

ISSUE BRIEF

No. 4727 | JUNE 30, 2017

The Case for Reforming the *Trafficking in Persons Report* *Olivia Enos*

At the release of the U.S. Department of State's 2017 *Trafficking in Persons (TIP) Report*, Secretary of State Rex Tillerson declared that the Trump Administration is “committed to making the 21st century the last century to experience human trafficking.”¹

The annually released TIP Report is a positive diplomatic tool used to hold other countries accountable when it comes to combatting human trafficking, a modern scourge estimated to affect at least 21 million people worldwide.² The report ranks countries according to their compliance with the report's minimum standards for elimination of trafficking in persons. It ranks countries from best to worst in four categories: Tier 1 (fully meet the Trafficking Victims Protection Act minimum (TVPA) standards); Tier 2 (making significant efforts to meet TVPA minimum standards); Tier 2 Watch List (Tier 2 countries with increasing number of victims); and Tier 3 (not making significant efforts to meet TVPA minimum standards).

However, the TIP Report has a muddled history. In 2015, for example, Malaysia and Cuba were unexpectedly upgraded from Tier 3 to Tier 2 Watch List. Many viewed both upgrades as politically motivated and unjust, revealing the subjectivity of the report's

rankings. While the fact that the Administration is making these issues a priority is welcome, the 2015 report—and even this year's report—reveal the pressing need for TIP Report reform.

Highlights from the 2017 TIP Report

This year's report took a positive step forward in placing China on Tier 3—the worst designation a country can receive.³ China was downgraded due to its decreased law enforcement efforts to address trafficking in persons, its continuation of “re-education through labor” practices, as well as its role in facilitating the trafficking of vulnerable North Korean women and children, among other reasons.⁴ The Tier 3 designation is merited: China should have been on Tier 3 for years due to these activities, including Chinese government complicity in forced labor.

While China's downgrade is valid, it reveals the subjectivity of the TIP Report's rankings. China was downgraded only once during the Obama Administration, and that downgrade was done only because of a requirement in the TVPA that triggers an automatic downgrade if countries have not made substantial efforts to comply.⁵ This year's downgrade of China is also an automatic downgrade. The real test will be whether the Trump Administration maintains China's Tier 3 designation in 2018, and whether it will waive or implement sanctions triggered by the designation.⁶ The Obama Administration waived the sanctions.

There were other surprising developments in this year's *Trafficking in Persons Report*, including the upgrade of Malaysia from Tier 2 Watch List to Tier 2. While there is no clear political motivation

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4727>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

for this year's upgrade (unlike the one in 2015, which was viewed as politically motivated due to ongoing Trans-Pacific Partnership trade deal negotiations),⁷ the upgrade should nevertheless be viewed with skepticism.

In 2015, mass graves containing the bodies of 139 individuals were found in the Wang Kelian jungles on the border of Thailand and Malaysia. In spite of ongoing investigations in 2016 by both Thailand and Malaysia, not a single Malaysian was convicted for involvement, despite suspicions to the contrary.⁸ While the TIP Report documents a substantial increase in the identification of victims of trafficking—1,558 confirmed survivors of trafficking in 2016, as compared to 305 in 2015⁹—publically available data on prosecutions of traffickers suggest a decrease in legal remedies to address trafficking. According to the Malaysian government, only 33 human traffickers were convicted in 2016.¹⁰ Malaysia's upgrade is even more surprising when compared with the main-

tenance (rightly) of Thailand's Tier 3 designation. According to John Sifton of Human Rights Watch, comparatively speaking, Malaysia has done far less than Thailand to combat trafficking.¹¹

There were countless other questionable decisions made in the 2017 TIP Report, including the removal of Burma and Iraq from the Child Soldier Prevention Act list, which lists governments guilty of recruiting and using child soldiers. Their removal was premature and contradicts U.S. law, especially since non-governmental organizations (NGOs) and the United Nations documented the use of child soldiers in both countries in 2016.¹²

A Pressing Need for Reform

Perceived discrepancies in rankings in the 2015 TIP Report deeply affected the report's credibility. At the time, investigations by Reuters revealed that the State Department's Office to Monitor and Combat Trafficking in Persons (J/TIP) staff's recommended

1. News release, "Remarks at the 2017 Trafficking in Persons Report Launch Ceremony," U.S. Department of State, June 27, 2017, <https://www.state.gov/secretary/remarks/2017/06/272205.htm> (accessed June 30, 2017).
2. International Labor Organization, "Forced Labour, Modern Slavery and Human Trafficking," <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (accessed June 30, 2017).
3. Gardiner Harris, "China Is Among Worst Human Trafficking Offenders, State Dept. Says," *The New York Times*, June 27, 2017, https://www.nytimes.com/2017/06/27/world/asia/china-human-trafficking.html?_r=0 (accessed June 30, 2017).
4. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, "2017 Trafficking in Persons Report: China," June 2017, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271165.htm> (accessed June 30, 2017); Mark P. Lagon, "Trafficking Trends and Key Rankings: Say No to Grade Inflation," testimony before the Committee on Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, U.S. House of Representatives, April 22, 2015, <http://docs.house.gov/meetings/FA/FA16/20150422/103357/HHRG-114-FA16-Wstate-LagonM-20150422.pdf> (accessed June 30, 2017); and Human Rights Watch, "China: Don't Force 8 Refugees Back to North Korea," April 23, 2017, <https://www.hrw.org/news/2017/04/23/china-dont-force-8-refugees-back-north-korea> (accessed June 30, 2017).
5. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, "2017 Trafficking in Persons Report, 2017: Methodology," June 2017, <https://www.state.gov/j/tip/rls/tiprpt/2015/243361.htm> (accessed June 30, 2017).
6. *Ibid.*
7. Olivia Enos, "A Call to Review Evaluation Methods in the Trafficking in Persons Report," Heritage Foundation *Backgrounder* No. 4452, August 10, 2015, p. 2, <http://www.heritage.org/crime-and-justice/report/call-review-evaluation-methods-the-trafficking-persons-report>.
8. "Tenaganita: Malaysians Likely Behind Southern Thai Mass Grave," *Malaymail Online*, May 6, 2015, <http://www.themalaymailonline.com/malaysia/article/tenaganita-malaysians-likely-behind-southern-thai-mass-grave> (accessed June 30, 2017).
9. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, "2017 Trafficking in Persons Report, 2017: Malaysia," June 2017, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271235.htm> (accessed June 30, 2017).
10. "100 Convictions Under Anti-Trafficking Act in 2016, Says DPM," *Malaymail Online*, February 8, 2017, <http://www.themalaymailonline.com/malaysia/article/100-convictions-under-anti-trafficking-act-in-2016-says-dpm> (accessed June 30, 2017).
11. Private conversation with John Sifton, Asia Advocacy Director at Human Rights Watch. Referenced with permission.
12. Human Rights Watch, "U.S.: Return Burma, Iraq to Child Soldier List: Tillerson Undermines US Law by Removing Violators," June 26, 2017, <https://www.hrw.org/news/2017/06/26/us-return-burma-iraq-child-soldier-list> (accessed June 30, 2017); United Nations, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Myanmar: 849 Children and Young People Released from Tatmadaw Since 2012," June 23, 2017, <https://childrenandarmedconflict.un.org/press-release/myanmar-849-children-and-young-people-released-from-tatmadaw-since-2012/> (accessed June 30, 2017); and United Nations Security Council, "Children and Armed Conflict" April 20, 2016, https://www.un.org/ga/search/view_doc.asp?symbol=s/2016/360&referer=/english/&Lang=E (accessed June 30, 2017).

rankings for at least 17 different countries were disputed or overruled by senior diplomats.¹³ While it is unknown whether J/TIP staff were similarly overruled during the 2017 report determinations, earlier incidents highlight the critical need for reform.

One of the challenges of the TIP Report, and the anti-trafficking community writ large, is the lack of data incorporated into the evaluation of best practices for combatting trafficking in persons. For example, the only consistently used metric for measurement of compliance with minimum standards relies on government reporting on victim identification and prosecutions of traffickers.¹⁴ The data is sparse and largely unverifiable by secondary sources.

An additional challenge is that there is no agreed-upon figure on the number of victims of trafficking worldwide. While the International Labor Organization's (ILO's) figure—21 million—is the most broadly respected, it remains disputed. And the Global Slavery Index's (GSI's) hotly contested estimate suggests that the number of victims may be more than double the ILO's figure.¹⁵ The ILO and the GSI are together slated to release a new estimate in September of this year, but at present, the full scope of human-trafficking challenges remain unknown.

The lack of data makes it difficult to know, first, whether the U.S. has identified the correct minimum standards for elimination of trafficking in persons, and second, whether current strategies are meaningfully reducing the prevalence and incidence of trafficking.

Without certainty on the scope of the problem and the effectiveness of current strategy, the TIP

Report may continue to be viewed with skepticism by the international community.

Improving TIP Report Credibility

If the Trump Administration intends to continue U.S. leadership in combatting human trafficking, the executive and the U.S. Congress should seriously consider TIP Report reform.

Later this year, Congress will move to reauthorize the signature piece of anti-trafficking legislation, the TVPA. The bill's reauthorization will be the perfect opportunity to give serious consideration to reforming the minimum standards for elimination of trafficking in persons, and move toward TIP Report tier-ranking reform. Re-introduced legislation from Senators Robert Menendez (D-NJ), Marco Rubio (R-NJ), Tim Kaine (VA-D), and Cory Gardner (R-CO) offers a starting point for reform.¹⁶

The executive branch and U.S. Congress should:

- **Re-evaluate the minimum standards for TVPA compliance in the TIP Report.** Modifications to these criteria should include compliance based on standards that are proven to reduce the number of victims of trafficking. Such standards should include time-tested, reliable best practices for the elimination of human trafficking. Some have suggested that the definition of concrete actions to address trafficking be defined more explicitly and include things such as evaluating law enforcement efforts, legal efforts, and outcomes (including, but not limited to prosecutions), training provided to law enforcement, as well as victim services. These minimum standards should be evaluated and re-evaluated based on outcomes of such programming. They should also be based on credible evidence that countries are making good-faith efforts to eliminate trafficking.
- **Develop an empirical framework and incorporate it into the TIP Report.** The U.S. government should collaborate with academic institutions and anti-human-trafficking NGOs to develop a methodology for tracking the implementation, successes, failures, and long-term impacts of U.S. anti-trafficking programs. Once developed, the methodology should be integrated into the TIP Report as one of the factors in

13. Jason Szep and Matt Spetalnick, "State Department Watered Down Human Trafficking Report," Reuters, August 3, 2015, <http://www.reuters.com/article/2015/08/03/us-usa-humantrafficking-disputes-special-idUSKCN0Q821Y20150803> (accessed June 30, 2017).

14. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, "2017 Trafficking in Persons Report, 2017: Global Law Enforcement Data," June 2017, <https://www.state.gov/j/tip/rls/tiprpt/2017/271114.htm> (accessed June 30, 2017).

15. The Global Slavery Index, <https://www.globalslaveryindex.org/> (accessed June 30, 2017).

16. Trafficking in Persons Report Integrity Act, S. 377, 115th Cong., 1st Sess., <https://www.congress.gov/115/bills/s377/BILLS-115s377is.pdf> (accessed June 30, 2017).

assigning tier rankings. Incorporating additional empirical data into the TIP Report could help to deflect criticism that TIP rankings are politically motivated and subjective.

At the release of the 2017 TIP Report, Ivanka Trump indicated that ending human trafficking is a priority for the Trump Administration. Any good faith effort the Administration makes to address trafficking, however, must include a dedication to strengthening and improving the TIP Report.

—*Olivia Enos is a Policy Analyst in the Asian Studies Center, of the Kathryn and Shelby Cullum Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.*