§5(a)(2) expands the culpability of traffickers by striking "in or affecting interstate commerce" and adding "in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States."³⁷ This expansion to include

³⁴ *Id.* §2(4) 117 Stat. 2875, 2875.

³⁵ *Id.* §2(6), 117 Stat. 2875, 2875.

³⁶ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 106-313, 117 Stat. 2875.

³⁷ *Id.* §5(a)(2), 117 Stat. 2875, 2879.

international commerce effectively broadens the jurisdiction where the TVPA can reach the traffickers. It also recognizes the international economic effects trafficking has.

However, in the thirteen pages of amendments of the reauthorization, the definitions and broadening of the definitions to cover human trafficking outside of sex and labor trafficking did not occur. As a result, as of 2003, women and children kidnapped for ransom to provide revenue to terrorist organizations are still excluded from legislative protections and deterrents.

b) Trafficking Victims Protection Reauthorization Act of 2005

On January 10, 2006, the 109th Congress of the United States reauthorized the TVPA in the Trafficking Victims Reauthorization Act of 2005.³⁸ The reauthorization begins with findings, as the 2003 reauthorization did.³⁹ The findings in §2 include an acknowledgment that populations are at a higher risk of several forms of violence, including trafficking, during armed conflicts and humanitarian emergencies.⁴⁰ §101(a) documents the amendment for installing anti-trafficking and protection measures for vulnerable populations in post-conflict and humanitarian emergency assistance activities by the United States Agency for International Development, the Department of State, and the Department of Defense.⁴¹ This amendment adds to §106 titled, Prevention of Trafficking in Conjunction with Post-Conflict and Humanitarian Emergency Assistance of the TVPA. The amendment continues by adding a study to be done and a report to be generated by the Secretary of State examining various forms of trafficking, including both labor and sexual exploitation, vulnerabilities of commonly affected populations, and

³⁸ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558.

³⁹ *Id.* §2, 119 Stat. 3558, 3558.

⁴⁰ *Id.*

⁴¹ *Id.* §101(a), 119 Stat. 3558, 3560.

recommendations to combat trafficking in post-conflict assistance.⁴² §104 of the reauthorization amendment enhances the U.S.' efforts to combat trafficking in persons. More importantly, §104(c)(1)(C) adds "the interrelationship between trafficking in persons and terrorism, including the use of profits from trafficking in persons to finance terrorism."⁴³ This addition is inserted at the end of §112(b) in the TVPA of 2000, a section discussing sentencing guidelines for traffickers. The acknowledgment of trafficking to finance terrorism being an issue and to be a sentence enhancement is a significant move to add consequences to individual traffickers rather than showing that an entire government is responsible. This also allows victims the opportunity to seek justice against their kidnappers. Unfortunately, this is the only amendment in the 2005 reauthorization that shows the progress of closing the legislative gaps in combating human trafficking for kidnapping to fund terror organizations.

c) William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 was enacted by the 110th Congress on December 23, 2008. §103 of this reauthorization amends §106 in the TVPA of 2000 by adding an entire section to §106 establishing programs to deter and prevent trafficking. This add-in includes technical assistance to foreign governments to improve their ability to investigate and identify traffickers and trafficking organizations.⁴⁴ These assistance programs also extend to nongovernmental organizations. Next, §104 of the reauthorization inserts a section to the end of §107 of the TVPA of 2000. This section requires that grants and agreements to solicit anti-trafficking programs be available to the public.⁴⁵

⁴² *Id.*

⁴³ *Id.* §104(c)(1)(C), 119 Stat. 3558, 3564.

⁴⁴ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044.

⁴⁵ *Id.* §104, 122 Stat. 5044, 5046.

Additionally, applicant organizations must show they have completed or will complete training in connection to human trafficking before being awarded funds.⁴⁶ However, reauthorization §105 sets an authorized appropriation limit of not more than 5% of the amounts made available for TVPA funds can be used to evaluate anti-trafficking programs, emerging problems, and global trends.⁴⁷

Of the forty-nine pages of amendments published in 2008, the previously mentioned sections are the sections most beneficial in deterring kidnapping to fund extremist organizations. However, the legislation is still focused on only sex and labor trafficking. Tackling the issue of terrorism funding through human trafficking will take international organizations, governments, and nongovernmental organizations to see actual progress. However, in the reauthorization, the limit of allowing only 5% of the amount allocated to the TVPA is to be used to evaluate these organizations and global trends.⁴⁸ How can the government combat human trafficking issues and trends when it will not allow adequate funding to organizations that might progress toward this goal?

d) Trafficking Victims Protection Reauthorization Act of 2013

The 2013 reauthorization of the TVPA was included in the Violence Against Women Reauthorization Act of 2013, enacted by the 113th Congress. The act reauthorized and amended the Violence Against Women Act of 1994 and the Trafficking Victims Protection Act.⁴⁹ The reauthorization of the TVPA in 2013 broadened and strengthened the prosecution of United States Citizens who travel abroad to partake in illicit sex acts that are illegal in the United States

⁴⁶ *Id.*

⁴⁷ *Id.* §105, 122 Stat. 5044, 5047.

⁴⁸ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

⁴⁹ *Id.* §108 127 Stat. 54, 78.

jurisdiction, known as “sex tourism” in §110.⁵⁰ §3 of this reauthorization amends section 1591 of title 18, United States Code by striking the current heading and inserting “Severe forms of trafficking in persons.”⁵¹ The definition of ‘severe forms of trafficking persons’ used for this statutory code is the exact definition mentioned earlier for the TVPA of 2000. This definition limits severe forms of human trafficking to only commercial sex trafficking and labor trafficking, again leaving out women trafficked via kidnapping explicitly for ransom. §301 of the 2013 reauthorization amends the authorized appropriations in the TVPA of 2000. Appropriations for the Human Smuggling and Trafficking Center are cut in half from \$2 million to \$1 million per fiscal year.⁵² Additionally, the amount to be appointed to the President for foreign victim assistance is halved from \$15 million per fiscal year to \$7.5 million.⁵³

Continuing, funding for assistance to foreign countries to meet minimum standards appropriated to the President was decreased by half, starting at \$15 million and decreased to \$7.5 million per fiscal year.⁵⁴ Continuing on this decreased funding slope, the original \$10 million offered to the Secretary of Labor for the purpose of increasing the effectiveness of anti-trafficking programs, the 2013 reauthorization halved the funding to just \$5 million.⁵⁵ The last amendment to the TVPA of 2000 was a decrease in allocations to the Secretary of Homeland Security for investigations by the Bureau of Immigration and Customs Enforcement of severe forms of trafficking from \$18 million to \$10 million per fiscal year.⁵⁶ §302 amends the

⁵⁰ *Id.* §110, 127 Stat. 54, 80.

⁵¹ *Id.* §3 127 Stat. 54, 56.

⁵² Trafficking Victims Protection Reauthorization Act of 2013, H.R.898, 113th Cong. §301(a)(1) (2013), <https://www.congress.gov/bill/113th-congress/house-bill/898/text>.

⁵³ *Id.* §301(b)(D)(i).

⁵⁴ *Id.* §301(b)(D)(ii).

⁵⁵ *Id.* §301(b)(F).

⁵⁶ *Id.* §301(b)(G).

authorized appropriations for the TVPA Reauthorization of 2005.⁵⁷ The amendment strikes “\$20,000,000 for each fiscal year” and inserts “10,000,000” for each fiscal year 2014-2017, which was allocated to enhance state and local efforts to combat trafficking in persons.⁵⁸

After multiple reauthorizations and opportunities to amend the Trafficking Victims Protection Act of 2000 to be more inclusive to other trafficking victims outside of commercial sex and labor trafficking, this has not happened. All victims of any trafficking are essential and deserving of the law to protect and provide representation to them, but if women who are kidnapped to fund terrorism which poses a threat to national security, are omitted, what other populations of victims are not being provided this protection of representation?

In summary, the TVPA overlooks and underserves women and girls trafficked to fund extremist groups. This trafficking can happen in several forms, such as sexual exploitation, forced ransom payments, and recruitment tactics to be wives for members. “Male and female child soldiers are often sexually abused and/or exploited, and young girls may be forced to marry the commanders or other male combatants.”⁵⁹

These women are kidnapped, then ransomed, or forced into marriage with recruits to the extremist groups. They do not fit into the commercial sex act or labor trafficking boxes the TVPA has carved out in its protections and enforcement plans. The current enforcement does not affect these extremist groups because they are not on the global stage to trade as a legitimate country or government entity. Even the countries they operate out of are omitted from the annual report by the State Department or are still offered trade-related aid from the United States while

⁵⁷ *Id.* §302.

⁵⁸ *Id.*

⁵⁹ NOEL BRIDGET BUSCH-ARMENDARIZ ET AL., HUMAN TRAFFICKING: APPLYING RESEARCH, THEORY, AND CASE STUDIES 85 (2018).

making no effort to conform to the TVPA or international standards. Therefore, these countries are not facing any consequences for allowing this proliferation of ransom kidnappings to continue. The TVPA needs a broadened view of human trafficking, the perpetrators of trafficking, and harsher enforcement for governments that allow extremist groups to continue these reigns of terror and exploitation on communities.

2) United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol)

On the international stage, the United Nations initiated the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2000.⁶⁰ This protocol is also commonly called the Palermo Protocol. One hundred seventeen countries signed this protocol. This protocol's goal was to supplement the United Nations Convention against Transnational Organized Crime specifically to create a "universal instrument that addresses all aspects of trafficking in persons."⁶¹ The Palermo Protocol defines human trafficking as:

the recruitment, transportation, harbor, 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.^{62 63}

⁶⁰ G.A. Res. 55/25, ¶ 2 (Jan. 8, 2001).

⁶¹ G.A. Res. 55/25, annex II pmbl. (Jan. 8, 2001).

⁶² NOEL BRIDGET BUSCH-ARMENDARIZ ET AL., HUMAN TRAFFICKING: APPLYING RESEARCH, THEORY, AND CASE STUDIES 85 (2018); G.A. Res. 55/25, ¶ 2 (Jan. 8, 2001).

The beginning of the Palermo Protocol's definition of "human trafficking" is inclusive of kidnapping and abductions. Although not explicitly stated, these ways of forcefully removing a person could be used to include kidnapping for ransom to fund terrorist organizations. As the definition continues, however, the ways of trafficking that are stated explicitly to be included are sex and labor trafficking. Again, this is another act formed to be the cornerstone of human trafficking legislation, yet it limits the applicability of the act.

In fact, ransom kidnappings are not mentioned once in the entire act. The United Nations Report of the Secretary-General on Conflict-Related Sexual violence states that in January 2015 alone, the Islamic State of Iraq and the Levant (ISIL) extorted \$850,000 for the release of 200 abducted women and girls.⁶⁴ The UN report continues that in 2014 ransom payments for kidnapped women and children earned the group between \$35 million to \$45 million.⁶⁵ These immense amounts of profit generated by kidnapping for ransom by extremist groups show that this is a significant problem. Maybe not as lucrative as commercial sexual trafficking, but the ramifications of continuing activities by terrorist organizations have international security and safety waves. Although the Palermo Protocol was instated in 2000, the world's attitude changed towards terrorism and terrorism funding after September 11, 2001. However, no amendments have been made to the Palermo Protocol to keep up with these changing worldviews.

The Palermo Protocol's effectiveness relies on each member state to instate domestic laws to protect and aid human trafficking victims. However, putting laws on the record and enforcing the laws are two different things. Therefore, actual consequences for countries that do not enforce

⁶⁴ U.N. Secretary-General, *Report of the Secretary-General on conflict-related sexual violence*, ¶ 20, U.N. Doc. S/2016/361 (Apr. 20, 2016).

⁶⁵ *Id.*

against human trafficking and terrorist organizations that utilize kidnapping to fund their organizations should be required.

In summary, the Trafficking Victims Protection Act and the Palermo Protocol were enacted to act as wide-ranging legislative initiatives to deter and combat human trafficking. Both documents were monumental for being the first broad initiative against human trafficking by the United States Congress and United Nations. While a good first step, both initiatives fail an entire population of women at risk and victims left without recourse by focusing on only two types of human trafficking. After several reauthorizations with amendments, the Trafficking Victims Protection Act still does not include kidnapping for ransom as a section of human trafficking the act addresses. The Palermo Protocol is now twenty-two years old and has not undergone any amendments. The world has changed drastically in the last two decades; it is only fair to assume that the cornerstone of international human-trafficking laws should be updated to reflect and combat those changes. In the following section, the application gaps of these efforts to combat trafficking are analyzed with the interrelationship between trafficking and financing for terrorist groups.

Section III- Intersectionality of Legislative Oversight and Terrorist

Funding

After reviewing the legislation of the U.S. Congress and the United Nations, the effects of the mentioned shortcomings will be analyzed. Then, the intersection of these shortcomings with kidnapping for ransom to fund terrorism will be analyzed.

1. Oversight of the Trafficking Victims Protection Act of 2000 and Subsequent Reauthorizations

The U.S. Government Accountability Office (GAO) conducted two reports on the effectiveness of the Trafficking Victims Protection Act on human trafficking and where the legislation is lacking. The GAO then proposed recommendations to Congress to correct these oversights. These reports were published in 2006 and 2016. The first report in 2006 evaluated the United States' foreign antitrafficking efforts, the United States' strategy for combating trafficking abroad, and the Department of State's evaluation of foreign government's antitrafficking efforts.⁶⁶ The 2006 GAO report is a cumulative look at the TVPA of 2000, the TVPA Reauthorization of 2003, and the TVPA Reauthorization of 2005.

The first major critique of the TVPA of 2000, 2003, and 2005 is the inaccurate and unreliable data collection on human trafficking that is used.⁶⁷ Next, the Trafficking in Persons Report, which the State department is responsible for producing yearly, as directed by the TVPA, relies on this inaccurate data to place countries in tiers. The purpose of the Trafficking in Persons Report was to be used as a diplomatic tool and to assess foreign government's efforts to combat trafficking.⁶⁸ Also, data on internal trafficking within a country's border is not collected. Women and girls who are kidnapped for ransom by terrorist groups are usually kept within a country's borders under the control of the acting organization while awaiting a ransom payment. So, not only are these women and girls left out of the definitions of 'severe forms of trafficking, but they are also forgotten to be included in the data the TVPA uses to measure effectiveness and where needs are because the offenses do not cross national borders. The report also calls attention to the

⁶⁶ *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, U.S. GOV'T ACCOUNTABILITY OFF. (Aug. 14, 2006), <https://www.gao.gov/products/gao-06-825>.

⁶⁷ *Id.*

⁶⁸ *Id.*

fact that the U.S. government had an established task force for antitracking activities, except they had not developed a strategy for this task force to be able to combat trafficking abroad.

Additionally, this task force was created to work as an interagency team; thus, multiple federal agencies were tasked with combating international human trafficking to utilize and staff this task force— with no real strategy or plan on how this task force would accomplish this task.⁶⁹

The 2016 GAO report assesses the TVPA reauthorizations of 2008 and 2013. The assessment addresses the development of the Secretary of State's Trafficking in Persons Report, the amount of disclosure and transparency given for a country's current tier ranking, increases and decreases of a country's tier standing, and how effective this report is in addressing trafficking.⁷⁰

2. Oversight of the Palermo Protocol

As of 2018, more than 170 countries have made commitments to eradicating modern-day slavery, but only 122 countries followed the Palermo Protocol and enacted laws to criminalize human trafficking.⁷¹ Despite an increase in the number of victims, conviction levels for human trafficking have fallen. In Europe, according to The Guardian, convictions fell 25% between 2011 and 2016.⁷² These statistics show that despite the Palermo Protocol attempting to set standards for signatory countries to meet, there needs to be more active enforcement.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Kate Hodal, *One in 200 People is a Slave. Why?*, THE GUARDIAN (Feb. 29, 2019, 2:46 AM), <https://www.theguardian.com/news/2019/feb/25/modern-slavery-trafficking-persons-one-in-200>.

⁷² *Id.*

Enforcement is needed to pressure countries to follow through on the responsibilities of signing United Nations protocols. Instead, countries have treated signing the Palermo Protocol as a promise or casual agreement rather than an international legal and human rights responsibility.

An article in The Guardian states:

An increase in violent conflict worldwide over the past 30 years has also inflated the number of people at risk of slavery, according to the United Nations Office on Drugs and Crime (UNODC), with armed groups and terrorists turning to trafficking “to show they have control over the community, or to increase their force, either recruiting child soldiers or giving sex slaves as a reward for their recruitment.”⁷³

Studies have shown that kidnapping for ransom increases in areas with conflict, economic instability, and forced migration.⁷⁴ The United Nations needs to pay special attention to these countries in times of unrest to ensure that they are being provided with the tools and means necessary to still actively fight human trafficking in these times, especially kidnapping for ransom to fund terrorist organizations, as this is usually a prime opportunity for these groups to gain strength and power. The United Nations Secretary-General stated, “for predators and human traffickers, war is not a tragedy – it is an opportunity.”⁷⁵

Section IV- Future Successes in Closing the Legislative Gaps

According to a U.S. Senate Report, in 2003, Al-Qaeda averaged \$200,000 per hostage.⁷⁶

As of the report in 2015, Al-Qaeda is estimated to receive \$10 million per hostage.⁷⁷ In this section, the prevention of kidnapping for ransom to fund terrorist organizations will be

⁷³ *Id.*

⁷⁴ EVERARD PHILLIPS, THE BUSINESS OF KIDNAP FOR RANSOM IN THE FACES OF TERRORISM 192-93 (David Canter, 2009).

⁷⁵ United Nations Office on Drugs and Crime; Global Report on Trafficking in Persons 2022, 52 (2022), https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf.

⁷⁶ *Terrorist Financing: Kidnapping, Antiquities Trafficking, and Private Donations*, *supra* note 17.

⁷⁷ *Id.*

discussed. Then, whose responsibility to take these measures will be discussed, whether it falls on the domestic government, the international community, or is an NGO's responsibility. Lastly, actual effective measures and the results are discussed.

1. Prevention

The U.S. government and international community need to treat kidnapping for ransom to fund terrorist organizations as a human rights and public health issue rather than a criminal justice issue.⁷⁸ The TVPA uses the 3 P's: Prevention, Protection, and Prosecution. However, there has been an overemphasis on the prosecution of traffickers rather than an equal emphasis on all stages to deter human trafficking. Additionally, as noted throughout this essay, current legislation primarily focuses on commercial sex trafficking and labor trafficking. Combining a broadened approach to human trafficking to increase prevention and protection along with an expanded definition of what qualifies as all forms of trafficking provides an improved ability to stop trafficking, specifically kidnapping for ransom to fund terrorist organizations.

2. Domestic Government, International Community, or NGO responsibility?

Human trafficking is a global issue. Specifically, kidnapping for ransom to fund terrorist groups poses security and safety issues to all regions of the world by providing brutal and violent organizations with a plentiful form of funding. In a brief with the United Nations Security Council in 2017, the Secretary-General said the "world community has a collective responsibility to stop human trafficking and support victims."⁷⁹ The Secretary-General also called on member states to

⁷⁸ Michael Gallo & Dr. Hannah Thinyane, *The Palermo protocol Turns 20: Failures of the Past and Shifting Paradigms for the Future*, United Nations University Blog (Nov. 20, 2020), <https://cs.unu.edu/news/news/the-palermo-protocol-turns-20.html>.

⁷⁹ Press Release, Security Council, United Nations Office on Drugs and Crime, World Community Has 'Collective Responsibility' to Stop Human Trafficking, Support Victims, U.N. Press Release (Nov. 21, 2017).

intensify their efforts and the UN system's efforts to use all tools at their disposal for "cooperation, mutual legal assistance and information-sharing."⁸⁰ Terrorist organizations can be transregional. Meaning if one state becomes very harsh on convictions and punishments, they can ramp up their operations of kidnapping for ransom for funding in another more lenient state. To effectively crack down on terrorist organizations and their forms of human trafficking, a joint international effort is required from all member states to enforce anti-human trafficking laws and hold the groups responsible for kidnapping for ransom accountable. This joint effort may come from increased humanitarian aid to governments and NGOs, partnered with research, and individual members State governments being accountable for their inactions.

3. Plans and Responses Looking Forward

In 2022, United Nations Office on Drugs and Crime (UNODC) issued its Global Report on Trafficking in Persons. This report examines changes in human trafficking from 2019-2022 and the effect the Covid-19 pandemic had on human trafficking. In addition, this report provides numerous possible responses for the UNODC and global community to take in response to the report's findings.

Unsurprisingly, conviction rates of human traffickers overall decreased globally between 2019-2022. In some regions, such as South Asia and South America, conviction rates fell by

⁸⁰ *Id.*

56% and 46%, respectively.⁸¹ A decrease in human trafficking did not cause the decrease in convictions, but rather a decrease in detection as the Covid-19 pandemic drove traffickers into less visible and more concealed forms and places.⁸² The UNODC notes that since 2017, global human trafficking convictions have fallen by about 44%.⁸³ In response to this lack of justice and convictions, the UNODC has recommended the following responses for member states: “to include trafficking in persons among their top three crime priorities when funding is allocated,” “to ensure that access to victim assistance is not conditional on a victim’s participation in criminal proceedings,” and “to support efforts to improve human-rights based counter-trafficking actions in low- and medium- income countries.”⁸⁴ While these possible responses are not definite solutions, they are a start in the right direction. The UNODC recognizes that additional work needs to be done, especially in the wake of the global pandemic, to restore conviction numbers and collectively be able to help victims by sharing resources and targeting known problem regions.

It is reported that the number of male victims of trafficking has increased by 3% since 2019.⁸⁵ A proposed response to this increase in male victims calls on member states to tailor protection and aid for all victims of all forms of exploitation.⁸⁶ This call for expanding resources and recognizing all forms of exploitation is vital to break out of the confines of only commercial sex and labor trafficking set by all previous legislation. This possible expansion will help women and girls kidnapped for ransom to fund extremist groups receive the recognition and help needed

⁸¹ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022*, 7 (2022), https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf.

⁸² *Id.* at 4.

⁸³ *Id.* at 64.

⁸⁴ *Id.* at 7.

⁸⁵ *Id.* at 11.

⁸⁶ *Id.*

to start preventing this form of human trafficking. Another proposed response calls on “donor communities, international organizations, and academia to invest in research into patterns of diverse forms of trafficking, including mixed forms, criminal activity, forced marriage and others.” This response should work hand in hand with an additional possible response for donor communities, international organizations, and academia to study and “unveil potential misperceptions and bias in the detection of victims and target the response towards the most in need.”⁸⁷ Both of these responses sound promising, but it does not go unnoticed that the realization and need for an expanded view of human trafficking did not come into the conversation under men became an increasingly affected party. This solidifies that even action to deter human trafficking, which affects the entire international community, is more sensitive to the effects on men than the historically disproportional exploitation of women in human trafficking.

Conclusion

To conclude this essay, current legislation overemphasizes the prosecution prong of human trafficking, despite showing a decrease in trafficking convention rates across the board. The legislation now available and currently being implemented confines human trafficking to only commercial sex and labor trafficking. These archaic ideas of what human trafficking is leaving out a wide range of victims, including women and girls kidnapped for ransom, to fund terrorist organizations in various regions worldwide. So, not only do these alleged innovative and foundational pieces of legislation in combating human trafficking do a poor job of showing

⁸⁷ *Id.*

results for being effective in determent, but they ignore more than a fifth of trafficking victims. Thus, making the legislation even more ineffective than it is led to be.⁸⁸

The increased focus on the prosecution of trafficking, which is the last of three steps in combating human trafficking, leaves the prevention and protection aspects as secondary goals. So, by the time victims can receive the help, knowledge, and resources they needed from the beginning to prevent them from being trafficked altogether, they have already endured unimaginable exploitation. The essay began with statistics of projected profits made by terrorist organizations from kidnapping for ransom. This shows that there are government offices and organizations acknowledging that this system is happening, seeing the monetary effects, yet they are doing nothing about it. They are leaving these women and girls to be vulnerable and unsupported, while simultaneously allowing terrorist organizations to garner millions of dollars in funding. Instead, the government is more worried about only 3 oz. toiletries being allowed on planes to prevent terrorist attacks while watching and allowing the funding of attacks to happen. Not to mention being aware of the women and girls exploited to bring in this funding, yet not taking any legislative action against the kidnapping or protecting these specific victims. Equal focus and emphasis must be placed on the prevention, protection, and prosecution of human trafficking. The prevention and protection angles must embrace a modern-day approach and understanding of all forms of trafficking, not just sex and labor trafficking. The increased resources devoted to a broader array of forms in which human trafficking appears, especially kidnapping to fund terrorist organizations, can decrease the number of victims, provide adequate resources to victims of all forms of trafficking, and increase the number of convictions of offenders. In turn, especially in regions and states where unrest and instability occur, effective

⁸⁸ *Id.* at 15.

laws and measures against trafficking can re-instill a sense of authority and legitimacy in the government to protect its citizens.

Proposed measures to be taken by the United Nations Office on Drugs and Crime include devoting research and funding to understanding and tackling all forms of trafficking. This research and subsequent findings are meant to be a joint effort from the UN, the international community, and academia. By using joint efforts, a more inclusive report is suspected to come, which means a more effective approach to human trafficking and the need to work against traffickers and with victims actively.

The Government Accountability Office is calling on the Secretary of State and U.S. Congress to provide more transparency in its annual Trafficking in Persons Report when deciding and reporting which tier of compliance countries fall within. Increased transparency will assist in creating a more helpful and effective diplomatic tool. In addition, increased transparency could pressure countries not in a higher compliance tier to take action to become compliant with the Trafficking Victims Protection Act by providing explicit evidence and linkages to the State's decision to upgrade or downgrade a country's placement.

If all the above-proposed changes become implemented, women and girls who have been exploited for ransom to fund terrorist groups will finally be included in anti-trafficking legislation and their kidnappers will be within the realm of prosecution for their actions. This issue will require the international community jointly and individual countries to be held responsible for their inaction. The effectiveness of implementation will become apparent in the Trafficking in Persons Report produced by the Secretary of State and the UNODC Global Report on Trafficking in Persons in the future as women and girls kidnapped for ransom will be included in the statistics and perpetrators will be included in conviction rates. The world moves

fast, but bureaucracy and impactful legislation move slow, allowing an increasing number of victims to add up in the meantime.

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