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## Trafficking in Persons in Latin America and the Caribbean

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# Trafficking in Persons in Latin America and the Caribbean

## Summary

Trafficking in persons for sexual exploitation or forced labor, both within a country and across international borders, is a lucrative criminal activity that is of major concern to the United States and the international community. Trafficking in persons affects nearly every country and region in the world. While most trafficking victims still appear to originate from South and Southeast Asia or the former Soviet Union, human trafficking is a growing problem in Latin America and the Caribbean. Countries in Latin America serve as source, transit, and destination countries for trafficking victims. Latin America is also a primary source for the estimated 14,500 to 17,500 people that are trafficked to the United States each year.

In Latin America, trafficking in persons occurs both within countries and across borders as children and adults are trafficked for prostitution, forced labor, and domestic servitude. Traffickers take advantage of poor young people with minimal education in countries with political instability, high unemployment, and corruption. Trafficking is increasingly tied to organized criminal groups who exploit undocumented migrants, especially in the U.S.- Mexico border region.

Congress has taken a leading role in fighting human trafficking by passing the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) and the Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193). On October 7, 2005, the Senate approved the ratification of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons. The United States became a party to the Protocol on December 3, 2005.

In FY2004, the State Department and other U.S. agencies provided more than \$82 million in anti-trafficking assistance to foreign governments. On June 3, 2005, the State Department released its fifth annual report on human trafficking, *Trafficking in Persons Report* (TIP) dividing countries into four groups according to the efforts they were making to combat trafficking. Tier 3 countries are those that have not made an adequate effort to combat trafficking and are subject to sanctions.

Latin America had a higher percentage of Tier 3 countries in both the 2004 and 2005 TIP reports than any other region. In 2005, Bolivia, Ecuador, Jamaica, Venezuela, and Cuba were placed on Tier 3, but only Venezuela and Cuba were subject to sanctions by the presidential determination announced in September 2005.

This report describes the nature and scope of the problem of trafficking in persons in Latin America and the Caribbean. The paper then describes U.S. efforts to deal with trafficking in persons in the region, as well as discusses the successes and failures of some recent country and regional anti-trafficking efforts. The paper concludes by raising several issues for policy consideration that may be helpful as the 109<sup>th</sup> Congress continues to address human trafficking as part of its authorization, appropriations, and oversight activities. This report will be updated periodically. For more information, see CRS Report RL30545, *Trafficking in Persons: The U.S. and the International Response*, by Francis Miko.

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# Trafficking in Persons in Latin America and the Caribbean

## Background

Trafficking in persons for sexual exploitation or forced labor, both within a country and across international borders, is a lucrative criminal activity that is of major concern to the United States and the international community. While most trafficking victims still appear to originate from South and Southeast Asia or the former Soviet Union, human trafficking is a growing problem in Latin America and the Caribbean. This paper describes the nature and scope of the problem of trafficking in persons in Latin America and the Caribbean. The paper then describes U.S. efforts to deal with trafficking in persons in Latin America and the Caribbean, as well as discusses the successes and failures of some recent country and regional anti-trafficking efforts. The paper concludes by raising several issues for policy consideration that may be helpful as the 109<sup>th</sup> Congress continues to address human trafficking as part of its authorization, appropriations, and oversight activities.

## Definition

Severe forms of trafficking in persons have been defined in U.S. law as “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 ... 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.”<sup>1</sup> Most members of the international community generally agree that the trafficking term applies to all cases of this nature involving minors whether a child was taken forcibly or voluntarily.

Some groups in the United States have sought to broaden the definition of trafficking in persons to include all forms of prostitution, but the international community has thus far rejected these attempts.<sup>2</sup> Others, including key U.S. officials,

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<sup>1</sup> *Victims of Trafficking and Violence Protection Act of 2000 (TVPA)* (P.L. 106-386). For a detailed report on global human trafficking, see CRS Report RL30545, *Trafficking in Persons: The U.S. and the International Response*, by Francis T. Miko.

<sup>2</sup> Proponents of this broader definition of trafficking in persons, which include both religious groups and feminist organizations, argue that prostitution is never truly voluntary and that traffickers simply force their victims to appear to be acting voluntarily. Others, including many European and Latin American countries, have legal and regulated prostitution and argue that this broadened definition would impede the capacity of the international

(continued...)

have referred to trafficking as “modern day slavery.” Critics of presenting trafficking as the equivalent of slavery note that although it creates a powerful analogy, the term “slavery” only applies to a small percentage of trafficking cases. They assert that most cases of trafficking occur when migrants are exploited by traffickers during the process of migration.<sup>3</sup>

**Trafficking and Migration.** Over the last thirty years, several factors have combined to increase migration flows from Latin America and the Caribbean. From 1995-2000, economic stagnation, poverty, unemployment, and the ongoing conflict in Colombia made Latin America the region with the highest out-migration rate in the world.<sup>4</sup> Primary destination countries for Latin American immigrants have included Spain, Italy, Canada, the Netherlands, Britain, and the United States. These countries — many with low birth rates and aging populations — have come to rely on both male and female migrant laborers from Latin America to fill low-paying agricultural, construction, service industry, and domestic service jobs. At the same time, concerns about security and other issues related to absorbing large numbers of foreign-born populations have led many developed countries to tighten their immigration policies. These factors have led to a global rise in irregular or undocumented immigration.

In the Western Hemisphere, increasing irregular migration has been most evident along the U.S.- Mexico border. In 2004, Mexican authorities reported detaining 215,695 undocumented migrants, a 15% increase over 2003. These migrants, though primarily from Central America, have begun to include large numbers of individuals from South American countries such as Brazil and Ecuador. Over the past three years, the number of non-Mexican undocumented migrants apprehended along the U.S.- Mexico border has more than tripled.<sup>5</sup> Increasing irregular migration has put Latin American migrants at a high risk of both human rights and health dangers, including abuse by traffickers and alien smugglers.

**Trafficking and Alien Smuggling.** In 2000, the United Nations drafted two protocols, collectively known as the Palermo Protocols, to deal with trafficking in persons and human smuggling.<sup>6</sup> Trafficking in persons is often confused with alien or human smuggling. Alien smuggling involves the provision of a service, generally procurement or transport, to people who knowingly buy that service in order to gain illegal entry into a foreign country. The Trafficking Protocol considers people who have been trafficked, who are assumed to be primarily women and children, as “victims” or “survivors” who are entitled to protection and a broad range of social services from governments. In contrast, some analysts assert that the

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<sup>2</sup> (...continued)

community to achieve consensus and work together to combat trafficking.

<sup>3</sup> “Human Trafficking and Slavery,” *Vital Voices Trafficking Report*, September 2005.

<sup>4</sup> “World Migration,” International Organization for Migration, 2005.

<sup>5</sup> For more information, see CRS Report RL33097, *Border Security: Apprehensions of “Other Than Mexican” Aliens*, coordinated by Blas Nuñez-Nieto.

<sup>6</sup> The United Nations Convention Against Organized Crime and Its Protocols, Available at [[http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_convention.html)].

Smuggling Protocol considers people who have been smuggled as willing participants in a criminal activity. Smuggled migrants are to be treated “humanely,” but states are not required to provide them with any specific level of protection.<sup>7</sup>

Some observers assert that smuggling is a “crime against the state” and that smuggled migrants should be immediately deported, while trafficking is a “crime against a person” whose victims deserve to be given government assistance and protection.<sup>8</sup> Others maintain that there are few clear-cut distinctions between trafficking and smuggling cases and that many people who are considered “smuggled” should actually be viewed as trafficking victims. They argue that as immigration and border restrictions have tightened, especially along the U.S. - Mexico border, smuggling costs have increased and migration routes have become more dangerous. As a result, they assert that smugglers have increasingly sold undocumented migrants into situations of forced labor or prostitution in order to recover their costs.<sup>9</sup>

**Global Figures on Trafficking.** Trafficking in persons for sexual exploitation or forced labor, both within a country and across international borders, is one of the most lucrative and fastest growing types of organized crime. Due to the clandestine nature of this type of crime, it is difficult to gather reliable data on its prevalence in particular countries and regions of the world. Researchers have generally had to rely on estimates compiled by non-governmental organizations (NGOs) in order to assess the scope of the global trafficking industry. NGO reports on trafficking tend to contain more anecdotal evidence than concrete statistics. In addition to the difficulty of gathering good statistics on a clandestine activity, countries may be reluctant to publish data for fear of being cited by the U.S. government as having a major trafficking problem. According to U.S. State Department estimates, some 600,000 to 800,000 people are trafficked across borders annually worldwide for forced labor, domestic servitude, or sexual exploitation. These figures do not include victims who are trafficked domestically who, if included, would raise the total to between 2 million and 4 million.<sup>10</sup>

The International Labor Organization (ILO) estimates that globally some 2.4 million people have been trafficked by private agents into situations of forced labor. Although most observers concur that the overwhelming majority of trafficking victims are women and children, the ILO has found that the sex of trafficking victims depends on the type of activity they are forced to undertake. Women and girls

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<sup>7</sup> Jacqueline Bhabha, “Trafficking, Smuggling, and Human Rights,” Migration Policy Institute, March 1, 2005.

<sup>8</sup> Statement by Claire Antonelli of Global Rights, Center for Strategic and International Studies Event on Human Trafficking in Latin America, July 9, 2004.

<sup>9</sup> Ann Jordan, “Human Trafficking and Globalization,” Center for American Progress, October 2004.

<sup>10</sup> U.S. Department of State, *Trafficking in Persons Report, 2005*, June 3, 2005. [<http://www.state.gov/g/tip/rls/itprpt/2005>].

account for the vast majority of those trafficked for commercial sexual exploitation, but men and boys account for 44% of those trafficked for forced or bonded labor.<sup>11</sup>

Trafficking in persons affects nearly every country and region in the world. Internal trafficking generally flows from rural to urban or tourist centers within a given country, while trafficking across international borders generally flows from developing to developed nations. Countries are generally described as source, transit, or destination countries for trafficking victims. Most trafficking victims still appear to originate from South and Southeast Asia. The countries of the former Soviet Union have also been major source countries for many years, especially for women and children trafficked into prostitution and the sex industry. There has also been an increasing problem of human trafficking in Latin America and the Caribbean.

## Scope of the Problem in Latin America and the Caribbean

Countries in Latin America and the Caribbean serve as both source, transit, and destination countries for trafficking victims. Latin America, along with Southeast Asia and the former Soviet Union, is a primary source region for people trafficked to the United States. The U.S. State Department estimates that some 14,500 to 17,500 people are trafficked to the United States annually.<sup>12</sup> Countries in Latin America and the Caribbean also serve as transit countries for victims brought from China and other countries to Canada or the United States. For example, in 2004, Argentine officials discovered some 700 Chinese trafficking victims en route to the United States.<sup>13</sup>

**Child Trafficking.** There is considerably less research on the extent and nature of trafficking in persons in Latin America and the Caribbean than there is on Asia and Europe. Most of the research that does exist focuses on trafficking in children for sexual exploitation. This research is often tied to ongoing projects in particular countries — targeted at children vulnerable to commercial sexual exploitation — that are administered by the ILO and other international organizations in partnership with local NGOs. Trafficking of children for sexual exploitation is most common in countries that are both popular tourist destinations and centers of sex tourism. This problem is exacerbated by the fact that most countries in the region have legislation establishing (on average) 14 years of age as the legal age of consent

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<sup>11</sup> The ILO subdivides trafficking by private agents into two categories. The first category is commercial sexual exploitation and the second is economic exploitation, which includes, among other things, bonded labor, domestic servitude, and forced agricultural labor. See “A Global Alliance Against Forced Labor,” ILO, 2005.

<sup>12</sup> The number of people trafficked to the United States each year has been revised downward from 1999 Central Intelligence Agency (CIA) estimates of 45,000 to 50,000 victims, to 18,000 to 20,000 victims reported in the 2003 Trafficking in Persons report, to the current range of 14,500 to 17,500 trafficking victims. While the U.S. government cites better methodologies as the reason for these altered figures, some academics have criticized them as being merely ‘guesstimates.’ See Gozdziaik and Collett, “Research on Human Trafficking in North America: A Review of the Literature,” in *Data and Research on Human Trafficking: A Global Survey*, International Organization for Migration (IOM), 2005.

<sup>13</sup> “Chinese Use Back Door Into America,” *Washington Times*, January 24, 2005.

to work (see **Table 1** at the end of this report). The available data show that the number of children sexually exploited in the region is increasing while the average age of exploited children is decreasing.<sup>14</sup>

Although street and orphaned children are particularly vulnerable to trafficking into the sex industry, a large percentage of children who have been trafficked remain living with their families and engage in commercial sex activity in order to contribute to household income. A 2002 study of child prostitutes in El Salvador found that 57% of those interviewed lived with their parents or other close relatives.<sup>15</sup> Other factors associated with children at risk of trafficking include poverty, infrequent school attendance, physical or sexual abuse, drug or alcohol addiction, and involvement in a criminal youth gang.

In addition to sexual exploitation, Latin American children have been trafficked for illegal adoptions and for use as soldiers in armed conflict, domestic servants, and agricultural and mining laborers. Guatemala is one of the largest source countries of children kidnaped and trafficked internationally for adoption by childless couples unwilling to wait for a child through legitimate adoption agencies.<sup>16</sup> Colombia has the largest number of children trafficked for use as child soldiers; as many as 14,000 youth as young as seven years old have been trafficked to fight in the country's armed conflict.<sup>17</sup> However, other countries, including Brazil, are facing increasing instances of youth trafficked by drug gangs into urban warfare.

Children are also trafficked both internally and across international borders for use as domestic servants. One State Department official estimates that as many as 1 million children may be working as domestic servants in Latin America, many of whom are vulnerable to verbal, physical, and sexual abuse.<sup>18</sup> A 2004 USAID-sponsored study explores this phenomenon in the case of child domestic servants from Haiti who are trafficked to the Dominican Republic. In early November 2005, the United Nations Children Emergency Fund (UNICEF) and the Inter-American Commission on Human Rights (IAHCR) condemned this practice, which has involved the illegal trading of some 30,000 Haitian children to the Dominican Republic.<sup>19</sup>

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<sup>14</sup> Pamela Coffey et al., "Literature Review of Trafficking in Persons in Latin America and the Caribbean," Development Alternatives, Inc (DAI) for the U.S. Agency for International Development, August 2004.

<sup>15</sup> Zoila Gonzalez de Innocenti, "Explotación Sexual Comercial de Niñas y Adolescentes: Una Evaluación Rápida, ILO/IPEC, 2002.

<sup>16</sup> "The Baby Trade," *Foreign Affairs*, November 1, 2003.

<sup>17</sup> "Child Soldiers Global Report 2004," Coalition to Stop the Use of Child Soldiers, November 17, 2004.

<sup>18</sup> Interview with representative from the Global Office to Monitor Trafficking in Persons, U.S. Department of State, September 29, 2005.

<sup>19</sup> Smucker and Murray, "The Uses of Children: A Study of Trafficking in Haitian Children," USAID/Haiti Mission, December 28, 2004; "Rights Organizations Slam Illegal Trade in Children on Haitian-Dominican Border," *BBC News*, November 7, 2005.



Finally, the ILO has documented instances from across the region of children forced to work under dangerous circumstances in agricultural or mining industries. In Bolivia, children work in the country's mines and sugarcane harvesting, while Brazilian youth harvest agro-export crops.<sup>20</sup>

**Trafficking for Sexual Exploitation.** While trafficking for forced labor is a serious problem in Latin America and the Caribbean, trafficking for sexual exploitation has been perceived as a more widespread and pressing regional problem.<sup>21</sup> Most victims are trafficked for prostitution, but others are used for pornography and stripping. Children tend to be trafficked within their own countries, while women between the ages of 18 and 30 are often trafficked internationally, sometimes with the consent of their husbands or other family members. Major source and recruitment countries include Brazil, Colombia, the Dominican Republic, Uruguay, Venezuela, and Suriname. Spain, Germany, the Netherlands, Portugal, and the United States are commonly identified as countries of destination for Latin American trafficking victims. Although flows are significant, some observers question 2004 and 2005 TIP report estimates that some 70,000 Brazilians, 45,000-50,000 Colombians, and 50,000 Dominicans are engaged in prostitution in Europe and may be trafficking victims, noting that the figures have not been corroborated by European police officials. In addition to Europe and the United States, the Organization of American States (OAS) estimates that 1,700 women from Latin America, primarily Colombians, Peruvians, and Brazilians, are trafficked each year to Japan.<sup>22</sup>

There are also intra-regional trafficking problems. A 2005 report by the International Organization for Migration (IOM) report asserts that the Caribbean's relatively open borders, lax enforcement of entertainment visa and work permit rules, legalized prostitution, and burgeoning tourism industry have contributed to the problem of trafficking there.<sup>23</sup> Argentina and Brazil have also served as destination countries for women trafficked from the Andes or Caribbean countries like the Dominican Republic. Panama attracts as many as 1,000 Colombian migrants per year, many of whom are trafficked, who arrive with entertainment visas to work in prostitution, which is legal in that country for residents and non-residents. The newest trafficking problem has occurred at border crossings throughout Central America and Mexico, especially the Mexico-Guatemala border, as undocumented women who have not been able to get to the United States end up being forced into

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<sup>20</sup> TIP Report, 2005, [<http://www.state.gov/g/tip/rls/itprpt/2005>].

<sup>21</sup> Laura Langberg, "A Review of Recent OAS Research on Human Trafficking in the Latin American and Caribbean Region," in *Data and Research on Human Trafficking: A Global Survey*, IOM, 2005.

<sup>22</sup> "Annual Report on Fighting the Crime of Trafficking in Persons, Especially Women, Adolescents, and Children in the Americas," Inter-American Commission of Women, Organization of the American States, May 5, 2005.

<sup>23</sup> "Exploratory Assessment of Trafficking in Persons in the Caribbean Region," IOM, June 2005.

prostitution. Tecun Uman, a Guatemalan town near the Mexican border, reportedly has one brothel with as many as 1,000 women working as prostitutes.<sup>24</sup>

**Trafficking for Forced Labor.** The ILO reports that trafficking victims comprise 20% (or 250,000) of the 1.3 million people in Latin America engaged in forced labor.<sup>25</sup> These numbers do not include the increasing numbers of Latin Americans who have ended up in situations of forced labor after migrating to Europe or the United States. Despite the relatively large number of victims trafficked for forced labor both within the region and internationally, there are relatively few studies on this topic aside from reports describing the problem of bonded labor in Brazil and the trafficking of Haitians to the Dominican Republic. In Brazil, more than 25,000 people have been recruited from small towns in the northeast to labor in the country's agribusiness industry.<sup>26</sup> In 2003, following a concerted law enforcement effort by the Brazilian government, some 4,900 workers were freed from conditions of slave labor. Every year thousands of undocumented Haitians flock to the Dominican Republic lured by false promises from recruiters of profits to be made in the sugarcane fields (*bateyes*). The IOM estimates that some 650,000 Haitians, unable to gain citizenship for themselves or for their children born in the Dominican Republic, live and work under slave-like conditions in the sugarcane, construction, or domestic service industries in the Dominican Republic.<sup>27</sup>

In the past few years, the Department of Justice has prosecuted an increasingly large volume of cases of foreigners trafficked into forced labor in the United States. Although the majority of these cases have involved trafficking for prostitution, a significant number have involved the agricultural sector. Annually some 1.5 million seasonal farm workers, mostly from Latin America and the Caribbean, plant and harvest produce in the United States. Low wages, harsh working conditions, and a lack of legal protection, combined with an ever increasing demand for cheap labor, have resulted in growing numbers of forced labor abuses. In 2003, two New Hampshire employers were convicted of forcing four Jamaicans to labor in their landscaping business by confiscating their passports and threatening them with physical abuse.<sup>28</sup>

**Factors that Contribute to the Rise in Trafficking.** Both individual factors and outside circumstances may account for the rise of human trafficking within and from Latin America and the Caribbean. Individual risk factors include poverty, unemployment, illiteracy, history of physical or sexual abuse, homelessness, drug use, and gang membership. The IOM in Colombia has identified some personal characteristics common among trafficking victims. These include a tendency to take risks in order to fulfill one's goals, a focus on short-term rewards that may result

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<sup>24</sup> Mary Jordan, "A Harsh Price to Pay in Pursuit of a Dream," *Washington Post*, December 6, 2004.

<sup>25</sup> "A Global Alliance Against Forced Labor," ILO, 2005.

<sup>26</sup> TIP Report, 2005, [<http://www.state.gov/g/tip/rls/itprpt/2005>].

<sup>27</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2004: Dominican Republic*, February 2005.

<sup>28</sup> Free the Slaves, "Hidden Slaves: Forced Labor in the United States," September 2004.

from short-term risks, and a lack of familial support and/or strong social networks.<sup>29</sup> These risk factors that may “push” an individual towards accepting a risky job proposition in another country have been compounded by “pull” factors, including the hope of finding economic opportunity abroad, which is fueled by television and internet images of wealth in the United States and Europe.

Outside factors contributing to human trafficking include the following:

- the high global demand for domestic servants, agricultural laborers, sex workers, and factory labor;
- political, social, or economic crises, as well as natural disasters, occurring in particular countries;
- lingering *machismo* (chauvinistic attitudes and practices) that tends to lead to discrimination against women and girls;
- existence of established trafficking networks with sophisticated recruitment methods;
- public corruption, especially complicity between law enforcement and border agents with traffickers and alien smugglers;
- restrictive immigration policies in the destination countries that have limited the opportunities for legal migration flows to occur;
- government disinterest in the issue of human trafficking; and,
- limited economic opportunities for women in Latin America. Even where women have achieved the same educational levels as men, women’s employment continues to be concentrated in low-wage, informal sector jobs. As of 2002, women’s income averaged just 69% of men’s income in Latin America.<sup>30</sup>

**Relationship to Organized Crime and Terrorism.** In many parts of the world, trafficking in money, weapons, and people is largely conducted by criminal gangs or mafia groups. Human trafficking can be a lucrative way for organized criminal groups to fund other illicit activities. In Latin America, regional gangs — including the Mara Salvatrucha (MS-13) — are increasingly involved in the trafficking of drugs, arms, and people.<sup>31</sup> According to the Bilateral Safety Corridor

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<sup>29</sup> Sanin et al., “Condiciones de Vulnerabilidad a la Trata de Personas en Colombia,” IOM, 2005.

<sup>30</sup> David E. Guinn and Elissa Steiglich, eds. *In Modern Bondage: Sex Trafficking in the Americas*, New York: Transnational Publishers, Inc., 2003.

<sup>31</sup> The MS-13 is one of the largest gangs operating in Latin America with ties to the United States. MS-13 was created during the 1980s by Salvadorans in Los Angeles who fled the country’s civil conflict. For more information, see CRS Report RS22141, *Gangs in Central* (continued...)

Coalition (BSCC), criminal gangs from Mexico, Central America, Russia, Japan, Ukraine and several other countries have been caught attempting to traffic victims across the U.S.- Mexico border. Some analysts maintain that these gangs could eventually form ties with terrorist groups, such as Al Qaeda, thereby threatening regional security, although there has been no evidence of this to date. They argue that, just as terrorists have engaged in drug trafficking in Colombia and the Tri-Border region (Argentina, Brazil and Paraguay), they may increasingly turn to human trafficking as a way of funding their networks and operations. Others contend that trafficking is a type of “disorganized crime” in which traffickers are generally individuals or small groups that collaborate on an ad-hoc basis, rather than a big business controlled by organized crime.<sup>32</sup>

**Trafficking and HIV/AIDS.** One of the serious public health effects of human trafficking is the risk of victims contracting and transmitting HIV/AIDS and other diseases. On the global level, women engaged in prostitution, whether voluntarily or not, have a high prevalence of HIV/AIDS. Some experts have noted that human trafficking may be linked to the spread and mutation of the AIDS virus. Recent research in the region has shown that trafficking victims, along with other irregular migrants, are at high risk of contracting HIV/AIDS. Factors that put these groups at risk include poverty, discrimination, exploitation, lack of legal protection and education, cultural biases, and limited access to health services. One study found that HIV is rapidly spreading among the migrant communities in north-eastern Brazil.<sup>33</sup>

## U.S. Policy

### Anti-Trafficking Legislation

Congress approved the first major legislation on human trafficking, the Victims of Trafficking and Violence Protection Act (TVPA) of 2000, and President Clinton signed the bill into law on October 28, 2000 (P.L. 106-386).<sup>34</sup> The law seeks to enable the U.S. government to confront the issue of human trafficking at the national and international level within the framework of “prevention, protection, and prosecution.” The law directs the Secretary of State to issue an annual report to detail the trafficking problem in each country, assess each government’s efforts to combat trafficking, and list countries that do and do not comply with minimum standards for the elimination of trafficking. Countries failing to meet the minimum standards are subject to sanctions on non-humanitarian U.S. assistance unless continued assistance is deemed to be in the U.S. national interest. The law also calls for the creation of

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<sup>31</sup> (...continued)  
*America*, by Clare Ribando.

<sup>32</sup> David A. Feingold, “Human Trafficking,” *Foreign Policy*, September/October 2005.

<sup>33</sup> TIP Report, 2005, [<http://www.state.gov/g/tip/rls/itprpt/2005>]; UNAIDS, *Latin America Fact Sheet*, July 2005; IOM, *World Migration*, 2005; “Mobility and HIV in the Caribbean,” October 2005.

<sup>34</sup> For more detailed information on anti-trafficking legislation, see CRS Report RL30545, *Trafficking in Persons: The U.S. and the International Response*, by Francis T. Miko.

an Interagency Task Force to Monitor and Combat Trafficking, chaired by the Secretary of State, and an Office to Monitor and Combat Trafficking to fund anti-trafficking programs and initiatives in foreign countries and coordinate U.S. government efforts to combat trafficking.

In 2002, Congress amended the TVPA in Sec. 682 of the Foreign Relations Authorization Act, FY2003 (P.L. 107-228) in order to provide increasing support, especially for NGOs, to provide services and assistance to trafficking victims. The amendment also authorized an increase in FY2003 appropriations to fund such programs.

In 2003, Congress approved the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), which President Bush signed into law on December 19, 2003 (P.L. 108-193). The law authorized large increases in funding for anti-trafficking programs in FY2004 and FY2005 (totaling more than \$100 million for each fiscal year). P.L. 108-193 refined the standards for the elimination of trafficking that governments must meet and charged those governments with providing the information to prove their compliance. The bill also created a “special watch list” of countries that, although not subject to sanctions, requires ongoing scrutiny over the next year.

**Legislative Action in the 109<sup>th</sup> Congress.** On October 7, 2005, the U.S. Senate gave its advice and consent to ratify the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. President Bush then signed the Protocol and the United States became a party to the agreement on December 3, 2005. Currently 113 countries have signed the Protocol and 94 countries are party to the agreement. The United Nations Protocol on Trafficking is an important multilateral policy instrument that commits its parties to prevent and combat trafficking, protect and assist victims of trafficking, and promote anti-trafficking cooperation among states. The Protocol defines trafficking, offers tools for law enforcement and border security, emphasizes the importance of the judiciary in enforcing anti-trafficking laws, expands the scope of victim assistance, and establishes prevention policies.

The House-passed version of the FY2006 and FY2007 Foreign Relations Authorization Act, H.R. 2601, would require the State Department to submit a cost-benefit analysis to Congress on the most effective ways to help deal with the problems of trafficking and alien smuggling in Ecuador.

On February 17, 2005, Representative Christopher Smith and nine co-sponsors introduced the Trafficking Victims Protection Reauthorization Act of 2005, H.R. 972. The bill authorizes appropriations for FY2006 and FY2007 and seeks to close loopholes in previous anti-trafficking legislation. On December 8, the House Judiciary Committee approved, by voice vote, a bill (H.R. 972) to re-authorize the Trafficking Victims Protection Act (P.L. 106-386) through FY2007. It contains provisions that would increase support to foreign trafficking victims in the United States, address the needs of child victims, and develop anti-trafficking programs for post-conflict situations and humanitarian emergencies abroad.

## Trafficking in Persons Reports

On June 3, 2005, the State Department issued its fifth annual report on human trafficking, *Trafficking in Persons Report (TIP), June 2005*, as mandated by P.L. 106-386 and P.L. 108-193. The 2005 TIP report is more comprehensive than prior reports, covering 150 countries as compared to 140 countries in the 2004 report. Countries not included in the report either do not appear to have a trafficking problem (at least 100 cases per year) or there is insufficient data to ascertain whether or not they have a trafficking problem.

In the 2005 TIP report, countries are ranked in four groups or tiers. Tier 1 is comprised of the countries that have a serious trafficking problem but fully comply with the act's minimum standards for the elimination of trafficking. Tier 2 consists of the countries the State Department identifies as not fully complying with those standards but making "significant efforts to bring themselves into compliance." Tier 2 Watch-list, first added in the 2004 report, are the countries that are between Tier 2 and Tier 3, that the State Department must submit an interim report for by February 2006 in advance of the next TIP report. Tier 3 are the countries whose governments are deemed as not fully complying with the minimum standards and not making significant efforts to do so. Beginning in 2003, countries on Tier 3 could be subject to sanctions on non-humanitarian, non-trade-related assistance and loss of U.S. support from international financial institutions. Sanctions may be imposed if such countries have not made adequate progress in combating trafficking by the date that the President issues a determination (generally within 90 days of the release of the report) or have not been granted a sanctions waiver.

**Latin America and the TIP Rankings.** The extent of the trafficking problem in Latin America and the Caribbean is evidenced by the fact that Latin America had a higher percentage of Tier 3 countries in the 2005 TIP report than any other region (See **Table 1** at the end of this report). In its FY2006 budget justification, the State Department asserts that these low rankings show a lack of awareness in the region about the seriousness of the trafficking problem and a lack of political will on the part of some governments to deal with the problem. In 2005, Latin American countries on Tier 3 were Bolivia, Cuba, Ecuador, Jamaica, and Venezuela. Tier 2 Watch-list countries were Belize, Dominican Republic, Haiti, Mexico, Nicaragua, and Suriname. After a 90-day grace period, Bolivia and Jamaica avoided sanctions and moved to the Tier 2 Watch-list on the basis of positive actions taken by their governments to bring themselves into compliance with the TVPA. Ecuador was judged not to have made significant progress within the allotted period, but U.S. assistance was allowed to continue on the basis that it either promoted the purposes of the TVPA (funded anti-trafficking programs) or is otherwise in the U.S. national interest. Of the five Tier 3 countries, Venezuela was made subject to partial sanctions, and the Cuban government, which does not have diplomatic relations with the United States, was subjected to full sanctions.

On September 22, 2005, Representative Chris Smith, the original author of the TVPA, issued a statement expressing disappointment that countries like "Ecuador were waived [from sanctions], despite their failure to make any significant reform." Representative Smith commented that "actions like this send the wrong signal to

nations — friends and foes alike — that turn a blind eye to this international horror.”<sup>35</sup>

In 2004, Latin America also had a higher percentage of its countries on both the Tier 3 and the Tier 2 Watch-list than any other region. Latin American countries on Tier 3 were Cuba, Ecuador, Guyana, and Venezuela. Tier 2 Watch-list countries were Belize, Bolivia, Dominican Republic, Guatemala, Honduras, Jamaica, Mexico, Paraguay, Peru, and Suriname. After a 90-day grace period, Ecuador and Guyana avoided sanctions and moved to the Tier 2 Watch-list on the basis of positive actions taken by their governments to bring themselves into compliance with the TVPA. Venezuela was subject to partial sanctions, and the Cuban government, which does not receive U.S. assistance, was subject to full sanctions.

These trends reflect a similar pattern as the 2003 TIP report, in which Belize, Cuba, the Dominican Republic, Haiti, and Suriname were placed on Tier 3, but only Cuba remained following the September Presidential determination.

## **U.S. Government Anti-Trafficking Programs in Latin America**

In FY2004, the U.S. government provided \$82 million in anti-trafficking assistance to foreign governments worldwide, with some \$17 million for Latin America and the Caribbean. The funding supported 251 global and regional anti-trafficking programs, with 60 in Latin America, second only to Europe and Eurasia with 115 programs. These programs are administered by a variety of U.S. agencies, including Department of State, the Agency for International Development, Department of Labor, Department of Justice, Department of Health and Human Services, Department of Homeland Security, Immigration and Customs Enforcement, the White House, and U.S. contributions to the United Nations.<sup>36</sup> The majority of the programs are either regional, or directed at countries that were placed on either Tier 3 or the Tier 2 Watch-list in recent TIP reports.

In FY2004, Latin America regional programs focused on coordinating regional efforts to combat trafficking in persons through the Organization of American States (OAS) and providing funds for workshops, conferences, and public awareness campaigns throughout the region. Funds also supported large initiatives administered by the ILO and others aimed at reducing child labor and the commercial sexual exploitation of children. In Central America, several programs focused on harmonizing trafficking, repatriation, and victim protection policies among the governments and civil society; disseminating public awareness materials; and reintegrating street children at-risk of trafficking with their families and social networks.

Whereas regional programs in Latin America supported initiatives necessary to address the cross-cutting nature of human trafficking, country programs focused on

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<sup>35</sup> “Rep. Smith Disappointed with White House Failure to Sanction Allies for Trafficking Violations,” *U.S. Fed News*, September 22, 2005.

<sup>36</sup> TIP Report, 2005, [<http://www.state.gov/g/tip/rls/rpt/51689.htm>]; USAID, *Trafficking in Persons: USAID’s Response*, March 2005.

the specific challenges and/or government weaknesses in combating trafficking that have been identified in TIP reports. For example, anti-trafficking programs in Brazil were targeted at combating sex tourism and forced labor. Programs in Haiti aimed to provide assistance to children employed under harsh circumstances in domestic service and to prevent further trafficking of these children within Haiti and to the Dominican Republic. Throughout Latin America, there is an emphasis on programs that seek to improve public awareness and prevention efforts, to provide more thorough assistance to trafficking victims, including repatriation and reintegration for victims trafficked abroad, and to strengthen legal reforms and enforcement mechanisms.

Although a break-down of the FY2005 anti-trafficking initiatives funded by agency are not yet available, the FY2006 State Department budget justification indicates that \$2.6 million of \$12 million in global Economic Support Funds (ESF) would be targeted to Latin America. The funds would be used to support regional coordination activities through the Organization of American States (OAS), public awareness campaigns, victims services and reintegration (especially in border areas), creation or expansion of shelters for trafficking victims in countries where few exist, and anti-trafficking legal reform.

In addition to foreign aid programs, various agencies within the Department of Homeland Security are stepping up joint efforts with Mexican officials to identify, arrest, and prosecute human trafficking and smuggling rings that operate along the U.S - Mexico border and beyond. On July 21, 2005, the Bureau of U.S. Immigration and Customs Enforcement (ICE) reported that it had apprehended 10 members of a criminal group trafficking young women from Honduras to work as forced laborers in New Jersey. In August 2005, the Bureau of U.S. Customs and Border Protection (CBP) announced a new program, the “Operation Against Smugglers (and Traffickers) Initiative on Safety and Security” (OASISS), aimed at strengthening cooperation with Mexican officials to crack down on these types of criminal groups.<sup>37</sup>

**Presidential Anti-Trafficking in Persons Initiative.** In July 2004, President Bush announced that eight countries had been selected to receive \$50 million in strategic anti-trafficking in persons assistance.<sup>38</sup> The countries were chosen on the basis of the seriousness of the trafficking problem each faces, as well as their willingness to cooperate with a variety of U.S. agencies to combat the problem. Brazil and Mexico, along with Cambodia, India, Indonesia, Moldova, Sierra Leone, and Tanzania, were slated to receive the funds. The \$50 million would be in addition to regular anti-trafficking funds being provided by the United States.

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<sup>37</sup> “Indictments Made in Case Involving U.S.-Honduran Smuggling Ring,” July 22, 2005, and “U.S. Mexico Increasing Efforts to Prosecute Human Traffickers,” August 23, 2005, U.S. Department of State, Washington File, [<http://usinfo.state.gov>].

<sup>38</sup> The \$50 million consists of projects that must be approved by the Senior Policy Operating Group (SPOG) and the Deputy Secretary of State for each region. At this time, \$7.1million have yet to be approved by the SPOG and the Deputy Secretary of State. Programs were either funded by FY2003 Child Survival and Health (CSH) funds, FY2004 ESF funds, or, once approved, will be funded by the end of FY2006 with FY2005 ESF funds (which are two-year funds).



As of October 2005, \$8.2 million in funds had been approved by the Senior Policy Operating Group (SPOG) on trafficking for Brazil. These funds will support labor trafficking programs in the Southern Amazon; shelters for sex tourism victims in Rio, Recife and Sao Paulo; reintegration and border shelters in the Tri-border region (Brazil, Paraguay, and Argentina); and strengthening mobile law enforcement teams to fight forced labor in the interior, as well as training judges and prosecutors.

Mexico is also slated to receive \$8.2 million in funds. An additional \$550,000 for Mexico and regional programs are currently pending SPOG approval. These funds will support training for law enforcement and immigration officials, as well as shelter and emergency services in Mexico City, Cancun, Ciudad Juarez, Tijuana and Monterey. They will also finance projects aimed to prevent sex tourism and to rehabilitate sex trafficking victims. Funds are slated for prosecutorial training, which may be especially important if and when the Mexican Congress adopts pending anti-trafficking legislation. The funds will establish shelters and provide reintegration assistance along the Mexico-Guatemala border.

## **Regional and Country Efforts to Combat Trafficking**

### **Organization of American States**

OAS efforts to combat trafficking in persons began in 1999 when the Inter-American Commission of Women (CIM) co-sponsored a research study on trafficking in persons in nine countries in Latin America that offered broad recommendations for its elimination. In 2003 and 2004, the OAS General Assembly passed two resolutions on the subject, the latter of which created an OAS Coordinator on the Issue of Trafficking in Persons based in the CIM. Since that time, OAS/CIM, in partnership with IOM, has provided training and held several workshops for government officials and representatives from civil society in Mexico, Bolivia, Belize, and the English-speaking Caribbean and the Netherlands Antilles. CIM representatives have participated in numerous seminars at the country, regional, and international level to identify and disseminate information on best practices in the region. The OAS/CIM has also begun to conduct research in destination countries, including a project recently completed in Japan and a proposed project with the European Union.

### **Inter-American Development Bank**

In 2004, the Inter-American Development Bank (IDB) formed an internal working group to begin developing ways to support governments' anti-trafficking efforts in the region. The IDB is coordinating its efforts with the OAS and the IOM, and has developed technical cooperation projects for Bolivia, Colombia, El Salvador, Guyana, and Paraguay. The IDB is also working with the Ricky Martin Foundation to raise awareness of the extent of child trafficking in the region through public service announcements, promotional materials, and a video on best practices to combat trafficking in the region. In 2006, the Bank and the Foundation will publicize trafficking prevention hotlines (funded by IOM) in Central America, Colombia, Mexico, and Peru.

## Country Efforts: Progress and Remaining Challenges

Over the last few years, most Latin American countries, perhaps motivated by international pressure or the threat of U.S. sanctions, have taken steps to address the growing problem of human trafficking. As evidenced in **Table 1**, a majority of countries in the region have signed and ratified several international protocols in which they have pledged to combat various aspects of the trafficking problem. Those agreements include The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, the ILO Convention on the Worst Forms of Child Labor; the Optional Protocol to the UN Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution, and Pornography; and The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

A number of countries, including 7 countries in 2004, also passed new or amended anti-trafficking legislation and created National TIP Coordinators or Task Forces to coordinate anti-TIP programs and initiatives. For example, in January 2003, President Lula da Silva of Brazil announced a seventy-five point “National Plan for the Eradication of Slavery,” thereby elevating trafficking — especially for forced labor — to the level of a top presidential priority.

Most governments in the region that have received a Tier 3 designation, though initially dismayed, have worked with U.S. officials to address the problem of trafficking in persons during the 90-day grace period before the Presidential determination. According to the State Department, Bolivia, a country that was placed on Tier 3 in June 2005, had begun taking steps to improve its anti-trafficking programs and legislation before the report was released. A State Department spokesman asserted that the Bolivian example “is a model for the kind of cooperative dialogue on these kinds of issues that is envisioned not only by the law, but by ... our application of the law.”<sup>39</sup> In contrast to the case of Bolivia, the Venezuelan government issued a statement on June 3, 2005 challenging the TIP reports’ conclusions that “it funded no NGO programs geared toward victims of trafficking” and that its prevention efforts were “inadequate.” The statement concludes that Venezuela’s Tier 3 status is “an example of either a profound lack of knowledge of what the government of Venezuela is doing,” or an “intentional mis-characterization of the good faith actions” that it has taken.<sup>40</sup>

The general problem with the new international commitments, legal reforms, and human trafficking initiatives that have emerged in Latin America is that many countries appear to lack the resources and perhaps the political will to fund and implement their anti-trafficking programs adequately. Sometimes country efforts are, for example, thwarted by larger problems, such as political instability. Ecuador had five different Ministers of Government responsible for trafficking measures over the course of the two-year Gutierrez administration, making it difficult, if not impossible, for the government to coordinate effective anti-TIP activities. Many countries have

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<sup>39</sup> Sean McCormack, Spokesman, U.S. Department of State, Daily Press Briefing, June 3, 2005.

<sup>40</sup> “Politics: U.S. Trafficking Report Includes Cuba and Venezuela,” Inter Press Service, June 10, 2005.

few, if any, shelters for trafficking victims and, as in the case of Paraguay, no follow-up plans to help victims after they return from overseas or to their residences in smaller towns across the country. Some countries — including Guyana and Belize — have appeared to model their national TIP laws so closely to TVPA that they do not have the resources or the manpower to implement the complicated legislation. Public corruption is also a major obstacle to effective anti-trafficking programming as there is often complicity between traffickers and corrupt border officials, customs agents, law enforcement personnel, and politicians.

Colombia, the only Latin American country placed on Tier 1 in 2005, is also the largest recipient of U.S. assistance in Latin America, which may account for some of its ability to mobilize law enforcement, judicial and social service systems to fight trafficking in a holistic manner. The Colombian government did not prosecute any traffickers in 2004, but initiated 20 new cases and continued working on more than 300 pending cases. It worked with authorities in other countries to repatriate Colombians who had been trafficked abroad and to provide them with reintegration assistance. Similar services were provided for child victims of internal trafficking. National public awareness campaigns have been complemented by efforts to raise awareness in other countries in the region, including the Dominican Republic, about successful ways that Colombia has dealt with human trafficking.

## Issues for Policy Consideration

There are a number of issues and foreign policy considerations affecting the implementation of anti-trafficking in persons legislation that make U.S. efforts on this front appear inconsistent at times. Indeed, the State Department has acknowledged that the United States has a “deep, involved relationship” with a number of the countries in the TIP report, but that trafficking is “an important moral issue” that “we’re not going to hesitate to bring up [with those countries].”<sup>41</sup> As is the case with many human rights issues, ethical concerns about human trafficking must be balanced against broader U.S. geopolitical goals and interests in each country. Striking a balance between these competing concerns is exacerbated by the difficulty of gauging the effectiveness of existing implementation efforts. Issues that may be considered when evaluating the implementation of U.S. anti-trafficking policies are discussed below.

## Data Collection

In June 2003, Human Rights Watch criticized the State Department’s Trafficking Report for lacking a consistent analytical framework for gathering data on trafficking. Most observers attribute the lack of reliable data on trafficking to the clandestine nature of the crime. Others assert that good data are only produced when police are mandated to keep reports on prostitution or forced labor in their jurisdictions, which is often not the case. Information that has been gathered by NGOs is often not properly categorized as trafficking or, if it is properly identified, is frequently program-specific and difficult to aggregate. While some NGOs

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<sup>41</sup> McCormack, June 3, 2005.

exaggerate figures in order to draw attention to the trafficking problem in a particular country, others hold back figures out of fear that it could result in a country being criticized in the TIP report.<sup>42</sup>

In November 2005, the State Department hosted a conference with leading academics and practitioners on the topic of developing better trafficking indicators. Once those indicators are agreed upon, regional officials might discuss how best to aggregate those indicators into user-friendly databases. Latin American countries are likely to require financial and technical assistance to enable them to collect better migration and trafficking data.

## Measurements of Success

It is often difficult to measure success in the fight against human trafficking. The State Department has identified the passage of new TIP legislation or the amendment of existing TIP legislation to increase prosecutions of traffickers as evidence of some success. Since many countries in Latin America have passed or amended their existing TIP laws in recent years, it follows that an increasing number of prosecutions and convictions under that legislation should be a further indicator of success in combating TIP. In 2004, there were 145 prosecutions of suspected traffickers, but only 56 convictions in Latin America. These figures pale in comparison to South Asia, with 1,705 prosecutions and 1,260 convictions, and Europe and Eurasia, with 3,329 prosecutions and 1,274 convictions in 2004.<sup>43</sup> Some have asserted that the low conviction rates in Latin America may be due to the fact that it is easier to prosecute traffickers for other offenses, such as money laundering, than for trafficking in persons. Others have noted that even in the United States, there were only 59 defendants charged with trafficking and 43 individuals convicted of TIP-related crimes in 2004.

## Enforcement Improvement

In order to improve enforcement of TIP legislation in Latin America, observers have identified several issues that they maintain should be addressed. Some have noted that countries, instead of being encouraged to pass laws modeled after other countries (such as the TVPA), need to be given time to develop trafficking laws that respond to their particular TIP problems and law enforcement capacities. Once legislation is in place, more attention and resources may be needed to help countries implement that legislation, and that assistance may need to go beyond training for law enforcement and legal professionals. Third, attention may be needed to address the issue of police corruption that has long-plagued many countries in the hemisphere. This could be addressed by stiffening penalties for police, border guards, lawyers, judges, or politicians caught assisting traffickers.

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<sup>42</sup> “U.S. State Department Trafficking Report Undercut by Lack of Analysis,” *Human Rights Watch*, June 2003; Laczko and Gramegna, “Developing Better Indicators of Human Trafficking,” *Brown Journal of World Affairs*, Summer/Fall 2003.

<sup>43</sup> TIP Report, 2005, [<http://www.state.gov/g/tip/rls/rpt/51689.htm>].

## Balancing Multiple U.S. Interests

U.S. interests in Latin America are multiple and, at times, conflicting. These interests include strengthening democracy, promoting economic growth through free trade, stemming the flow of illegal narcotics and undocumented migrants, and cooperating on border security and anti-terrorism measures. These broad interests either directly or indirectly affect all U.S. policy in the region and may at times conflict with specific human rights goals, such as fighting human trafficking.

There are several ways in which broader U.S. foreign policy goals may influence the TIP report and sanctions process. Some observers maintain that there are certain U.S. allies in the region that could never be sanctioned for political reasons. Others contend that the repeated inclusion of Cuba and Venezuela on the Tier 3 list constitutes “selective indignation” on the part of the U.S. government.<sup>44</sup> While those cases may be extreme, there are other countries in the region facing sanctions for not complying with other U.S. requests — such as signing an Article 98 agreement<sup>45</sup> — whom some feel the United States does not mind seeing on Tier 3, such as Bolivia and Ecuador.

U.S. Embassy officials in the region have noted that it is sometimes difficult to produce an unbiased account of government efforts against trafficking without being swayed by underlying foreign policy concerns. Others have noted that it is difficult to deal with human rights issues like trafficking in persons when a country is undergoing extreme political instability.<sup>46</sup> Others contend that sanctions against countries such as Bolivia and Ecuador, which would include democracy and governance assistance, could undermine larger goals of preventing further democratic breakdown in the hemisphere.

## Beyond Cuba and Venezuela?

Since 2003, no governments in Latin America except Cuba and Venezuela have been subject to partial or full sanctions for failing to meet the minimum standards of TVPA. Ecuador has appeared on the Tier 3 list in both 2004 and 2005, but has yet to face sanctions. Some argue that sanctions will probably only be applied to countries already subject to sanctions — such as Burma, Cuba, or North Korea — and that threatening other countries with sanctions may actually encourage them to become less open to working with the United States.<sup>47</sup>

Others argue that this may be the case with China or Saudi Arabia, but most Latin American countries depend on good political and economic relations with the United States and fear the public humiliation that comes with a Tier 3 designation as

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<sup>44</sup> “Politics: U.S. Trafficking Report Includes Cuba and Venezuela,” *Global Information Network*, June 10, 2005.

<sup>45</sup> Article 98 agreements exempt U.S. service members from the jurisdiction of the International Criminal Court.

<sup>46</sup> Interviews with State Department Officials, September 2005.

<sup>47</sup> Feingold, 2005.

much as actual sanctions. For example, some believe a Tier 3 designation motivated the Jamaican government to take several positive steps against trafficking between June and September 2005. In this view, the Government of Jamaica may have been motivated by the sanctions threat, but it was also concerned with maintaining its international image as a good destination for foreign tourists. As more countries in the region become eligible for Millennium Challenge (MCA) assistance, the stakes will be raised even higher, as a Tier 3 designation could jeopardize both regular U.S. foreign assistance and MCA assistance.

## Equal Focus on All Types of Trafficking?

The TVPA defines trafficking broadly to include problems such as forced labor, sex slavery, and domestic servitude. Although the U.S. government funds programs to combat all types of trafficking in persons, some observers believe that the government focuses too much on sex slavery as opposed to non-sexual labor exploitation. A 2005 ILO study finds that less than half of all trafficking victims worldwide are part of the sex trade. Despite these statistics, critics say that both the media and the U.S. government focus on sex-trafficking cases more than other trafficking cases. They argue that an increasing percentage of the U.S. anti-trafficking budget is being directed to inexperienced NGOs focused on rescuing women and children from the commercial sex industry. The inventory of U.S. anti-trafficking programs in 2004 appears to counter these claims as it shows U.S. support for a wide variety of NGOs that strive to protect victims and prosecute traffickers engaged in all types of human trafficking.<sup>48</sup>

## Prostitution and Trafficking

Some groups in the United States have sought to broaden the definition of trafficking in persons to include all forms of prostitution, but many countries have thus far rejected those attempts. Proponents of this broader definition of trafficking in persons argue that prostitution is “not ‘sex work;’ it is violence against women [that] exists because ... men are given social, moral and legal permission to buy women on demand.”<sup>49</sup> Opponents, including many European and Latin American countries, have legal and regulated prostitution and argue that this broadened definition would impede the capacity of the international community to achieve consensus and work together to combat trafficking.

The U.S. State Department has repeatedly asserted that prostitution and trafficking in persons are inextricably linked. U.S. officials argue that “where prostitution is legalized or tolerated, there is greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.” Others disagree, noting that giving

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<sup>48</sup> Jennifer Block, “Sex Trafficking: Why the Faith Trade is Interested in the Sex Trade,” *Conscience*, Summer/Autumn 2004; “A Global Alliance Against Forced Labor,” ILO, 2005; Debbie Nathan, “Oversexed,” *The Nation*, August 29 - September 5, 2005, vol. 281; U.S. State Department, TIP Report 2005, [<http://www.state.gov/g/tip/rls/rpt/51689.htm>]

<sup>49</sup> Janice G. Raymond, “Sex Trafficking is Not ‘Sex Work,’” *Conscience*, Spring 2005.

prostitutes some measure of legitimacy short of legalization reduces the risk that they will be exposed to the dangers of trafficking.<sup>50</sup>

In 2003, Congress approved two pieces of legislation that made U.S. funding for HIV/AIDS and anti-trafficking programs available only to groups that explicitly condemn “prostitution and sex trafficking.” An amendment to H.R. 1298 (P.L. 108-25), which authorizes the President’s Emergency Plan for AIDS Relief (PEPFAR), prohibits funds from being distributed to any group or organization that does not have a policy “explicitly opposing prostitution and sex trafficking.”<sup>51</sup> Similarly, the Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193) restricts anti-trafficking funds to groups that oppose prostitution.

Critics have argued that these policies exclude the people who are most able to report and combat abuses within the sex industry, prostitutes themselves. They are concerned that well-established programs may be penalized by these new regulations, thereby nullifying progress that has been made in HIV/AIDS prevention and anti-trafficking. Some groups that work directly with sex workers in India and Cambodia have already rejected U.S. funding. Brazil has rejected U.S. support for its HIV/AIDS programs because it is opposed to the new restrictions. On the other hand, Ambassador John Miller, Director of the State Department’s Office to Monitor and Combat Trafficking in Persons, has replied to these assertions by noting that this change in U.S. funding policy has yet to have any adverse effects on groups already working to combat trafficking worldwide.<sup>52</sup>

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<sup>50</sup> U.S. State Department web-site, [<http://www.state.gov/g/tip/>]; Feingold, Sept./Oct. 2005.

<sup>51</sup> For more information on PEPFAR, see CRS Report RL33135, *The Global Fund and PEPFAR in U.S. International Aids Policy*, by Raymond W. Copson.

<sup>52</sup> Melissa Ditmore, “New U.S. Funding Policies on Trafficking Affect Sex Work and HIV-Prevention Efforts World Wide,” *SIECUS Report*, Spring 2005; Esther Kaplan, “Just Say Não,” *The Nation*, May 30, 2005; “Opinion: *Des Moines Register* Editorial Showed ‘Surprising Ignorance’ on Sex Work, Trafficking, HIV/AIDS,” Kaiser Daily HIV/AIDS Report, July 28, 2005.

**Table 1. Latin America and the Caribbean Trafficking in Persons Status**

Country	2004 Tier Placement	2005 Tier Placement	UN TIP Protocol		ILO Convention 182	Optional Protocol of CRC		Optional Protocol CRC Armed Conflict		TIP Law	TIP Coord. or Task Force	National Plan on CSEC	Age of Consent to Work
			Signed	Ratified (a)	Ratified	Signed	Ratified (a)	Signed	Ratified (a)				
Argentina	Tier 2	Tier 2	X	X	X	X	X	X	X		X	X	14
Belize	Tier 2 (W)	Tier 2 (W)		X (a)	X	X	X	X	X	X	X		14
Bolivia	Tier 2 (W)	Tier 3	X	X	X	X	X			X			14
Brazil	Tier 2	Tier 2	X	X	X	X	X	X	X	X	X	X	14
Chile	Tier 2	Tier 2	X	X	X	X	X	X	X			X	14
Colombia	Tier 1	Tier 1	X	X	X	X	X	X		X	X	X	14
Costa Rica	Tier 2	Tier 2	X	X	X	X	X	X	X	X	X	X	15
Cuba	Tier 3	Tier 3				X	X						
DR	Tier 2 (W)	Tier 2 (W)	X		X			X		X		X	15
Ecuador	Tier 3	Tier 3	X	X	X	X	X	X		X	X		14
El Salvador	Tier 2	Tier 2	X	X	X	X	X	X	X	X		X	14
Guatemala	Tier 2 (W)	Tier 2		X (a)	X	X	X	X	X			X	14
Guyana	Tier 3	Tier 2		X (a)	X					X	X		14
Haiti		Tier 2 (W)	X			X		X					15
Honduras	Tier 2 (W)	Tier 2			X		X (a)		X (a)				16
Jamaica	Tier 2 (W)	Tier 3	X	X	X	X		X	X				12
Mexico	Tier 2 (W)	Tier 2 (W)	X	X	X	X	X	X	X	pending	X	X	14
Nicaragua	Tier 2	Tier 2 (W)		X (a)	X		X (a)				X	X	14
Panama	Tier 2	Tier 2	X	X	X	X	X	X	X	X			14
Paraguay	Tier 2 (W)	Tier 2	X	X	X	X	X	X	X	X	X	X	15
Peru	Tier 2 (W)	Tier 2	X	X	X	X	X	X	X		X		14
Suriname	Tier 2 (W)	Tier 2 (W)				X		X			X		14
Venezuela	Tier 3	Tier 3	X	X		X	X	X	X		X		14

\* For an explanation of Tier Placement, see USG *Trafficking in Persons Report*, June 2004 and June 2005.

\*\* (W) indicates placement on Tier 2 Watch List as opposed to Tier 2.

\*\*\* (a) indicates accession.

Status of Ratification of Treaties and Protocols:

— U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons: [[http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html)]

— ILO Convention 182 (Convention on the Worst Forms of Child Labor): [<http://www.ilo.org/ilolex/english/newratframeE.htm>]

— Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution, and Pornography: [[http://www.ohchr.org/english/countries/ratification/11\\_c.htm](http://www.ohchr.org/english/countries/ratification/11_c.htm)]

— Optional Protocol to the CRC on the Involvement of Children in Armed Conflict: [<http://www.unhcr.ch/html/menu2/6/crc/treaties/status-opac.htm>]

— National Plan of Action Against Commercial Sexual Exploitation of Children: [[http://www.ecpat.net/eng/Ecpat\\_inter/projects/monitoring/national\\_plan.asp#5](http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/national_plan.asp#5)]