

# Human Trafficking: Focusing on Key Countries, Demand, and Victim Protection

Prepared statement by

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Chairman Smith, Congresswoman Bass, and Members of the Subcommittee, it is a privilege to testify today. It is always a special pleasure to look at the upcoming Trafficking in Persons Report I was charged with shepherding and using diplomatically with the legislator most responsible for it being added to the U.S. policy toolbox, you, Mr. Chairman. I would ask that my full written testimony, which I will summarize, be admitted into the record.

On an issue of robustly bipartisan concern, let me begin with some praise for an administration of the other party than that which I served in. I am pleased to see President Obama’s personal engagement in the annual

meetings of the President Interagency Task Force established by the Trafficking Victims Protection Act (TVPA). He used that occasion on April 8 to place special attention on victim protection. The rhetoric of a victim-centered approach under administrations of both parties has never been matched fully with deeds. The TVPA and the UN Palermo Protocol, developed at the same time, heavily prioritize the prosecution of perpetrators in a law-and-order approach. Yet human trafficking is fundamentally a human rights calamity even more than a criminal or security issue, and as such, the moral imperative for the U.S. and the world is to focus on the empowerment of survivors. I will return to that.

Secretary Kerry and his team at the State Department also deserve praise for going through with the automatic downgrades of Russia, China, and Uzbekistan to Tier 3 in last June's *TIP Report* – cases I expressed deep concern about at your corresponding hearing, Mr. Chairman, one year ago. Calling it like it is on those three countries protects the integrity of the Report, and bolsters the legitimacy of U.S. foreign policy more generally.

I would like to speak to a few countries of concern meriting close scrutiny in the 2014 Report, and by the Congress and the American people as the report is finalized.

Malaysia is among those countries which face an automatic downgrade to Tier 3 under Section 107 (a) of the 2008 TVPA reauthorization. In 2009, right after my tenure as Ambassador at Large, Malaysia was assigned the Tier 3 ranking that it truly deserved for governmental lack of will, and not just of capacity. Since then, it has remained on the Tier 2 Watch List for four consecutive years. The country was granted a waiver from downgrade to Tier 3 based on a government plan that, if implemented, would represent significant efforts to meet the minimum standards for the elimination of trafficking. Among other pressing reforms, Malaysia needs to enforce the law that prohibits employers and labor agents from withholding travel documents; amend its anti-trafficking law to allow victims to live, travel and reside outside of government facilities; increase efforts to prosecute and punish offenders, especially fraudulent labor recruiters; develop and implement procedures for identifying and protecting victims; and increase training to officials to avoid government complicity in human trafficking cases.

Thailand is also on the cusp of an automatic downgrade from a Watch List which should not serve as a long-term status. Public unrest and shaky rule of law in the last year are no pretext for not telling it like it is in the 2014 *TIP Report*. Moreover, Thailand illustrates what are unfortunate revisions to the TVPA in the 2013 reauthorization bill produced in the Senate to which the House acquiesced without revision. That reauthorization added ill-advised new criteria to the TVPA minimum standards from which tier rankings in the *TIP Report* are derived. Those added criteria give credit to nations for conferences and partnerships with NGOs and other entities aimed at fighting trafficking. Best-practice sharing and partnerships are important (indeed one reason I have worked to develop and serve uncompensated on the Board of the Global Business Coalition Against Human Trafficking), but not an end in itself. Last fall, I was a featured speaker at the so-called Bangkok Dialogue hosted by the Thailand Institute of Justice housed in the country's Ministry of Justice. That conference properly highlighted how rule of law must be a central precept in the post-2015 Millennium Development Goals being fashioned in the United Nations. But my enthusiastically taking part in a worthy conference is no substitute for government action to combat trafficking.

In particular, concerns in Thailand include defective mechanisms for identifying victims among vulnerable populations; lax investigation, prosecution and conviction of perpetrators; inadequate regulations concerning labor brokers and recruitment fees paid by migrant workers; official complicity in the cross-border smuggling of undocumented migrants; inadequate assistance to victims; and failure to yet accede to the UN Palermo Protocol. Reuters reported this month that the Thai Government shared with the United States statistics on anti-trafficking efforts; however, those numbers' veracity was suspect as they do not include thousands of Rohingya people trafficked from Burma, which the Thai government considers as smuggling cases rather than trafficking cases.<sup>1</sup>

I am indeed concerned about the interaction of Thailand and Burma. As Ambassador at Large, in 2007, I met several young Burmese women in a Thai shelter who had been recruited from Burma as migrant workers. They described to me the brutal forced labor they were subjected to in seafood processing in Samut Sakhon. I had the privilege to speak with Aung San Suu Kyi at a small lunch about my experience and her continued concern about the Burmese subject to human trafficking in her country and neighboring ones. The Rohingya people are particularly vulnerable to human trafficking today. Daw Suu is a true heroine. But she, and the governing authorities, must be attentive to the plight of the Rohingya, and not just reform and reconciliation. Burma has been on Tier 2 Watch List in 2012 and 2013 after previously sitting in Tier 3 for several years. Among other things, the Burmese government needs to immediately address the problem of military officials engaging in forced recruitment of child soldiers; find, demobilize and rehabilitate children serving in the armed forces; recognize citizenship to minorities lacking legal protection; more vigorously prosecute and punish perpetrators, including complicit government officials; and increase victim identification and protection efforts.

Let me say a word more generally about trafficking in the seafood sector so prevalent in that region of the world. I have recently testified before the Senate Foreign Relations Committee and a House Natural Resources Subcommittee on the subject of human trafficking arising in illegal, unreported and unregulated (IUU) fishing. I am very glad that thereafter, the Senate approved the "Port State Measures Act" which will help close the window of vulnerability to trafficking in IUU fishing. Congress should pass H.R. 69, "The Illegal, Unreported and Unregulated Fishing Enforcement Act," introduced by Congresswoman Bordallo, and S. 267 "The Pirate Fishing Elimination Act," introduced by Senator John D. Rockefeller IV to do the same.

Yet human trafficking does not just occur on the high seas. When the seafood comes to shore it then must be processed, and many migrants are subject to human trafficking in that grueling work—just as those Burmese I met in the outskirts of Bangkok seven years ago. It is a tragedy that abuse persists in this sector years later. Government authorities must grapple with it.

Elsewhere in East Asia, I would like to talk about problems in otherwise admirable, affluent, democratic allies of the United States: New Zealand and Japan. These are two nations with a good record of spending resources and time to combat human trafficking in the Asia-Pacific region. However, just as the U.S. must attend to its own record *at home* on human trafficking, and not solely be assessed based on its international efforts, so too must New Zealand and Japan be held to account for their *domestic* efforts.

New Zealand has for a number of years been assigned to Tier 1. Yet if one looks at the narrative in the 2013 *TIP Report*, one sees a picture more complex than the grade itself. New Zealand needs to significantly increase efforts to investigate and prosecute human trafficking cases. Its government has not prosecuted or convicted *any* offenders in the last seven years, nor has it identified *any* trafficking victims in the last nine years. In addition, the government should update and implement its 2009 national action plan to properly identify and assist victims, notably sexually exploited children and migrants in forced labor. Finally, to address demand, the country should launch an anti-trafficking awareness campaign directed at clients of the sex trade.

Japan is rightly considered the most important ally of the United States in the region. Perhaps for this reason, the Government of Japan is, to say the least, perturbed to be the only G-7 member not on Tier 1. Yet Japan deserves on the merits no more than the Tier 2 ranking it has earned for several years. It is very much in the power of Japan to ratify the UN Palermo Protocol and pass a comprehensive anti-trafficking law, yet it has not done so. Instead, it relies on piecemeal provisions, and shortchanges law enforcement training on human trafficking *per se*, leading to prosecutions for lesser offenses. Law enforcement activity, if anything, appears to be falling off in this area. And the problem is not just sex trafficking among Japanese minors and immigrant adults, but abuses under a labor trainee apprentice program designed to impart skills to migrants of less developed nations of the region, but in fact permitting trafficking due to the inapplicability of labor laws to the “trainees.” I, myself, met two such victims from China in Japan.

Moreover, as Ambassador at Large from 2007 to 2009 and Executive Director from 2009 to 2010 of a nonprofit with an office then in Japan, Polaris Project, I was startled by authorities’ disinclination toward collaborating with civil society organizations to identify and rehabilitate trafficking victims.

When regularly asked in what region of the world trafficking is the worst, my answer is: the Arabian Gulf. Scurrilous labor agents, debt bondage, sponsorship laws, withheld passports and papers, and fraud are among the persistent problems there, which do not chiefly victimize undocumented workers, but rather *documented guest workers*. Foreigners (from South and Southeast Asia, and increasingly Africa) and women are not treated as human beings in full, nor accorded access to justice. Those who are both, like many domestic servants, are very vulnerable to abuse.

I was involved in contentious diplomacy with Oman for its Tier 3 ranking in 2008. Since then, perceived improvements in Oman’s efforts have earned it a Tier 2 ranking for four consecutive years. Yet Oman demonstrates a problem. The *TIP Report* conclusively propels nations to enact comprehensive anti-trafficking laws, as proven statistically by Judith Kelley of Duke University and Beth Simmons of Harvard University,<sup>2</sup> but enforcement of those laws often does not follow. It is time to assess whether implementation is lagging following the formal steps which earned Oman’s hike to Tier 2. Moreover, having myself been ushered through a “Potemkin Village” trafficking victim’s shelter in Kuwait in 2008 as Ambassador at Large, two such government shelters in Oman appear equally to be a triumph of form over survivor-empowering substance. During the last assessment period, the government only identified and referred two trafficking victims to its first, underused government-run shelter. In addition, unscrupulous labor brokers are driving migrant workers into forced labor in the country.

Qatar has earned a Tier 2 ranking the last two years. It is of special interest given its preparations for the 2022 FIFA World Cup and eagerness to host FIA Formula One World Championship races. Major sporting events like the World Cup and Olympics cause a dual hazard for human trafficking with labor exploitation in constructing competition arenas *and* a spike in sex trafficking during the events themselves. Mr. Chairman, during the last Superbowl, you spoke pointedly about this latter hazard in your own state of New Jersey. As for Qatar, there was a report two weeks ago claiming that 1,200 men had lost their lives since the construction work started--much larger than the death toll for workers in preparation for the Brazil and South Africa World Cups, with 7 and 2 deaths respectively, and the Beijing Olympics with 10 workers deaths.<sup>3</sup> There are several factors present in Qatar that substantially increase the risks of human trafficking and labor abuses, including a sponsorship system that binds migrant workers to their employers, exorbitant recruitment fees, and a widespread withholding of passports. In addition, the government continues to punish victims for offenses committed due to being trafficked, and only assists victims that filed complaints before their arrests.

And it appears that Qatar is not alone in responsibility for migrant workers grossly exploited on its soil. Among “source countries” for migrant workers, for instance, the Government of Nepal has a responsibility for regulating the labor recruiters who woo its nationals into debt, and for more forcefully defending its nationals in its diplomacy with Qatar. Instead, it seems that the Nepali government has chosen to look the other way and continue taking advantage of the succulent remittances from its citizens working abroad, which represent up to a quarter of its GDP.<sup>4</sup> The community of U.S. anti-trafficking nonprofits has been particularly focused on Nepal, which has been on Tier 2 in recent years, candidly as a beneficiary of grade inflation due to lack of perceived capacity. Around the world there is a murky line between lack of capacity and lack of will in less developed countries. Trafficking in Nepal includes extreme cases of physical abuse of children and domestic servitude. The government should commit to protect its citizens both abroad and at home; regulate and prosecute offending labor brokers; train public officials to find victims and refer them to protective services; grant immunity to victims; comport its laws on trafficking with international standards; and ratify the Palermo Protocol.

Elsewhere in South Asia, the colossus, India, remains a mixed bag. On the one hand, the nation has the highest incidence of human trafficking globally, with millions from marginalized castes (who typically never cross a border) in bonded labor. On the other hand, India has finally begun slowly what the United States, with another federal system, did in the Civil Rights Era: national authorities engaging state authorities to impel them to implement national laws. Yet one case outside India deserves attention for larger lessons. The arrest of Indian diplomat Devyani Khobragade in the U.S. for charges related to the trafficking of a domestic servant calls attention to the special priority the TVPA places on government officials’ complicity in TIP. Sometimes the *TIP Report* does not recount these cases (not even by discretely leaving out the names of the accused). And a U.S. regulation to penalize flagrant or repeated abuses by barring all of a country’s diplomats from bringing third country nationals into the U.S. has never been invoked.<sup>5</sup> Lest diplomatic immunity become impunity (for activities truly unrelated to official duties under a sober reading of the Vienna Convention on Diplomatic Relations of 1961), India is a case to watch, on this case of that acute sort of abuse shrouded within a home and also within the bubble of diplomatic privilege.

Afghanistan is another nation facing automatic downgrade from Tier 2 Watch List to Tier 3. I know from experience that the State Department used to treat some nations facing particular turbulence as Special

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Cases. Yet so many years have passed since a U.S.-led invasion to oust the Taliban government that it is now important for the U.S. to transparently assess the reality on the ground. While access to justice and opportunity for women and girls have improved since that invasion, problems in this regard remain serious and enable human trafficking. The majority of Afghan victims are trafficked internally. Families selling children for prostitution, or insurgent groups forcing children to serve as suicide bombers are all too common. In addition, unscrupulous labor brokers are driving increasing numbers of Afghan men, women and children into forced labor abroad. The Afghan government needs to grant immunity to victims for crimes due to their being trafficked, punish complicit government officials, and train law enforcement in victim identification and protection.

I would like to end by looking at some ostensible success stories. Brazil has been on Tier 2 since 2007, and its labor inspectors have rescued forced labor victims in the thousands each year since then. Yet it was not until last year's Report that a case was documented of labor slavery earning a real honest-to-goodness prison sentence (as opposed to time in a halfway house, community service, or other suspended sentence). Labor inspectors and law enforcement still do not cooperate enough to make sure that more of those liberated from forced labor get justice through their traffickers being punished commensurate with the appalling seriousness of the crime. Partnering with the International Labor Organization (ILO), Brazil's authorities tend to follow the ILO model of mere administrative punishments for labor trafficking--as opposed to sex trafficking, which is punished a bit more.

Brazil is emblematic of a global pattern of impunity for labor trafficking. Continuing the statistical disaggregation introduced in my tenure directing the TIP Office, the 2013 *TIP Report* revealed that only 15 percent of prosecutions for TIP globally were labor (rather than sexual) exploitation; and that was a doubling from but 7 percent the previous year.

In Europe, one would assume that anti-trafficking efforts were robust. That is largely the case, relative to the developing world. Yet is a new European Union directive to combat human trafficking<sup>6</sup> being implemented in individual EU countries? And there remains a problem of demand for sex trafficking. Especially in those countries, like the Netherlands and Germany, where sex buying is not criminalized or stigmatized, commercial sex sector becomes the enabling environment for sex trafficking of minors and of adults through force, fraud, and coercion. The model in Germany has manifestly failed.<sup>7</sup> As a result, more and more European countries, including France, Ireland, Finland and the UK are contemplating the adoption of the Nordic model, which makes it a crime to buy, but not sell, sexual services. In addition, last month, the European Parliament passed a non-binding resolution in favor of criminalizing the purchase of sex, putting pressure on those countries that have adopted the German model.<sup>8</sup> How meaningful can the anti-demand efforts of nations (which the TVPA minimum standards require the *TIP Report* to account for) be if sex buying is legal, and frankly encouraged as a tourist industry by the Dutch, German, and other governments?

Italy deserves scrutiny. The country established a humanitarian visa--even before the United States did--to regularize the status of undocumented workers who, through no fault of their own, became trafficking victims. Moreover, Italy and other European nations offer survivors a "reflection period" to consider whether they wish to cooperate with law enforcement and whether they wish to stay in the country or be

repatriated back to their own. These provisions are even more humane and likely to elicit reliable cooperation with law enforcement than our own U.S. laws and policy.

Yet, recently, victim protection and care in Italy has been suspect. Instability in countries such as Libya, Eritrea and Syria has driven thousands of people towards the coast of Italy, creating a humanitarian crisis in the island of Lampedusa. The 2013 *TIP Report* includes accounts from NGOs that large numbers of refugees and migrants were summarily returned without proper screening for trafficking, protection needs, or risks to children. In *Hirsi Jamaa and others v Italy*, the European Court of Human Rights found that Italy breached international law when they returned several African refugee seekers to Libya, without consideration of their claims.<sup>9</sup> Italy should boost efforts to screen irregular migrants and asylum seekers to avoid deportations which just lead to their being re-trafficked, and to identify victims of domestic trafficking, particularly among vulnerable children.

In these European examples, one sees two imperatives for U.S. anti-trafficking policy *globally*. First, the demand which drives human trafficking deserves more concerted attention. Ambassador CdeBaca, a valued colleague, speaks to this need. Yet I think U.S. policy needs to better walk the walk, and not just talk the talk. Current provisions in the TVPA could be more vigorously applied. In the case of sex trafficking, demand is crucial to address. You, Chairman Smith, and others have insisted that for U.S. troops (such as in Korea) or UN peacekeepers (such as in Cote d'Ivoire, where I visited as Ambassador at Large), it is intolerable to keep suggesting "boys will be boys" on "R and R," when the purchase of commercial sex becomes a magnet for sex trafficking. Well, more generally we need to reject the resigned shrug and quip that "boys will be boys" and prostitution is inevitable as the so-called oldest "*profession*" (oppression, really.) It is not "cool," right, or harmless to commodify females. Sex trafficking grows in this swamp. It is for this reason that I support legislation sponsored by Congressman Hultgren to add a provision to the TPVA minimums standards, which assesses whether national governments having it in their power to criminalize sex buying *do so*. Females in the sex industry and especially those who are sex trafficking victims must not be punished. Yet the so-called *johns* who buy them must be. The social stigma should be on the latter, not the former.

Secondly, of the three Ps--of prosecution, protection, and prevention--under the TVPA and Palermo Protocol, that of protection of victims must come first. A less patronizing turn of phrase would be "survivor empowerment." As examples, if Italy is falling short on victim identification and protection, and the U.S. Government is spending so little on this area relative to, say, "corporate and agribusiness welfare," how can we expect *developing* nations to fully prioritize helping survivors? Even more than prosecution of traffickers or long-term, diffuse prevention efforts, how can we not make finding and helping survivors reclaim dignity for themselves the most urgent agenda item? My recent research for a forthcoming book has focused on what kinds of partnerships of government, international organizations, NGOs, and businesses do the most to advance the key aspects of survivor empowerment: victim identification; shelter; physical medical care; therapy for deep, layered traumas; job training; and job placement.<sup>10</sup> The last is one place that businesses can go further than philanthropy and supply chain transparency to fight human trafficking. Offering a survivor a job is the most tangible way that she or he can reclaim agency and dignity.

In conducting oversight regarding key countries treated in the upcoming annual *TIP Report* (whether Thailand, Qatar, Afghanistan, Brazil, or Italy), Congress would do well to focus on these two particular priorities of U.S. policy worldwide: demand and survivor empowerment. By focusing on them in oversight

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and in legislation, it will contribute to the actual contraction and eventual abolition of what amounts to the slavery of our time.

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<sup>1</sup>“Special Report: Flaws found in Thailand's human-trafficking crackdown,” *Reuters On-Line*, April 10, 2014. See <http://www.reuters.com/article/2014/04/10/us-thailand-rohingya-special-report-idUSBREA3922P20140410>.

<sup>2</sup> See Judith Kelley and Beth Simmons. 2014. “Politics by Number: Indicators as Social Pressure in International Relations.” *American Journal of Political Science*. Forthcoming.

<sup>3</sup> “Staggering number of workers said to die as Qatar prepares for World Cup,” *The Washington Post On-Line*, April 15, 2014. See [http://www.washingtonpost.com/news/morning-mix/wp/2014/04/15/staggering-number-of-workers-die-as-qatar-prepares-for-world-cup/?tid=hp\\_mm](http://www.washingtonpost.com/news/morning-mix/wp/2014/04/15/staggering-number-of-workers-die-as-qatar-prepares-for-world-cup/?tid=hp_mm),

<sup>4</sup> “And Still They Come the Abuse of Migrants--Balancing the Interests of Migrant Workers and the Countries They Live In,” *The Economist*, April 19, 2013. See <http://www.economist.com/news/international/21601029-balancing-interests-migrant-workers-and-countries-they-live-and-still-they>.

<sup>5</sup> See 8 U.S. Code § 1375c - Protections, remedies, and limitations on issuance for A–3 and G–5 visas.

<sup>6</sup> Directive 2011/36/EU of the European Parliament and the Council of April 5, 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims and Replacing Council Framework Decision 2002/629/JHA.

<sup>7</sup> “Unprotected: How Legalizing Prostitution Has Failed,” *Der Spiegel On-Line*, May 30, 2013. See <http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>.

<sup>8</sup> “Outlaw Buying Sex, Says Former Tory Minister Caroline Spelman,” *The Guardian On-Line*, April 21, 2014. See <http://www.theguardian.com/uk-news/2014/apr/21/outlaw-buying-sex-caroline-spelman-nordic-model-prostitution>.

<sup>9</sup> “European Court Censures Italy Over African Migrants,” *BBC On-Line*, February 23, 2012. See <http://www.bbc.com/news/world-europe-17138606>.

<sup>10</sup> See Mark P. Lagon, “Fighting Human Trafficking: Transformative versus ‘Cotton-Candy’ Partnerships,” in Mark P. Lagon and Anthony Clark Arend (eds.), *Human Dignity and the Future of Global Institutions* (Washington: Georgetown University Press, 2014), forthcoming.