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LEGAL OPTIONS TO STOP HUMAN TRAFFICKING

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BEFORE THE

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

OF THE

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LEGAL OPTIONS TO STOP HUMAN TRAFFICKING

MONDAY, MARCH 26, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW,
Washington, DC

The Subcommittee met, pursuant to notice, at 3:02 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. Good afternoon. The meeting of the Human Rights and Law Subcommittee of the Senate Judiciary Committee will come to order.

Unfortunately, my Ranking Member, Senator Coburn, had alerted me in advance that he had a difficult day and wasn't sure he could make it back today. He is completely interested in this subject and I know will follow through his staff and otherwise on the findings of this hearing, and I'm sure other members of the Subcommittee will as well. But he has, from my point of view, an excused absence because of scheduling, which happens to us from time to time.

This is the first time in the history of the Senate that we have created a Subcommittee on Human Rights and the Law. I think it's crucial at this point in time. Repressive regimes that violate human rights create fertile breeding for terrorism, war, poverty, and exploitation. Our Nation and our world will never be fully secure as long as fundamental human rights are not honored.

Our first hearing was just last month. We addressed the issue of genocide and the rule of law, focusing on the mass killings and genocide in Darfur. I'm proud to say that, as a result of that hearing, we've introduced bipartisan legislation to promote divestment in Sudan and to expand the reach of U.S. law so that we can prosecute non-U.S. nationals who are in this country for crimes of genocide they committed abroad. We will continue to try to make this a Subcommittee that focuses on legislation, not just lamentations.

Today we're going to take up a topic which may be as old as mankind. From the beginning of time there has been evidence of exploitation and slavery. We haven't been spared in our generation.

At today's hearing, we will consider the issue of human trafficking. Few issues in the world today raise as many human rights implications as this insidious practice. It's estimated that one mil-

lion people are trafficked across international borders each year, pressed into labor, servitude, or commercial sex by the use of force, fraud, and coercion.

Human trafficking represents commerce in human misery. As an introduction to today's hearing, I would like to show a very brief video on human trafficking. It begins with a short public service announcement put together by the United Nations to help raise awareness of the issue.

The second part of the video is an interview with a trafficking victim from Cambodia. The purpose of these videos is to put a human face on the issue that we will talk about today.

[Whereupon, a video was played.]

Chairman DURBIN. Former General Secretary Kofi Annan has said: "The world is now wrestling with a new form of slavery, trafficking in human beings, in which many vulnerable people are virtually abandoned by legal and social systems into a sordid realm of exploitation and abuse."

If there's any silver lining to this problem, it's that the world is now beginning to open its eyes. There are 117 signatories to the United Nations' trafficking protocol, and many of these countries have passed tough anti-trafficking laws in the past few years.

The United States passed its first major anti-trafficking law in 2000. We cannot discuss this issue in the U.S. Senate without mentioning the visionary leadership of the late Senator Paul Wellstone. Senator Wellstone called the trafficking of human beings "one of the most horrendous human rights violations of our time."

On the day Congress passed the Trafficking Victims Protection Act on October 11, 2000, Senator Wellstone went to the floor of the Senate. He was very happy that day, and you could tell when Paul Wellstone was happy.

He praised his lead co-sponsor, Senator Sam Brownback, who has been a great champion of human rights for years. Senator Wellstone praised the broad coalition of groups that came together for the bill: human rights groups, women's rights, evangelical and Jewish groups, and members of the Clinton administration.

This is what Paul said: "I believe with passage of this legislation...we are lighting a candle. We are lighting a candle for these women and girls and sometimes men forced into forced labor.... This is the beginning of an international effort to go after this trafficking, to go after this major, god-awful human rights abuse."

Senator Wellstone's commitment to stopping human trafficking and other human rights abuses stands as one of his most enduring legacies, despite his untimely passing a little over 4 years ago.

The candle Senator Wellstone lit nearly 7 years ago is burning bright and we rekindle it today. Thanks to the passage of the Trafficking Victims Protection Act of 2000 and the legal tools that Senator Wellstone gave us, we have made progress.

The State Department, under the leadership of my friend and former colleague in the House, John Miller, pushed recalcitrant countries around the globe to pass anti-trafficking laws and to help victims.

John called and regretted that he couldn't be with us today, but he's here in spirit. Of course, human trafficking is not just hap-

pening in far-off lands, it's happening right here in the United States.

The Department of Justice has done an admirable job of investigating and prosecuting trafficking cases. These cases are often very difficult to bring because trafficking victims are isolated, trapped, and frightened. If victims are able to break free, they are often reluctant to talk to law enforcement out of fear of deportation, arrest, or prison.

For this reason, the role of victim and legal service providers is especially important in this fight against human trafficking. Organizations like the National Immigrant Justice Center in Chicago, which I am honored to represent, are trusted sources of aid for trafficking victims. These groups work closely with prosecutors to gain the trust of victims and make the case.

At today's hearing we will ask, 7 years after the passage of the Trafficking Victims Protection Act, what progress has the U.S. Government made in combatting human trafficking in the United States and overseas? What are we doing right, and what can we do better?

What aspects of the Trafficking Victims Protection Act and its 2003 and 2005 reauthorizations, should be changed or strengthened? Should Congress amend the law to make it easier and quicker for trafficking victims in the U.S. and their family members to receive a "T visa" and other government benefits?

We're also going to ask some hard questions. Why hasn't the United States done more to punish U.S. contractors in Iraq and other foreign countries who engage in human trafficking? How can we hold foreign diplomats in the United States responsible for trafficking when we're up against diplomatic immunity?

I intend to introduce legislation that will address some of the problems after we've talked about them at this hearing and I've discussed them with my colleagues. Several parts of the Trafficking Victims Protection Act are set to expire at the end of this year, so this is a good time to look carefully at this law and figure out what we need to do to further the fight against human trafficking.

At this point in time we're going to turn to our distinguished panel of witnesses and ask each of them to make an opening statement of about 5 minutes. Their complete written testimony I commend to all who are here, because each one of them has taken the time to write a very good and probing statement about this issue.

Will the witnesses, at this point, please stand and raise their right hands to be sworn?

[Whereupon, the witnesses were duly sworn.]

Chairman DURBIN. Let the record reflect that all four witnesses have replied in the affirmative.

The first witness is Grace Chung Becker. Thank you, Ms. Becker, for being here. She represents the Department of Justice. She's a Deputy Assistant Attorney General in the Civil Rights Division and helps supervise the Division's human trafficking prosecutions. Before that, she worked at the Defense Department as Associate Deputy General Counsel.

Before that, she worked right here, probably in this room, at the Senate Judiciary Committee. She was counsel to then-Chairman Senator Orrin Hatch in the 108th Congress. She served as a law

clerk to two Federal judges here in Washington, and is a graduate of an outstanding law school, Georgetown, and the University of Pennsylvania Wharton School of Finance.

Ms. Becker?

STATEMENT OF GRACE CHUNG BECKER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Ms. BECKER. Thank you very much, Senator Durbin. Good afternoon, Chairman Durbin. It's an honor and privilege to appear before the Committee today.

For decades, the Civil Rights Division has been charged with enforcing statutes prohibiting slavery, involuntary servitude, and peonage.

Human trafficking is a form of modern-day slavery that touches virtually every community in America, urban or rural, affluent neighborhoods, as well as poor communities. This is a crime that can occur anywhere, anytime, and against any vulnerable victim.

Traffickers prey on U.S. citizens as well as foreigners. They use force, fraud or coercion against prostitutes, domestic servants, factory machinists, and migrant farm laborers. Victims have included college students coerced into commercial sex in Atlanta, homeless men forced to work as farm laborers in Florida, and individuals with hearing impairments forced to peddle sign language cards in the New York City subways.

Human trafficking is a priority for the President and the Attorney General and I am pleased to report that the Civil Rights Division has adopted an aggressive strategy to fight this invidious crime.

The Attorney General recently announced the formation of a Human Trafficking Prosecution Unit in the Criminal Section of the Civil Rights Division. The unit consists of an elite group of expert prosecutors who will provide investigative and prosecutorial assistance, as well as coordination.

This unit is necessary because we're seeing more complex cases involving multiple jurisdictions, multiple law enforcement agencies, and financial or organized crimes. The unit also serves as a resource for training, outreach, and policy development.

The unit works closely with prosecutors within the section, as well as with U.S. Attorneys' Offices, and Human Trafficking Task Forces around the country. These task forces reflect the Civil Rights Division's victim-centered approach.

They are comprised of members from Federal, State, and local law enforcement, and they also include representatives from nongovernmental organizations who provide much-needed services to restore the victims of this terrible crime.

We work together to ensure that the victim's safety and housing needs are taken care of, to see that their medical and psychiatric needs are also taken care of, and for our foreign victims, to cooperate in normalizing their immigration status.

This victim-centered approach works. In conjunction with U.S. Attorneys' Offices around the country, the Civil Rights Division has increased by 600 percent the number of human trafficking cases filed in court in the last 6 years.

From 2001 till today, we've initiated about 725 investigations. Last year, we received one of the highest sentences ever in a sex trafficking case for two of our lead defendants: 50 years of imprisonment. We also received one of the highest orders of restitution, over $900,000, for a labor trafficking prosecution in Milwaukee.

Let me just give you one example. The victim in this case was just 9 years old—that's the same age as my daughter—when her parents were sold into servitude in Egypt. When she was 12, she was brought to the United States and forced to work as a domestic servant in Orange County, California.

She was forced to cook for a family of seven, clean the entire house, and baby-sit the younger children. Meanwhile, the young girl could only eat leftovers and was forced to live in the squalor of the garage. The defendants controlled the child, who could not speak English, by taking her passport, assaulting her, forbidding her to make friends or to go to school.

The defendants also threatened to report her older sister to the police in Egypt for previously stealing from the defendants if the victim ever tried to leave their employ. The defendants are now in prison and will likely be deported to Egypt after serving their sentence. They've paid $78,000 in restitution. By contrast, the victim is now studying in high school and can use her restitution money to achieve her dreams of going to college.

But there is much more work to be done, and that is why I support the President's request for an additional $1.7 million for the Civil Rights Division. As the Civil Rights Division turns 50 years old, it remains committed to supporting the values of our Nation, including the liberty promised by the Thirteenth Amendment of our Constitution.

Thank you.

Chairman DURBIN. Thank you very much.

[The prepared statement of Ms. Becker appears as a submission for the record.]

Chairman DURBIN. We will now hear from Katherine Kaufka. She works in Chicago at the National Immigrant Justice Center. She's the supervising attorney for Counter-Trafficking Services, and she's worked with many victims in Illinois and across the country.

She's a member of the Chicago Task Force on Human Trafficking and the Freedom Network USA, which is an important national network of service providers and attorneys who work with victims.

Ms. Kaufka has written articles about trafficking victims' services and has helped trained Federal prosecutors. She is a graduate of the University of Wisconsin Law School and the University of Michigan.

Ms. Kaufka?

STATEMENT OF KATHERINE KAUFKA, SUPERVISING ATTORNEY, COUNTER-TRAFFICKING SERVICES PROGRAM, NATIONAL IMMIGRANT JUSTICE CENTER, HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS, CHICAGO, ILLINOIS

Ms. KAUFKA. Thank you, Chairman Durbin. Thank you for the privilege of testifying today on behalf of survivors of human traf-

ficking who are victims of some of the most horrific human rights violations that we see today.

I have represented dozens of trafficking victims at the National Immigrant Justice Center, a leading national advocate for the protection of human rights of non-citizens.

Current anti-trafficking laws help victims every day, and we are grateful to Members of Congress for their critical support of these statutes. Nonetheless, the laws can be improved. In my testimony today I will address three areas of the law that fail to provide adequate protections for human trafficking victims.

First, providing greater protections for victims and their families is critical. Second, the laws must ensure that victims who make an effort to cooperate with law enforcement are adequately protected. Third, we must recongnize the importance of responding to the special needs of children who are victims of human trafficking.

Approximately 15,000 to 18,000 men, women, and children are trafficked to the United States every year. However, since the passage of the Trafficking Victims Protection Act over 6 years ago, almost 400 cases have been prosecuted on human trafficking charges and approximately 1,500 trafficking visas have been issued.

While it was the intent of the statute to punish traffickers and protect victims, these statistics show that we have failed to fulfill our goals. We believe that a principal cause of this failure is that the burdens placed upon victims are simply too high.

The first area I would like to discuss is the need to provide greater protection to trafficking victims and their families. Many victims are intimidated by the traffickers with threats against the safety and livelihood of immediate family. The victim's fear of harm to his or her family often prevents the victim from reporting the trafficking crime to authorities.

One client that we represent, whom I will call Anuja, was trafficked to a suburb of Chicago from a small Indian village when she was about 11 years old. She was forced to cook, clean, and take care of two small boys around the clock.

Four years later, she managed to escape. Anuja was interviewed by law enforcement, but she was reluctant at first to tell her full story because she was afraid that the traffickers would hurt her little sisters in India, a threat that they had made to her many times. Anuja would have been better able to assist law enforcement if she knew her family was safe and if they could have supported her during the prosecution of her abusers in the United States.

We recommend that victims of trafficking who cooperate with law enforcement have the option to be united with family to support them through the legal process. If those family members reside outside the United States, they should be allowed to enter the United States temporarily to aid the prosecution's efforts. This change to the law will not only enhance victim protection, it would lead to more successful prosecution of criminal traffickers.

The second issue that I want to address is the need to ensure full protection for victims who make an effort to assist law enforcement. Under current law, if authorities fail to respond or open an investigation, the trafficking victim who reported the crime will have no further opportunity to assist authorities and access protection.

We represent a woman, Padma, and her two daughters who were brought from India to Countryside, Illinois in 1998 and forced to work at a restaurant. Padma and her daughters escaped in 2001 and lived in hiding for years. They were too frightened to seek assistance until 2005, when a women's shelter referred them to the National Immigrant Justice Center.

Once she learned she could play a role in her case, Padma wanted justice for her family. We immediately reported the crimes to the Department of Justice and to the Chicago FBI office.

However, it took Federal authorities a year to interview Padma and, consequently, it took a year for Padma and her daughters to be legally recognized as victims and to receive the protections and services that they needed. Padma's earlier attempts to cooperate with law enforcement were not enough for her to be recognized as a victim under the law.

We recommend that the survivor of human trafficking who makes a good-faith attempt to cooperate with law enforcement should be eligible for a trafficking visa. Where the victim tries to assist but law enforcement takes no action, the victim should not be denied protection.

Finally, I want to speak about the need to enhance protection for victims of human trafficking who are unaccompanied children. These are, indeed, the most vulnerable of our victim population. Unfortunately, all too often authorities fail to recognize potential trafficking victims and treat children as alleged criminals.

A client from El Salvador, whom I will call Sonia, was just 15 years old when Federal agents discovered her in a brothel. She was interrogated for hours. Sonia was ashamed and fearful of both the traffickers and the Federal agents, so she said that at first nothing happened when she was in the brothel. Sonia was held in custody in Chicago and immediately placed in deportation proceedings.

Sonia's case demonstrates the great sensitivity that must be applied to cases involving children. We recommend that whenever authorities encounter a child in an environment that involves forced labor or commercial sex, officials should assume that the child is a victim of trafficking. At that point they should immediately refer the child to the Department of Health and Human Services for appropriate services and counsel.

Let me sum up by reiterating the three critical improvements we recommend that you make to the current law. Providing protection not only to victims but also to their immediate family members will help these victims better assist law enforcement in prosecuting the traffickers. We must offer protection to victims who make a good-faith attempt to aid authorities in the investigation and prosecution of human trafficking cases. To deny these victims protection is unjust.

Finally, potential child trafficking victims must be immediately referred to the Department of Health and Human Services, provided appropriate services and guaranteed access to legal counsel.

Thank you for allowing me the opportunity to speak. I would be happy to answer any questions.

[The prepared statement of Ms. Kaufka appears as a submission for the record.]

Chairman DURBIN. Ms. Martina Vandenberg is an attorney in the Washington, DC office of the law firm of Jenner & Block. Last year, Ms. Vandenberg was the recipient of her law firm's Pro Bono Award for her legal representation of trafficking victims, and her advocacy to end impunity for U.S. contractors who engage in human trafficking while serving with U.N. peacekeeping missions abroad.

Ms. Vandenberg previously worked as the European researcher at Human Rights Watch, where she conducted extensive research and wrote reports on human trafficking in Bosnia, Herzegovina, Russia, Uzbekistan, and Kosovo.

Ms. Vandenberg has taught at American University and has spoken nationally and internationally on women's human rights issues and human trafficking. She is a graduate of Columbia Law School, Pomona College, and Oxford University, where she was a Rhodes scholar.

Ms. Vandenberg?

STATEMENT OF MARTINA E. VANDENBERG, ATTORNEY, JENNER & BLOCK, LLP WASHINGTON, D.C.

Ms. VANDENBERG. Thank you, Senator Durbin. It's an honor to testify before you today on a grave, grave violation of human rights, trafficking in persons.

Over the past decade, Congress, the executive branch, and the non-governmental community, we've worked together to develop innovative criminal and civil remedies for traffickers—to bring traffickers to justice. But these gaps—gaps still do exist, and traffickers continue to operate with impunity, violating the human rights of trafficking victims every day.

I'd like to focus briefly this afternoon on three concrete trafficking cases that illustrate these gaps. I'll begin with the human rights norms, the substantive international law on trafficking, and then turn to case studies, one in Iraq, one in Bosnia and Herzegovina, and one in our own backyard just outside Washington, D.C.

Trafficking in persons is a gruesome human rights violation, trapping men, women, and children in debt bondage, forced labor, and forced prostitution. Article 3(a) of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, defines trafficking as the recruitment, transportation, harboring, and receipt of persons by threat or use of force, or any other means, for the purpose of exploitation.

Research by Human Rights Watch and other human rights organizations has shown historically that States have treated victims of trafficking as illegal migrants, as criminals, or both, generally detaining them, prosecuting them, and then summarily deporting them. And while we do see some progress toward more victim and rights-focused policies, there's still much to be done.

On August 19, 2004, insurgents kidnapped 12 Nepalese men traveling on the road from Amman to Baghdad. All 12 were later executed. A Chicago Tribune reporter, Cam Simpson, launched a 6-month investigation into the events leading up to their abduction and deaths.

The Chicago Tribune series, "Pipeline to Peril," and I have a copy for you today, uncovered a trafficking network that stretched from the remote mountains of Kathmandu to U.S. military bases in Iraq.

The chain began with recruiters in the men's villages who promised the men lucrative jobs in five-star hotels in Amman, Jordan. In exchange, they demanded enormous sums for up-front payments. Their families, desperate for the sons to find jobs abroad, took out loans, mortgaged the family farms, and paid interest rates of up to 36 percent per month.

But the men, upon arriving in Jordan, instead of the luxury hotel jobs that they had expected, found that they were on their way to Iraq. They were stripped of their passports and held in apartments.

They were passed from recruiter, to trafficker, to trafficker, and finally sent on the road to Iraq to serve at a U.S. military base for a subcontractor. Insurgents killed the Nepalese workers before they actually arrived at the U.S. base.

The Department of Defense Office of Inspector General launched an investigation. But, troublingly, that investigation concluded that while it would appear that some foreign-based companies are using false pretenses to provide laborers to Halliburton subcontractors in Iraq, none of the allegations are against U.S. persons or U.S. contractors.

There's no indication that the Inspector General actually delved into the issue of criminal complicity, or even criminal conspiracy, by U.S. persons or contractors. Indeed, there is no hint of any investigation into the involvement by any of these U.S. contractors.

Instead, there's a conflation of criminal and civil law principles, a finding that there are "no privities of contact between DoD and the foreign companies allegedly guilty of these trafficking practices, and therefore that the U.S. had no jurisdiction over the persons or the offenses."

But that's simply incorrect as a matter of law. Under the Military Extra-territorial Jurisdiction Act of 2000, the U.S. Government does have criminal jurisdiction over those who commit a crime, a felony that would be punished in the United States by up to a year, including trafficking crimes.

The investigation also uncovered other troubling practices. Contractors routinely took and held the passports of third country nationals working on U.S. bases, forced them to live in substandard housing, and provided them with little decent food.

Then General Casey issued an order demanding that contractors return the passports of third country nationals. Unfortunately Colonel Boyles, who was tasked with enforcing that order, testified before Congress in June 2006 that it was like pulling teeth to get the contractors to comply.

So the bottom line is impunity, but that is just really business as usual. I would like to skip now to the case of Bosnia and Herzegovina, which is, perhaps, the poster child for impunity for defense contractors.

Trafficking victims in Bosnia and Herzegovina, from Moldova, Ukraine, and other countries of the former Soviet Union had no idea that they would be trafficked into forced prostitution to serve trucker drivers, as well as peacekeepers, in Bosnia.

In a 3-year investigation that I conducted for Human Rights Watch, researchers uncovered at least eight cases of U.S. personnel who allegedly purchased—purchased—trafficked women and girls as chattel. They purchased both their persons and their passports from local brothel owners.

As in Iraq, the Department of Defense Inspector General confirmed that the allegations of trafficking were credible. In fact, their final report states "the evidence suggests that DoD contractor employees may have more than a limited role in human trafficking, but we were unable to gather more evidence of it precisely because there are no requirements and no procedures in place compelling contractors to gather such information regarding their employees, or to report it to U.S. military authorities." That remains the case now years down the road.

I'd like to now turn, briefly, to a domestic case. Recently, the ACLU filed a case against a Kuwaiti military attaché here working in Washington, DC for trafficking three Indian women he enslaved in his home, according to the complaint. The ACLU has provided a written statement today, and I commend it to you.

Diplomats who traffic their victims to the United States under the cover of special visas also engage in slavery and they do so with near impunity. The bottom line is that trafficking victims, whether trafficked by diplomats or by regular U.S. citizens, need attorneys. By our count, only 20 cases nationwide have been brought under 18 U.S.C. 1595, which is the civil remedy created by the TPRA of 2003.

Sadly, people trafficked by diplomats into the United States cannot use that as a remedy because those cases are routinely dismissed on the basis of diplomatic immunity.

So let me just close by asking what is to be done, because I think that is the fundamental question that you posed at the beginning of the hearing, Senator Durbin. I have a series of detailed recommendations in my written testimony, but I'd just like to highlight a few this afternoon. I'm eager to work with you and your staff to implement the recommendations in full.

First, we recommend that thorough investigations and, where appropriate, indictments, be done for trafficking for forced labor or forced prostitution by contractors and military personnel serving abroad.

We believe that the T visa system should be amended to permit victims of trafficking who are the victims of contractors abroad to come to the United States to testify and to have access to T visa status with the hope of being able to adjust to regular immigration status.

We'd like to see senior leadership in the Department of Defense assigned to combat trafficking, and we'd like to see a line item in the budget dedicated to trafficking in persons as well.

We'd also like to call for an investigation of a lack of compensation for the executed Nepalese victims of trafficking under the Defense Base Act. Although they were killed several years ago, their families still have not been able to access any funds from the U.S. Government.

I'll end there this afternoon, but I'd like to, again, thank you for inviting me to testify. I'd be happy to answer any questions that you might have.

Chairman DURBIN. Thank you. And without objection, the statement from the American Civil Liberties Union Women's Rights Project will be made part of the record.

Our last witness is Holly Burkhalter, the vice president of Government Relations at the International Justice Mission, a human rights organization that helps rescue trafficking victims overseas.

Before joining IJM, Ms. Burkhalter was the U.S. policy director of Physicians for Human Rights, and before that, Advocacy Director at Human Rights Watch.

At the beginning of her career she worked on Capitol Hill for Senator Tom Harkin, and for the House Foreign Affairs Subcommittee on Human Rights and International Organizations. She is a frequent witness before Congress. We are happy to have her today. A widely published author on human rights issues, graduate of Iowa State University. Now I see the Harkin connection.

Ms. BURKHALTER. Yes.

Chairman DURBIN. Ms. Burkhalter?

STATEMENT OF HOLLY J. BURKHALTER, VICE PRESIDENT FOR GOVERNMENT RELATIONS, INTERNATIONAL JUSTICE MISSION, WASHINGTON, D.C.

Ms. BURKHALTER. It works out that way, though the record should probably be corrected. I worked for Tom when he was in the House, which just goes to show that they were employing child labor on congressional staff in those days.

[Laughter.]

Thank you, Chairman Durbin. It's an honor to be here with my friends who are really the acknowledged experts on these matters in the United States. I'm honored to be associated with their testimony, as well as present my own.

I don't know if you knew this, but 200 years ago yesterday, on March 25, 1807, the abolition of slavery in the British Empire was enacted into law. It was basically signed into law by the king. The only way you could have come closer to commemorate that occasion was to have your hearing on Sunday, and I appreciate the fact that you did not.

But here we are, 200 years later, to work on completing the great work that your political ancestor, the great parliamentarian, William Wilberforce, began. William Wilberforce—reminding me of Senator Proxmire a little bit—introduced the anti-slavery bill every year for 16 years until it was finally passed into law and enacted 200 years ago.

Now, the man who really is dear to my heart was Thomas Clarkson, who is the father, as far as I'm concerned, of modern human rights NGO activism. It was his indefatigable campaigning throughout Europe and the United Kingdom that educated ordinary citizens about the great crime against humanity that was slavery.

By the way, he had the task of distilling 2 years of hearings, over 3,500 pages of hearings, into a short account that would be accessible to members of parliament. I am feeling kinship with the man

as I sit here, because I have a lot to say, now, and have about 2 minutes to say it.

But I want to bring your attention, on behalf of IJM—and in so doing thank my colleague, Kelly Carter, who is a legal intern with IJM helping me to prepare this testimony—to the legal tools that are already in our grasp, as is fitting on the 200th anniversary of a very important law that was exacted.

I will discuss the Trafficking Victims Protection Act, that we've already discussed today, also the U.S. Trade Act with regard to preferences under the Generalized System of Preferences, and as well as make mention of the Millennium Challenge Account. All three are legal tools that are important instruments for ending modern day slavery.

It is not so much the words of the law that need to be changed, although I do hear some of the recommendations. Rather, we need to see full and unvarnished implementation of the law that we already have.

Let me start with TVPA. In my 25 years in the human rights field, I think it's probably the most effective human rights law, of many that have been enacted, that condition U.S. foreign assistance on the performance of governments that would be beneficiaries.

I think the most important reason why is that the law does not require governments to end all crime within their borders. That is not the standard. They do not put forward an unattainable standard, nor do they require that poverty be eradicated in every country in the world where there's a trafficking program.

The requirement is that there be a good-faith effort to end trafficking. For my money, a good-faith effort can actually be measured. It can be monitored, measured, and quantified in the form of, how is the government responding to the criminals who engage in the crime of trafficking?

Trafficking is a different kind of crime than other crimes which my organization works on. We're a service organization which has field operations in 13 countries. We have all kinds of human rights cases, a lot of rape cases, a lot of common sexual violence against women and girls and boys, we do a lot of police abuse cases.

But this crime is different. This is an economic crime. It is a crime where there are clear victims and there are clear perpetrators. The perpetrators are getting rich off of it. Thus, a deterrence that could be measured in the form of number of prosecutions and number of people that actually go to jail. They don't just get a hand-slap, they go to jail, and they would include officials that are colluding or turning a blind eye. And because it is an economic crime, the prosecutions have a disproportionate impact.

Let me explain. If we were to deter rape and sexual violence in countries where it's just really epidemic, it's going to take a lot of prosecutions to kind of change the tolerance of that crime that is not economically motivated, for the most part. And we're seeking to do that in countries where that's the bulk of our case work, Guatemala, Uganda, Kenya, and elsewhere.

But in the crime of trafficking in human beings, a couple of prosecutions really have a disproportionate impact. And that's why trying to assess government's alacrity in dealing with this stain upon

the national honor can be measured, and should be measured, by the number of people that they're going after and the jail time that they get.

I don't really see that happening. Countries that don't want to provide information don't provide information. We don't have any way to judge them. But it seems to me, if they want to continue to be in good standing under the minimum requirements in our law, they ought to be held to account in that regard and we ought to do something about that.

Accordingly, we need more sort of political support to link the two pieces of work in the GTIP office at the State Department, the piece of work that is the reports, that are excellent, getting better every year, and then the piece of work that is the diplomatic recommendations, the foreign aid assessments, et cetera.

Let me turn, now, to the Trade Act. Interestingly, a piece of legislation that I am proud to say I did a little work on back in 1988, which is the labor rights and worker rights conditionality on trade benefits, (duty-free treatment for developing countries to bring their products into the United States.)

The standards are written differently than the TVPA, but it's the same category of crimes. It's slavery. It's labor slavery, it's child prostitution, it's child labor, and it's debt bondage and forced and bonded labor, almost the exact same category of crimes as named in the TVPA.

We're not seeing, at the present time, the real, extraordinarily useful tool of the USTR holding hearings on some well-known violators and on some extraordinarily important export products that have been tainted with child labor. We're not seeing that kind of scrutiny that would really be helpful.

I don't mean to bring a negative tone to the hearing, but in looking at the latest report that's available from the USTR, a quick glance indicates that in 2005 there did not appear to be a single labor rights, or workers' rights, or any slavery case even taken up for review.

The only cases taken up for review by the Trade Representative were those brought by economic interests in the United States. I'm not saying that was an inappropriate thing to do, I just think we need to have a little support—bipartisan support for a thorough look at the conditions of worker rights, and particularly forced labor slavery and child prostitution in some of our major trading partners. I would love to see those benefits linked to the tier status that we already have in motion.

The third—oh, my goodness. I'm way over time. But I want to just glancingly mention the Millemium Challenge Account, because it's a lot of money and it goes to countries that have been found to be good actors in terms of governance. It's an inspired and brilliant idea to use the good offices of the United States' foreign assistance in very large amounts to support reform. Good governance includes anti-corruption efforts.

The linkage between government corruption and trafficking and slavery is like this: you cannot traffick in human beings without the government at least turning a blind eye. In that way it's different than, say, bringing heroin across borders.

This is people we're talking about, live people, my size. We've had cases of little girls in prostitution that were delivered to the people that bought them by the police.

We have, on undercover camera taken by our undercover operatives posing as customers—our guys will literally negotiate police protection, you know, with a high-ranking police officer so as to pretend to take this child out.

We should look carefully at trafficking and the work that governments are doing, because there are some who are prosecuting these cases, and jail time is coming to pimps, and brothel owners, and prosecutors, and labor traffickers, et cetera. Look at that in the context of MCA and you've really got something to measure, and a darned incentive for governments to do well.

Well, in closing, I would just say that—that writing the good law is just the first step. And making the law live for the people who need it the most is another matter.

You know, the law that was enacted 200 years ago yesterday didn't actually start to have value and meaning in the lives of men, women and children who were chained aboard ships that were transiting the middle passage until the Government of Great Britain sent ships out to interdict them, literally.

The difference between life and death and freedom and slavery was when someone actually sent a ship out there. And that didn't happen really effectively for many years.

The law was the beginning. The work, the work to save human lives, is what followed. This hearing's a part of that, and I thank you very much. Sorry to go over time.

[The prepared statement of Ms. Burkhalter appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

Let me acknowledge, also, the presence of Dr. Helga Konrad, whom I met earlier. Raise your hand. Thank you for joining us. She's the former Austrian Federal Minister for Women's Issues and served as a Special Representative on Combatting Trafficking in Human Beings at the Organization for Security and Cooperation in Europe from 2004 to 2006. Thank you so much for joining us.

My apologies, first, to the panel of witnesses for asking you to restrict your comments on this to five minutes. It's almost impossible. It reminds me of the time that I was invited to speak and the host said: "Take the first 3 minutes to highlight your Congressional career."

[Laughter.]

And I said, "three minutes? How can I do it in 3 minutes?" He said, "Speak slowly."

[Laughter.]

I know that each of you could have spoken a lot longer. And let's hope that during the questioning period, that we can get into a more in-depth discussion about some of the aspects that you raised.

Before we get started, Ms. Becker, you made a distinction which I want to put on the record here between smuggling and trafficking, two different things. Because many of the things we've heard here suggests that people are being brought to the United States illegally and others not illegally. Could you make that distinction for the record?

Ms. BECKER. Yes, Senator. Human smuggling, as you know, is a crime that involves the deliberate evasion of immigration laws. In a human smuggling case, you have individuals who are actually moved across international borders.

In contrast, human trafficking, despite what the name suggests, does not necessarily involve the movement of people across an international border, or even across State lines. Human trafficking is really about force, fraud or coercion, and that is the key element that describes human trafficking.

Chairman DURBIN. Thank you.

Let's get into trafficking victims' services. I think that's come up several times. Ms. Kaufka recommended that trafficking victims be eligible for a T visa, Federal benefits, even if law enforcement declines to investigate or prosecute the case. Under current law, a victim can generally only receive Federal benefits if there's an ongoing investigation or prosecution.

Ms. Becker, would this change in the law help you to have witnesses step forward and to prosecute cases of trafficking?

Ms. BECKER. Let me say at the outset, Senator, that we think the system currently is working and we are being able to find victims using our victim-centered approach. And just to clarify, under the TVPA and the regulations, victims of a severe form of trafficking who are willing to cooperate with law enforcement are entitled to: (1) assistance as "potential victims", in other words benefits even before they are certified by Health and Human Services; and, (2) benefits whether or not there is a prosecution. There are mechanisms in place to provide some services to these victims.

In addition, Senator, the anecdote raised by Ms. Kaufka, which is a disturbing one about Padma, is, in the Justice Department's viewpoint, not a systemic problem. There may be individual instances where there has been delay, Senator, but that is certainly not how we train the thousands of Federal, State, and local law enforcement and NGOs. That is not the policy that we are pursuing at the Justice Department.

Chairman DURBIN. Ms. Kaufka, what is your response?

Ms. KAUFKA. It is correct that victims do have access to some services before they are formally recognized. "Formally recognized" means that they are given what is called "continued presence" or a T visa, which make victims eligible for public benefits, permission to work legally in this country, and legal status.

These protections are not available to our clients before they can prove that they have cooperated in an investigation or prosecution of a case.

There is limited funding available to victims to provide for emergency care: housing, food, shelter, and some mental health services. But that is temporary assistance and, in Padma's case, will expire after a certain period of time.

Chairman DURBIN. So while she was waiting, did you say a year?

Ms. KAUFKA. Yes.

Chairman DURBIN. From the time that she reported——

Ms. KAUFKA. She was ineligible for public benefits, she had no health insurance, she was not given permission to work, and she had no legal status.

Chairman DURBIN. For a year?

Ms. KAUFKA. For a year, both she and her daughters.

Chairman DURBIN. Let me ask you about the family members. You make a good point, that if a victim feels that if their family members are going to be abused if they speak up, you say bring the family members, unite them, so that will help the prosecution in those cases.

Ms. KAUFKA. Correct.

Chairman DURBIN. Is that your experience?

Ms. KAUFKA. Yes. We had a very successful case that was prosecuted by the Department of Justice recently out of Milwaukee, with a client who was a victim of domestic servitude. She was trafficked and enslaved for 19 years. For almost two decades, she had not seen her family.

Chairman DURBIN. Nineteen years?

Ms. KAUFKA. Nineteen years. Correct. And there were some threats made to her family. The Department of Justice assisted in paroling her parents into the U.S. for the last few months of the investigation and trial.

Her parents provided an immense amount of support to my client. She stated that she doesn't know if she would have been able to do it without her parents here, knowing that they were safe, and supporting her in the process.

Chairman DURBIN. Ms. Becker, what do you think about that suggestion?

Ms. BECKER. Senator, I think Ms. Kaufka mentioned the Calimlim case, which is one where we have been able to bring families, unite families, as the process is going on. I will say that we have also done something similar while a victim is—before the victim has gotten a T visa while they're still under continued presence.

And also, under current law there is an opportunity for victims' families to be able to come to the United States as well an receive a derivative T visa.

Chairman DURBIN. They can come to the United States?

Ms. BECKER. Yes. You know, the visa program, of course, is administered by the Department of Homeland Secunty. The Justice Department's role is very limited. We investigate and prosecute these cases.

We also, wherever we can, provide supporting documentation for the victim pursuant to their request for continued presence or for a T visa. Part of the T visa program provides that they are able to have an opportunity to request their family come over.

Chairman DURBIN. Ms. Kaufka, has that been your experience?

Ms. KAUFKA. It is true that, under the statute, individuals who are eligible for a T visa can also apply for derivative status for qualifying family members. However, that process, even the application for a T visa, often comes after the initial investigation and prosecution of the case, after a significant period of time. And in the examples that I provide in the written testimony and talked about today, often that support from family members needs to come sooner.

Some individuals may not be eligible for derivative status. For example, in the Calimlim case, because the victim was not a minor, her parents were not eligible to receive derivative status. There-

fore, at the conclusion of the case they did return home to the Philippines. But in the meantime, again, the family members provided a tremendous amount of support to her and assisted her in providing ongoing cooperation with law enforcement in the prosecution of the case.

Chairman DURBIN. I'd like to ask the panel, but start with Ms. Kaufka, how do you find these trafficking victims?

Ms. KAUFKA. About half of our cases come to our organization through service providers and half through law enforcement. We, as well as the other service providers we work with, provide ongoing training, often in collaboration with the Justice Department and other law enforcement agencies, to provide outreach. We offer training on the definitions of trafficking versus smuggling, and we educate groups on some of the issues that my colleagues on the panel have discussed.

For example, in Padma's case, it was a women's shelter that we previously trained that recognized this was a trafficking case, versus a domestic violence case and referred the client to us.

Chairman DURBIN. I guess I'm a little stunned by the examples you're giving in Illinois. It just shows how naive I was going into this hearing that this is happening right in the State that I represent.

Ms. KAUFKA. Right. It's happening in Chicago, in the suburbs, and in small towns.

Chairman DURBIN. Yes. I assume that it's happening in many other places across the country as well.

Ms. KAUFKA. Correct.

Chairman DURBIN. What is the scope of this problem in Illinois, can you say?

Ms. KAUFKA. We at the National Immigrant Justice Center have represented over 70 international victims over the last 3 years. I don't think anyone can actually answer the question of how many victims there are.

Victims of trafficking are not a self-identifying population. No one is raising their hand and saying, "I'm a victim of slavery and trafficking," which is why I think it's very important for all of us that are here today to continue doing the work that we're doing. We must enhance victim protections and prosecute traffickers, and provide good training and outreach on the issue.

Chairman DURBIN. Ms. Becker, can you help me? I'm trying to figure out, if you're on the prosecutorial side of this thing and you want the cooperation of the victims, you need the cooperation of the victims for anything to go forward, and yet the victims may not be eligible for some benefits unless you have an ongoing investigation or prosecution. So would there—would it make any sense to eliminate that requirement to provide some of these services and benefits?

Ms. BECKER. Well, Senator, to clarify, the Justice Department's role is to provide the supporting documentation, as I said, that the person—that the victim, No. 1, is a victim of a severe form of trafficking, and No. 2, is cooperative with reasonable requests by law enforcement during the course of the investigation.

Even if the case is never prosecuted, that victim is still entitled to benefits and may apply for a T visa. A T visa is sought by the

victim while continued presence is sought by law enforcement. Continued presence is one year in duration and a T visa is now 4 years in duration. Both are renewable.

Chairman DURBIN. Let me ask about one other aspect of the TVPA, and perhaps Ms. Burkhalter or Ms. Vandenberg can speak to it. The reauthorization in 2003 included a civil cause of action for trafficking victims to sue the perpetrators in U.S. courts.

Since that time, over 1,000 victims have received T visas, but only a handful have brought civil lawsuits. Could anyone on the panel comment about why there have been so few civil lawsuits?

Ms. VANDENBERG. Senator Durbin, there is—there's an effort now to try and increase the civil legal resources available to trafficking victims, but I think it is clear that the service providers don't have adequate funding to provide the full panoply of legal services that the victims need.

So while Katherine Kautha and her colleagues do an immense amount in assisting victims make it through the criminal process, holding their hands in some sense, there's not enough funding and not enough manpower or womanpower to actually take these cases all the way through civil cases. So many of the service providers now turn to lawyers at law firms and there's an effort nationwide to try and train pro bono attorneys to take these cases.

But unfortunately that's not a panacea, because it still requires quite a lot of the service provider's time to supervise the outside attorneys and to make sure that they do the cases appropriately without retraumatizing the victims.

Chairman DURBIN. It sounds like there might be a question as to the status of the plaintiff during the pending civil lawsuit, whether they're going to be deported or face some question about whether they can remain in the United States.

Ms. VANDENBERG. That's absolutely the case. And in the trafficking victim cases that I have dealt with, defense attorneys have actually responded that our client has no standing because she has no immigration status.

Chairman DURBIN. Is the law clear on that issue?

Ms. VANDENBERG. I believe it is. I think that that's simply a red herring, but one that they throw out quite frequently.

On the issue, though, of uncertainty on immigration status, I believe that it is still the case, and I would be interested to hear from the Justice Department whether it is still the case, I don't believe that the regulations have been issued yet to permit trafficking victims to adjust their status. So T visas only last for 3 years.

So what happens to those victims after 3 years when they'd like to turn into permanent residents, but there aren't regulations appropriate to permit them to do so?

Chairman DURBIN. Ms. Becker, is that the case?

Ms. BECKER. Senator Durbin, I'm not familiar with the status—current status of the regulations. I think those may be under the jurisdiction of another Federal agency.

Chairman DURBIN. If you would help us make that a question on record and make it part of our proceedings.

Let me speak about the issue of unaccompanied children, the most vulnerable victims. Ms. Kaufka has proposed that whenever a child is discovered to be a trafficking victim, law enforcement

should promptly contact HHS in order to supply benefits and assistance. She talked about one of her clients, Sonia, 15 years old, trafficked into a brothel in the U.S. from El Salvador.

When Sonia was rescued from the brothel, instead of receiving Federal assistance she was put into deportation proceedings. Ms. Kaufka, how long did it take for Sonia to be taken out of deportation and be referred to your office?

Ms. KAUFKA. The entire process took about six to 9 months.

Chairman DURBIN. What hoops did a child victim have to jump through before receiving eligibility for benefits?

Ms. KAUFKA. A number of hoops, actually, one even in identifying her as a victim of human trafficking while she was at a facility for unaccompanied minors and in deportation proceedings in addition to building trust with her to learn of her true circumstances.

Second, we faced a hurdle in convincing the proper authorities that she was, indeed, a victim. When she was picked up by authorities, she did not explicitly say that things happened to her, although she was removed from a known brothel. In fact, the brothel owner was charged with harboring, and, I believe, other charges relating to prostitution.

The respective authorities—I believe Department of Homeland Security—would not recognize her formally as a victim. We had to go through HHS, which in turn had to consult with the Department of Justice and Department of Homeland Security to issue her what's called an eligibility letter to make her eligible for services, including foster care. This process did not adress her legal immigration status. It's very complicated. She was finally able to access foster care and other services while we were working on her immigration status, specifically a T visa.

Chairman DURBIN. So here you have a frightened 15-year-old who has been enslaved in a brothel, finally comes forward to try to find some justice, and runs smack dab into three different Federal agencies, if not more, that are looking at her from different perspectives: the Department of Justice, as a witness in a prosecution; Health and Human Services as a child; and Homeland Security as someone who's here undocumented.

Ms. KAUFKA. Correct.

Chairman DURBIN. Do you have any recommendations on how we might have made life a little easier for Sonia?

Ms. KAUFKA. I think it would have helped to have an advocate there for her right away. This should be done whenever law enforcement encounters minors who may be potential victims of trafficking. In this case, I used a—what I think is an obvious example of a known brothel, a known pimp, and where a child is removed from that situation.

However, I also work with a number of other children who came into contact with law enforcement authorities who did not recognize the potential trafficking situation and who, I believe, should have known better. These authorities didn't have the proper training to conduct a proper screening to distinguish the child as a victim of human trafficking versus the criminal activity that they child was subsequently charged with.

I would recommend prouding an advocate or legal counsel there immediately in addition to a referral to the Department of Health

and Human Services, which would be the appropriate agency to deal with children and make the proper referrals.

Chairman DURBIN. So there's no guardian-type person who steps into this situation currently under the law?

Ms. KAUFKA. Under the law right now, if there is a person believed to be an unaccompanied minor, the Office of Refugee Resettlement would takes custody or guardianship of the child, while the child is often placed in removal proceedings or is maybe seeking other types of legal immigration relief.

Chairman DURBIN. Let me move to this question of government contractors. Ms. Vandenberg, you raised that, I think, very effectively here. I couldn't help think about when I was reading, particularly the incident involving Bosnia. I couldn't help think about the current controversy going on in Japan, where Korean women are asking for an acknowledgement by the Japanese, that they were exploited during World War II for Japanese troops. It's obviously a very painful chapter in the history of both countries.

But when you see these women, now very advanced in age, talking about their exploitation, it really touched me when you started talking about American contractors, paid for with American tax dollars, who are now being found, or being accused, of exploiting, in the case of Bosnia, women under like circumstances. Did that parallel strike you?

Ms. VANDENBERG. Well, ironically, the comfort women case is yet another case that was dismissed before the U.S. Federal courts when the comfort women tried to find a remedy in U.S. Federal court under the Alien Tort Statute.

But the other parallel that you bring up is the victims. And I think it's very important to focus on the victims and on their human rights, and on the perspective that they bring to this. And I raise that because I found that the investigations conducted in Bosnia and Herzegovina completely ignored the victims.

The perpetrators, the men who bought women from the brothels, most of them buying them from a brothel owner named Debeli, bought their passports, sometimes bought them together with weapons from the brothel owners. Those men said that they had "rescued" the women, that they had purchased them out of sexual slavery. No one bothered to actually interview the women. No one asked them whether they had simply traded one owner for another owner.

And that is why it is so important—I'd like to echo the point that Ms. Kaufka just made about training. There is, I think ineffective training at this point among DoD investigators who are tasked with investigating these cases. They need to take more care to interview the victims and to discover the victims' perspectives.

One woman who was released by a contractor just before he was repatriated to the United States on weapons charges, not because he had purchased her but because he had purchased a weapon alongside her, he was sent home to the United States.

He released her and gave her back her passport before—before he left. She wandered into a International Police Task Force station months later and said that she had lived with him like a prostitute and that she—that he had held her passport the entire time.

So from her perspective, he was just another trafficker. And yet, I feel like the Department of Defense investigators were inclined to believe his story that he was a rescuer.

Chairman DURBIN. So the firearm violation, he was being held responsible on a criminal basis, but not for any violation relative to this woman?

Ms. VANDENBERG. Well, Senator Durbin, to say he was held responsible for a criminal violation would probably be an exaggeration.

Chairman DURBIN. Overstating.

Ms. VANDENBERG. Because there have been no prosecutions whatsoever. There have been no indictments. The Military Extraterritorial Jurisdiction Act of 2000, already in effect for 7 years, has been used twice, and not once for a trafficking case, not once.

Chairman DURBIN. Ms. Becker, I'm going to ask you a question in a moment, but I want to recount what we've heard here from Ms. Vandenberg and others.

In the 2005 reauthorization of the Trafficking Victims Protection Act, jurisdiction was expanded to allow U.S. prosecutions of U.S. Government employees or contractors who engage in human trafficking abroad. But as Ms. Vandenberg's pointed out in her testimony, no one has been prosecuted.

Now, this writer from the Chicago Tribune, Mr. Cam Simpson, wrote a series of articles in the Tribune about a trafficking network that stretched from Kathmandu in Nepal to U.S. military bases in Iraq.

Others have written about a Defense Department contractor in Bosnia called DynCorp—I hope I pronounced that correctly—which employed eight people who bought women from brothels in 1999 and 2000 and used them for sexual and domestic services, and there have been no prosecutions.

Ms. Becker, you worked in the General Counsel's Office at the Defense Department before joining the Justice Department. Can you tell us why the U.S. Government hasn't done more to punish U.S. contractors in Iraq and other foreign countries who engage in human trafficking?

Ms. BECKER. Yes, Senator. While I was working at Department of Defense in the General Counsel's Office, I did not have responsibility for human trafficking, I had a different portfolio, so I cannot speak to the Department of Defense's actions in that regard.

I can say that we do have a number of investigations involving government contractors in foreign countries. As you know, there is a 5-year statute of limitations for general crimes, including this one. But we are—I can't say anything beyond that, Senator, because I wouldn't want to jeopardize any potential prosecution.

Chairman DURBIN. I certainly don't want to jeopardize any pending prosecution, because there haven't been many. We hope that some will take place.

I'll go back to a point made by Ms. Burkhalter. This is, by and large, an economic issue. It is much more than that, of course. It's a moral issue. But there's a lot of money involved in this. And if we start making it a costly undertaking, perhaps we can change the economics of it.

In her testimony, Ms. Vandenberg proposed that victims trafficked by the United States' contractors or employees abroad be permitted to come to the U.S. to testify and receive victim benefits like the T visa. Under current law, they're not allowed to do so.

Ms. Becker, do you think that the TVPA should be revised to permit these victims to come to our country?

Ms. BECKER. Thank you, Senator. That is a proposal that we recently received on Friday. I would—I would like the opportunity to give that request additional thought.

Chairman DURBIN. Would you get back to us on that? I'd like to know the position of the Department on that.

Another proposal by Ms. Vandenberg is to require the Justice Department, in its congressionally mandated annual report on U.S. Government anti-trafficking activities, to include an evaluation of Defense Department efforts.

I agree that would be valuable, and I would hope that the public could use it to gauge how much progress our Department of Defense is making in implementing its zero tolerance policy on trafficking.

Ms. Becker, do you have any thoughts, or would you like to wait and make sure you officially state the Department position on requiring an annual Department of Justice report to include a section on the Department of Defense's anti-trafficking activities?

Ms. BECKER. Yes, Senator, that is obviously something that we'd want to consult with the Department of Defense with.

Chairman DURBIN. I hope you will. It is ironic that we are now policing our own departments of our government to see if they're doing everything they're supposed to do on anti-trafficking, but I think that point has been raised very effectively.

Ms. Vandenberg, on that series that Mr. Simpson wrote, it involved, you said, Halliburton, or Kellogg, Brown & Root, one of the companies?

Ms. VANDENBERG. That was the prime contractor. Yes, Senator. But the actual allegations that Mr. Simpson made had to do with subcontractors who were below at several tiers.

Chairman DURBIN. And that is, I think, where it gets complicated legally.

Ms. VANDENBERG. Well, it gets complicated, but not as a matter of criminal prosecution. It's complicated in terms of sorting out the relationships and who was employing whom, but under MEJA, subcontractors in any tier are also covered.

Chairman DURBIN. The acknowledgement by our military in Iraq that these contractors had to give back the passports of those working for them seems to be an indication they realized there's a problem.

Ms. VANDENBERG. I believe so. And yet, it's troubling that the Department of Defense Inspector General's report seemed limited, and the investigations seemed limited, to these 12 men and whether there was criminal responsibility for these 12 men, because in the course of their investigation they interviewed hundreds of third country nationals and didn't find a basis for any criminal prosecution on the facts that they uncovered relating to all of these other third country nationals, even though they discovered widespread abuses, including seizing of passports.

Chairman DURBIN. Another issue which was raised here and I think I'd like to speak to, is this whole question of human trafficking right here in the Nation's Capital, or nearby, by foreign diplomats.

This issue was discussed in an article entitled "The Slaves in Our Midst" by Colbert King in the Washington Post, National Public Radio has reported on a lawsuit recently filed here in Washington, alleging a Kuwaiti military attaché forced three women from India to serve as domestic employees and child care providers against their will. They worked more than 15 hours a day, earning less than 60 cents an hour.

One of the women said she was struck in the head by the diplomat's wife, once with a wooden box and another time with a package of frozen chicken.

Regardless of the merits of the suit, it's likely to be dismissed on diplomatic immunity grounds, as have other similar cases. According to the NPR story, there have been more than 40 instances of domestic servitude involving diplomats, but no convictions.

One proposal to address this problem has been made by John Miller, who, I mentioned earlier, worked at the State Department in the anti-trafficking office. He's proposed the State Department rescind the 2,000 personal servant visas it issues each year. He argues that foreign diplomats serving in the United States should hire Americans for their domestic work.

Mr. King argued in his article that the State Department should stop recommending immunity for diplomats in lawsuits brought by domestic servants. He said the State Department should define domestic service as part of the professional and commercial activity exception to diplomatic immunity under the Vienna Convention on Diplomatic Relations. This might lead Federal judges to dismiss fewer lawsuits.

Ms. Becker, Ms. Vandenberg, what are your thoughts on these proposals?

Ms. BECKER. Senator, with respect to the—to the diplomatic immunity, that is a State Department issue. Certainly I can tell you with respect to diplomatic immunity—the Justice Department cannot prosecute somebody who has diplomatic immunity.

That being said, the Justice Department has brought cases involving diplomats, where diplomatic immunity has not been an issue. For example, in the District of Massachusetts, we recently brought a case involving a foreign national from Saudi Arabia who had a domestic labor trafficking case there, and that matter was resolved through a guilty plea.

Chairman DURBIN. What do you think, Ms. Vandenberg?

Ms. VANDENBERG. As I recommended in my testimony—in my written testimony, I would say that there needs to be a GAO study on this issue, and I say that for two reasons. There is a core group of lawyers and civil attorneys who try to bring cases for victims of trafficking and find their efforts thwarted by the State Department, unfortunately.

Those—those advocates have called the State Department and tried to get the State Department to respond, and unfortunately those advocates have also called—we have also called law enforcement and law enforcement does not always respond because they

hear the word "diplomat" and go running for cover. So it's—it's an enormous problem. It is an area of tremendous impunity.

I think it unlikely, based on the filing that the Department of State just made in the Gonzales case, the case that Colby King wrote about, the Department of Justice has recommended that that case, which is a worker exploitation and not a trafficking case, be dismissed on grounds of diplomatic immunity.

I would ask that the Department of Justice be far more aggressive in trying to get waivers of diplomatic immunity and prosecute these cases because it is absolutely shameful that slavery is occurring in the United States and in Washington, DC in the suburbs, slavery that we wouldn't tolerate if it were being done by American citizens.

Chairman DURBIN. I'm going to pursue that GAO report that you've recommended. I also have to say that we have a jurisdictional issue between committees, and I'm going to ask Joe Biden of the Foreign Affairs Committee about the policy aspects, because whatever we do to diplomats here, we can expect to be done to us overseas, so we have to follow through and find out what impact that might have.

Certainly I'm not suggesting any American diplomat is involved in trafficking, but if you restrict whom they can employ in an embassy, we should expect to run into the same restrictions in terms of our own employment standards abroad.

Ms. VANDENBERG. And Senator Durbin, we lawyers who are working on behalf of victims trafficked by diplomats are very sensitive to that point of view, which has been raised by the Department of State.

And we're actually trying to work creatively at this point, both with the Department of Justice and with the Department of State, to try and find remedies that are perhaps unconventional or would provide some sort of justice for these victims without—without running flat into the issue of immunity.

Chairman DURBIN. I'd like to ask the panel to consider another issue which came up in the hearing we had earlier on genocide. It's, I guess, euphemistically known as the "safe haven" issue. We have a dual standard when it comes to the people we prosecute for wrongdoing, those who've committed crimes overseas.

If a person has been guilty of torture, material support for terrorism, terrorism financing, the taking of hostages, and many other Federal crimes, we allow for the extraterritorial jurisdiction of the United States. In other words, that person does not have to be a citizen of the United States, nor does he have to have committed that crime here in the United States. The fact that he would set foot on American soil makes him subject to prosecution.

We use the example of Chucky Taylor of Liberia, who decided, after being guilty of torture in his own country, to come here and use some of his ill-gotten gains to buy a nice house in Florida. Well, he's now facing prosecution for it.

We found that when it came to genocide, that those who were engaged in genocide in Sudan could travel with impunity to the United States. There was no extraterritorial jurisdiction.

Now I'd like to ask all of the members of the panel who would like to comment whether they believe that the TVPA should be re-

vised so that non-U.S. citizens who engage in human trafficking abroad can be prosecuted if they come to the United States. Should the United States' law be changed to create extraterritorial jurisdiction in the area of human trafficking?

Ms. VANDENBERG. I'd like to address that, briefly, by talking about one change in the law that we succeeded in making in 2005, which was essentially an extension of MEJA so that we could prosecute employees of other agencies.

MEJA only covered, at that stage, Department of Defense and those with a nexus to the Department of Defense. We found that contractors from the Department of State were also accused of allegedly buying women from the brothels. So the TVPRA of 2005 does expand that jurisdiction.

The question of whether jurisdiction should be expanded to cover everyone, frankly, I haven't considered it and I'd want more time to think about it, if we could get back to you on that. I think the community of non-governmental organizations would like to consider that as an option, certainly.

Chairman DURBIN. All right.

Any other comments? Ms. Burkhalter?

Ms. BURKHALTER. IJM only works on victim relief and perpetrator accountability abroad. We don't do domestic cases. But in my many, many, many years in Human Rights Watch and Physicians For Human Rights, I dealt with the issue of genocide a lot.

I remember having—during the Rwanda genocide, serving papers, since I was not the lawyer in the case—wasn't a lawyer at all, as a matter of fact—to one of the militia leaders at the height of the genocide, Jean Bosco Barayagwiza, who was later indicted by the tribunal, and serving him his papers on a class action lawsuit we did on behalf of a bunch of Tutsis in the United States who lost their entire families.

But on the question of extraterritorial jurisdiction, on our kinds of cases we do a lot of American and European pedophile cases against local kids in the countries where we work. We've done some of these cases in Asia, and some in Latin America.

The PROTECT Act, of course, has been great, and that's a fairly new legal tool in the hands of human rights activists which allows Americans engaged in crimes abroad to be prosecuted back home. We just—you're not talking about that, I know. But it is a useful thing.

We just worked on a case this fall of Terry Smith, who is an American pedophile who was also violating young kids and offering 13-year-old kids in Cambodia, which our undercover operators discovered, got our contacts in the Cambodian police to pick him up. They did a great job of it. But he later managed to get out of jail on alleged health grounds.

Our investigators, working through Interpol, learned that he was wanted on charges of abusing children in the United States in the State of Oregon and he—when he decided to leave Cambodia after his short stint in jail, Federal marshalls, in cooperation with the Cambodian authorities, were there to pick him up. He's now facing trial in the United States.

Chairman DURBIN. But the case that I'm talking about—I hate to interrupt you.

Ms. BURKHALTER. I'm sorry.

Chairman DURBIN. But what I'm going after is this. Let's assume we have a notorious trafficker from a foreign country who has never been alleged to have done anything in the United States.

Ms. BURKHALTER. Right.

Chairman DURBIN. No trafficking in the United States, no violation of law in the United States, but is well known to have been a trafficker, perhaps prosecuted for it, in a foreign country, who now, because of this economic crime, is very wealthy and decides he wants to live in the United States.

Ms. BURKHALTER. Right. Well, I can't speak for IJM, so I'll speak personally.

Chairman DURBIN. Can we——

Ms. BURKHALTER. I think there——

Chairman DURBIN. If I might finish.

Ms. BURKHALTER. I think there ought to be universal jurisdiction for crimes against humanity, and I think trafficking and slavery are crimes against humanity.

Chairman DURBIN. Well, I think that's where I'm going, too. To think that the United States could somehow be a safe haven for that individual to live the rest of their natural lives in luxury because of their ill-gotten gains doesn't seem consistent with the treaties we entered.

Ms. BURKHALTER. Well, and you mentioned the—you mentioned the fact that torture is a crime for which there is universal jurisdiction. And in our experience, there has never been a slavery case or a trafficking case that does not involve constant violent abuse and torture of the victims.

Chairman DURBIN. So there might be another angle.

Ms. VANDENBERG. Senator Durbin, if I might just add something. At this point, the record of prosecutions, based on investigations conducted abroad—again, using the contractor example—is not good.

And so I would reiterate, if you move in the general direction of universal jurisdiction, there needs to be some facility, some vehicle, to bring witnesses and victims to the United States so that they can testify.

Ms. BURKHALTER. And there need to be resources to investigate those crimes abroad.

Chairman DURBIN. Ms. Becker, would you like to comment on this?

Ms. BECKER. Yes, just a couple of comments, Senator. First, you know, we currently have cases where we do have victims and witnesses abroad, and we have worked with OIA, International Affairs in the Criminal Division, in order to get MLATs and use other mechanisms such as an S visa in order to get the witnesses that we need to come to the United States to testify in particular cases.

I also wanted to mention, in the case that you had described, Senator, there may be current options as well in order to ensure that a non-U.S. citizen who engaged in human trafficking abroad does not find the United States to be a safe haven.

For example, if the country where that person is originally from has a law against human trafficking and we have an extradition

treaty, we could, of course, extradite that individual to the foreign country.

Chairman DURBIN. Let me ask you, Ms. Becker. Are you familiar with the GAO report of July, 2006 relating to our prosecution of U.S. trafficking overseas?

Ms. BECKER. I am aware that the GAO issued a report. I am only vaguely familiar with the specifics of it.

Chairman DURBIN. I'm going to ask you if you'll ask the Department to respond to this question then, and I won't ask you at this moment. This is the report, which I'm sure is easily available.

But the report concluded, "More than 5 years after the passage of the landmark antitrafficking law, the U.S. Government has not developed a coordinated strategy to combat trafficking in persons abroad, as called for in a Presidential directive, or evaluated its programs to determine whether projects are achieving the desired outcomes."

I'd appreciate it very much if you could ask the Department if they would respond to this report, which was released a year ago. But I'd like to have an official response, if we could, to that as well.

The TVPA requires the State Department to issue an annual report that ranks countries around the world as to their anti-trafficking activities.

And I'm going to ask all the panelists, how effective has the annual Trafficking in Persons office report been in holding foreign countries accountable in the fight against human trafficking? Has the U.S. Government imposed sanctions on any countries for their failure to make adequate progress? If anybody knows.

Ms. BURKHALTER. Well, the—what we have found in some of the countries where we work is that the threat of sanctions for countries that are on tier three has been extremely useful, particularly for countries that are—really desire U.S. foreign assistance.

And when a block of U.S. foreign aid, non-humanitarian aid, is potentially at risk, combined with good, strong, solid private diplomacy with a good Ambassadorial presence and staffed there, it can be very useful.

My colleague and boss, Sharon Cohen says, and not meaning to make light of it, that the best time to be a victim of trafficking is in the period leading up to June when the report is being compiled, because in some countries where, you know, you're demanding—particularly the statistics on prosecutions, local prosecutions—because you don't get deterrence of the crime unless you get prosecutions—that literally, all of a sudden, will have—we work with local law enforcement.

We aren't local law enforcement, but we work with them, imperfect and badly trained and under-resourced as they sometimes are. There are police of good will everywhere. And all of a sudden our effort, will get a little boost when our local diplomats, those of good will who take this very seriously indeed in many embassies around the world, come around asking for information.

I'm not going to speak about any specific countries. We're operational, and I would not embarrass those officials and leaders of good will who make it possible to bring cases. But I would—I would speak to you privately and your staff privately about places where a bit more candor would be much appreciated.

Chairman DURBIN. Well, since you feel a little uncomfortable in reading the names of the countries, I'll just go ahead and read them. They are tier three countries in the June, 2006 Trafficking in Persons report from the Department of State.

The countries are: Belize, Burma, Cuba, Iran, Laos, North Korea, Saudi Arabia, Sudan, Syria, Uzbekistan, Venezuela, and Zimbabwe. And because I don't want to put you in an indelicate position here, I don't know if you know how many of these countries receive Generalized System of Preferences, GSP, trade benefits.

Ms. BURKHALTER. I've actually got the list here, if you give me a second. Maybe others would like to respond. Let's take a look at GSP.

Chairman DURBIN. If anybody else would like to comment.

Ms. VANDENBERG. I can't answer that specific question, but while Ms. Burkhalter is looking I'd like to make two points about—about the TIP report every year. I would disagree slightly with Ms. Burkhalter that it's a great time to be a victim around the time that the stats are due, because prosecutions don't always operate in the best interests of victims.

The victims who are forced to testify who don't receive witness protection, who don't receive any kind of benefits or protections from the State, when a State is fighting to gain prosecutions but at the expense of victims in order to stay off of tier three of the TIP report, then I think we have a real problem.

And so there needs to be, I think, added emphasis on the services that are provided to victims in order to generate the kinds of prosecution statistics that countries like to brag about.

The second issue is talking to nongovernmental organization leaders in countries like Bosnia. They find—and in Romania as well. They sometimes find that the lack of first tier status of their own country—their governments sometimes blame that on the nongovernmental organizations themselves. They see nongovernmental organizations as organizations that are airing the country's dirty laundry and putting the country's status at risk.

So, there are two phenomena relating to nongovernment organizations that we've seen in the TIP report. One, is that NGO's are blamed when countries get a bad tier rating. The second, is that nongovernmental organizations are sometimes not fully credited. Sometimes States actually get the credit for the work that NGO's do rather than the nongovernmental organizations themselves getting credit for sometimes working in a hostile environment.

Ms. BURKHALTER. That's a good point.

Chairman DURBIN. Ms. Burkhalter?

Ms. BURKHALTER. She raises a good point, by the way, and I wouldn't disagree with it. I would also say that when you're working locally and you're trying to get perpetrator accountability so as to deter this crime, you are—you know, you're not working with the best police forces in the world.

What we try to do at IJM is bring up standards and watch to protect both the victims and people who are collaterally affected, and it is kind of a building block thing. But I take both those points. I think they're very useful.

I'm just quickly checking the eligibility. I only see, of those you named, Zimbabwe and Venezuela. Frankly, in both cases I'd be sort

of surprised if too much were coming in duty-free. I'd have to—I'd have to go back. This is either the latest we could get—it's a February 2005 document, however.

But the rest of the countries you named, if you don't mind me saying so, sort of look like the official enemies list. None of us would be eager to see Burma get anything, one might add; ditto, Cuba, and some of the other places.

I just think there's been progress in this area, but this cannot look like the sort of friends and enemies of the United States club. It is important that there be an honest eye.

I know that there's something of a diplomatic tussle over this every year because it is—it's difficult for other U.S. interests to hold friends accountable for egregious crimes.

And I might add, the United States failing to clean its own house in this regard does not enhance our ability to be an upholder of these standards, but I do think we should do better.

Chairman DURBIN. One last point I'd like to ask you. You mentioned the Millennium Challenge accounts.

Ms. BURKHALTER. Yes.

Chairman DURBIN. So do we take this into account, how countries are doing when it comes to trafficking enforcement, their own laws?

Ms. BURKHALTER. You'd have to ask MCA administrators. I've not liaised with them yet, but I'm sure going to, because some of the countries where we work that are kind of threshold countries, that means they're almost eligible, and this is a wonderful time diplomatically to really bring them along because if they—in an accountable way.

We lose cases every week, we and the prosecutors working with us, just lose cases—more cases because of corruption than any other factor, much more so than—to my knowledge than, lack of training, and all of the sort of economic factors.

Lose more cases, and not just trafficking cases, though the corruption issue is much greater on trafficking because there's a lot of money involved. In a common rape case, for example, we see bribery sometimes. We'll lose a case, when some local official has been paid off, or asked to be paid off by the—by the family.

But the real issue here is corruption in the trafficking cases. And again, there's tangible things to look at, keeping in mind Ms. Vandenberg's caveat in that regard.

Chairman DURBIN. Any points that anybody would like to raise before we close the hearing that you believe are still outstanding that we haven't touched on?

Ms. KAUFKA. I'd like to just followup on the earlier comments about expanding jurisdiction abroad. As a service provider, I would emphasize that if this is considered, we also should consider protections for victims here.

At the National Immigrant Justice Center, for example, we see many women who have been trafficked abroad, for example, trafficked from Albania or Moldova into Italy or Greece. They flee because of the impunity that Ms. Vandenberg mentioned earlier, and because of the corruption within their own police force and governments. They are unable to return home based on threats to themselves, or to their family members, and they have no relief in the

United States under the TVPA because the trafficking did not occur within the borders of the United States.

So, I would consider either extending T visas to those individuals or expanding asylum law to include victims of trafficking as a particular social group.

Chairman DURBIN. I want to thank the panel. I'm trying to reflect on this issue, which I've tried to study closely for this hearing. It's clear that it's a relatively new law that we're dealing with here. It's a huge problem. It's a complex prosecution problem, trying to find a witness, trustworthy witness, that comes forward that can help you prosecute a case that could involve a court fight and a long period of time.

I think, despite the statistic that Ms. Becker noted, that in 6 years our prosecutions are up 600 percent, that I think we all agree that we can do better, and we need to do better.

Some of the suggestions made by Ms. Kaufka and others about how to make these prosecutions more effective by being more sensitive to the victims and their families, I think, is a point well taken and it's something that the law should recognize.

But I return to a couple points here that still trouble me, the point made by Ms. Vandenberg about our government contractors and the fact that they are—they seem to be dealing with impunity in this field. I mean, that really reflects on us.

If you're right, Ms. Burkhalter, that you can't find human trafficking abroad without government corruption, what does it say about us that we would have government contractors involved in some forms, directly or indirectly, of human trafficking and not prosecute those cases?

Some other committee someplace else in the world could be holding a hearing today, saying, you know, it's probably a case of corruption in America that's led to this situation. I hope that's not the case, but I think we have to find a way to make sure that our contractors, these companies that our tax dollars sustain, are held accountable and understand the economics of their decision, if not the criminality of their decision.

And, finally, I think that when we're dealing with these other countries around the world, we can do a lot better in being much more aggressive in trying to set standards when it comes to human trafficking, particularly in our bilateral relations with these countries so that they know we are extremely serious about this.

I thank the panel. I thank all of you for being here today. I want to thank Mike Zubrensky on my staff for bringing this hearing together, and our staffers, Reema Dodin, Justin Steffen, and Joe DeMaria, to help prepare for this hearing.

The record will be kept open for a week for those who want to submit written questions to the members of the panel, and for responses that we might have elicited by our questioning.

I thank you all for being here today. The Subcommittee stands adjourned.

[Whereupon, at 4:30 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

June 7, 2007

The Honorable Richard J. Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses for the record of Grace Chung Becker, Deputy Assistant Attorney General for the Civil Rights Division, U.S. Department of Justice, to written questions, dated April 19 and April 30, 2007, following the March 26, 2007, hearing held by the Subcommittee entitled, "Legal Options to Stop Human Trafficking."

We hope this information is helpful to you. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Richard A. Hertling
Principal Deputy Assistant Attorney General

cc: The Honorable Tom Coburn
Ranking Member

Written Questions from Sen. Dick Durbin
Senate Judiciary Committee Subcommittee on Human Rights and the Law
Hearing: "Legal Options to Stop Human Trafficking"
April 18, 2007
Questions for Grace Chung Becker

1. At the March 26, 2007 hearing, one of the witnesses, Martina Vandenberg, stated that the executive branch had not yet issued regulations that would permit trafficking victims with a T visa to adjust their status and become permanent residents. You testified you were not familiar with the status of the regulations and that the regulations were under the jurisdiction of another federal agency.

Please consult with the appropriate federal agency and provide this subcommittee with a status report of those regulations. Why are the regulations not yet implemented? When do you anticipate they will be implemented? Why has there been such a long delay in the implementation of these important regulations?

Answer: We have been advised by the Department of Homeland Security that the T and U adjustment regulation remains under review, and they anticipate that it will be published in the near future.

2. At the March 26, 2007 hearing, Ms. Vandenberg proposed that victims trafficked by U.S. government contractors or employees abroad be permitted to come to the United States and receive federal benefits such as a T visa. Under current law, such victims are not allowed to receive such benefits. You testified at the hearing that you would like an opportunity to evaluate this proposal.

Please provide this subcommittee with the position of the Justice Department on this proposal to permit trafficking victims who were victimized abroad by U.S. government contractors or employees to come to the United States and receive federal trafficking victim benefits.

Answer: Trafficking victims, identified by U.S. law enforcement in the context of an investigation of a U.S. government contractor or employee, may be admitted to enter the United States to assist law enforcement authorities with a human trafficking investigation or prosecution. In such a case, their presence in the United States would be directly related to their participation in the trafficking investigation or prosecution, and they would then be eligible to apply for a T visa.

The Administration will consider any specific proposals with which we are presented.

3. At the March 26, 2007 hearing, we also discussed Ms. Vandenberg's proposal that the Justice Department include in its annual anti-trafficking report to Congress a section evaluating the Defense Department's efforts to implement its zero tolerance policy on human trafficking. Such an evaluation would include the amount of funding budgeted by the Defense Department for anti-trafficking activities; adverse contracting outcomes related to trafficking; and the Defense Department's anti-trafficking training efforts.

Please provide this subcommittee with the position of the Justice Department on this proposal to require that its annual report to Congress include an evaluation of the Defense Department's anti-trafficking activities.

Answer: The Department of Justice and Department of Defense agree that it would be helpful to Congress for information about DOD's anti-trafficking efforts to be included in the annual report from the Attorney General. The Department of Justice is working with the Department of Defense to determine the best format for including information about DOD's anti-trafficking efforts in the annual report, since DOD's efforts are unique to its structure and mission.

4. At the March 26, 2007 hearing, I asked you about a July 2006 report by the Government Accountability Office (GAO) that was critical of the U.S. government's efforts to fight trafficking overseas. The report, entitled "Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad," concluded: "More than 5 years after the passage of the landmark antitrafficking law, the U.S. government has not developed a coordinated strategy to combat trafficking in persons abroad, as called for in a presidential directive, or evaluated its programs to determine whether projects are achieving the desired outcomes." You indicated that you were only "vaguely familiar with" this report.

Please review the July 2006 GAO report and provide this subcommittee with a response to the report on behalf of the Justice Department. What specific efforts have been made by the Justice Department, and other relevant federal agencies, to address the concerns raised in this GAO report?

Answer: The Department of Justice has been effective in combating trafficking in persons abroad. Prosecutors from our Civil Rights Division and Criminal Division train foreign prosecutors and law enforcement on best practices for combating TIP and advise legislators on crafting effective anti-TIP legislation. Additionally, the Office of Overseas Prosecutorial Development, Assistance and Training and the International Criminal Investigative Training Assistance Program provide grants and technical assistance to foreign law enforcement, prosecutors, judges, and government officials on effective strategies for combating TIP. The Department of Justice is committed to continuing this assistance and focusing on actionable research that will assist our prosecutors and investigators to find and prosecute traffickers and rescue victims.

The overall coordination of trafficking strategy between U.S. government agencies is done through the Senior Policy Operating Group (SPOG) meetings, a policy coordination working group, which is chaired by the Ambassador-at-Large in the State Department Office to Monitor and Combat Trafficking in Persons. The President's Interagency Task Force on Trafficking in Persons (PITF), chaired by Secretary of State Rice and consisting of Cabinet-level members, designates senior officials as representatives to the SPOG and oversees the activities of the SPOG. These interagency task forces increase coordination between the relevant federal agencies on TIP-related issues. Fighting trafficking in

persons overseas falls within the mandate of the Department of State; however, the Department of Justice contributes resources, as noted above.

The SPOG, chaired by the Office to Monitor and Combat Trafficking in Persons (G/TIP), creates an active forum where interagency representatives work together to identify strengths and weaknesses of the U.S. approach to combat trafficking in real time. SPOG quarterly meetings and the annual Assessment of U.S. Government Activities to Combat Trafficking in Persons drafted by the Department of Justice are used as tools to help identify where the U.S. government needs to focus its energies to improve its efforts abroad to combat modern-day slavery.

We are advised by the Department of State (DOS) that it acknowledges the need cited in the GAO report for better performance measures and notes that efforts to develop measurement tools have been under way for the past few years. For example, in 2003, DOS's Bureau of Population, Refugees, and Migration (PRM) initiated discussions with the International Organization for Migration (IOM) and provided funds in 2004 to develop a performance indicators module to assess the impact of anti-trafficking programs. Since FY 2005, all PRM-funded anti-trafficking projects have been required to include performance indicators in project proposals and to report against them in quarterly progress reports. In addition, the U.S. government is looking for a coordinated way to measure the results of the President's Anti-Trafficking Initiative. G/TIP has developed a list of program indicators for assessing measurable outcomes of G/TIP-funded projects, including activities related to public awareness and prevention, protection and assistance to victims, investigation and prosecution, and training of professionals. G/TIP shared this list with PRM and the IOM and has begun applying the indicators to new grant projects. Further, G/TIP has set aside FY 2006 funds for projects to support establishing a foundation for evaluation of G/TIP-funded programs. Embassy personnel also play an important role in guiding project activities, ensuring accountability, and observing project activities first-hand. (Source: Combination of June 2006 Department of State comments to the GAO report referenced and the September 2006 Assessment of U.S. Government Activities to Combat Trafficking in Persons.)

In addition to the information above on DOS, the September 2006 Assessment of U.S. Government of Activities to Combat Trafficking in Persons in Fiscal Year 2005 addresses how the Department of Labor and USAID have instituted measurement tools.

5. What changes, if any, would the Department of Justice advocate making to the Trafficking Victims Protection Act if Congress were to reauthorize this law in 2007?

Answer: The efforts taken to enforce the TVPA consume enormous resources. One complex, multiple-victim case alone can require thousands of hours of attorney time. That is why the President, in his proposed budget for fiscal year 2008, has asked Congress for an additional thirteen positions (including eight attorney positions) and $1,713,000 to address current case demands and to further enhance the Civil Rights Division's anti-trafficking program. These additional resources will enable us to continue to build our human trafficking program – to identify and prosecute human trafficking crimes where they occur, and to restore the victims of this terrible crime.

Additional Written Questions from Sen. Dick Durbin
Senate Judiciary Committee Subcommittee on Human Rights and the Law
Hearing: "Legal Options to Stop Human Trafficking"

April 30, 2007

Questions for Grace Chung Becker

1. At the March 26, 2007 hearing, you suggested that the Department of Justice was successful in prosecuting a trafficker entitled to diplomatic immunity in the case of a Saudi woman, Hana Al Jader, who enslaved two domestic workers in her Winchester, Massachusetts home. Reports of this case, however, do not indicate that diplomatic immunity was at issue in this case.

A. Please clarify for the record whether Al Jader was entitled to diplomatic immunity and, if so, what occurred in that case to enable the prosecution to proceed despite that immunity.

Answer: Al-Jader traveled on a diplomatic passport but did not have formal diplomatic immunity because she was not posted to an Embassy or other protected office. Thus, diplomatic immunity did not bar prosecution.

B. Also, please indicate the sentence that Al Jader received.

Answer: On December 21, 2006, the defendant was sentenced to two years' probation to include a six-month term of home detention and 100 hours of community service. She was also ordered to pay $206,972 restitution and a $40,000 fine and to forfeit real property in Virginia.

2. As recent reports indicate, diplomatic immunity challenges the ability of the Department of Justice to combat trafficking in persons fully and effectively under the Trafficking Victims Protection Act.

A. Please indicate the number of human trafficking investigations that the Department of Justice has conducted of foreign diplomats with immunity under the Vienna Convention on Diplomatic Relations, including investigations for crimes of trafficking, forced labor, involuntary servitude, assault and battery.

B. In how many of those investigations did the Department of Justice ask the Department of State to request a waiver of immunity from the foreign mission of the diplomat?

C. In how many of those investigations was the diplomat's immunity actually waived, allowing a prosecution to proceed?

D. In how many of those investigations was the diplomat designated a *persona non grata* by the Department of State?

E. Has the Department of State cooperated in investigations of diplomats alleged to have engaged in trafficking in persons?

F. What investigative measures has the Department of State permitted, and which measures has the Department of State blocked?

G. What other specific challenges does diplomatic immunity pose to the investigative tools and mechanisms typically used by the Department of Justice to investigate traffickers?

Answer: The following applies to subquestions A-G: The Department of Justice does not maintain data specifically tracking the number of investigations implicating foreign diplomats with immunity, the number of requests for waivers of immunity, or the results of any such requests. The Department of Justice, in consultation with the Department of State, investigates trafficking allegations even in cases with diplomatic immunity issues and, in appropriate felony cases, refers the results of investigations to the Department of State for a request that a waiver of any immunity be sought to permit prosecution. The Department of State follows a policy of requesting waivers to permit prosecution and, if a waiver is denied in a felony case, requiring the diplomat and his/her family to leave the United States or imposing a *persona non grata* designation upon the diplomat. However, there is no systematic data maintained within the Department of Justice on the imposition of *persona non grata* designation. Where diplomatic immunity issues may be implicated, the Department of Justice and the Department of State engage in a deliberative process to determine whether there are any relevant immunities and, if so, the investigative measures that may appropriately be utilized in a particular investigation. We understand that these are areas of great concern and will work with the Department of State to see about improving the system where it has to do with gathering more data.

3. Under 18 U.S.C. § 1593, restitution is mandatory in trafficking and forced labor cases. However, in many instances trafficking victims are not receiving restitution.

A. In total, how much money has the Department of Justice succeeded in obtaining for trafficking victims through restitution orders mandated by the courts?

Answer: The Department does not maintain a formal system for tracking data on restitution awards by particular offense.

B. How much money (as a percentage, and in raw dollar figures) have trafficking victims collected under these mandatory restitution orders?

Answer: The Department does not maintain a formal system for tracking data on restitution awards by particular offense.

C. Please explain any discrepancy between the amount awarded and the amount collected.

Answer: Please see response to subquestion B above.

4. Under the 2003 Trafficking Victims Protection Act reauthorization, trafficking victims were given the right to seek civil remedies against their traffickers. I am concerned about the low number of such cases that have been brought.

A. Does the Department of Justice have any tally (official or unofficial) of the number of civil cases brought by trafficking victims under 18 U.S.C. § 1595? If so, how many cases total have been brought? If available, please provide a list of these cases, and their outcomes.

Answer: The Department of Justice prosecutes criminal violations of the Trafficking Victims Protection Act (TVPA) but is not a party to civil TVPA cases, and civil litigants are under no obligation to notify the Department of the filing of civil actions. The Department, therefore, does not maintain data on the number of civil TVPA cases.

B. Regardless of whether this data about 18 U.S.C. § 1595 civil actions is available to you at this time, would the Department of Justice be willing to collect and provide this data to Congress in the Attorney General's annual report on trafficking in persons?

Answer: The Department of Justice prosecutes criminal violations of the TVPA but is not a party to civil TVPA cases, and civil litigants are under no obligation to notify the Department of the filing of civil actions. Accordingly, it would not be feasible or appropriate for the Justice Department to accurately monitor all private civil litigation that may be brought under the TVPA.

SUBMISSIONS FOR THE RECORD

Statement for the Record from:

Caroline Fredrickson
Director, Washington Legislative Office

Lenora Lapidus
Director, Women's Rights Project

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American Civil Liberties Union

Eradicating Slavery:
Protecting the Human Rights of Domestic Workers Trafficked by Diplomats

Subcommittee on Human Rights and the Law
Senate Committee on the Judiciary

Hearing Regarding Legal Options to Stop Trafficking

March 26, 2007
226 Dirksen Senate Office Building

The ACLU Women's Rights Project and the ACLU Washington Legislative Office would like to thank Chairman Durbin, Ranking Member Coburn and the members of this esteemed Subcommittee for the opportunity to submit this written statement for the record of these hearings on the trafficking of persons. The ACLU is a nationwide, non-partisan organization with hundreds of thousands of activists and members and 53 affiliates.

The ACLU applauds the creation of this Subcommittee to address the ongoing responsibilities of the United States to promote and protect international human rights worldwide. We urge the Subcommittee to encourage the United States to fulfill its important role in promoting respect for human rights internationally by ensuring human rights are protected here at home. Only by promoting respect for human rights here at home, can we serve as a model for other countries.

The United States has led the international community in preventing and eradicating one of the most egregious human rights violations: modern-day slavery and trafficking in persons. We have championed the Trafficking Protocol and adopted robust domestic legislation that implements our international obligations and advances our constitutional commitment to abolishing slavery in all of its manifestations. Prevention, protection and accountability are the hallmarks of these international and domestic efforts.

However, U.S. international obligations to extend immunity to foreign diplomats currently conflict with our efforts to prevent, protect and ensure accountability for trafficking and modern-day slavery. Diplomatic immunity effectively carves out a special exception for the trafficking by diplomats of their domestic workers into the United States. We believe that in order to eliminate trafficking, it is imperative that United States law ensures that trafficking and forced labor does not occur with impunity on U.S. soil. We appreciate the opportunity to bring this issue to the attention of the Subcommittee and to suggest possible legislative solutions.

In recent years, foreign diplomats have perpetrated some of the worst trafficking abuses reported in the United States.[1] Media reports of severe abuse and exploitation by diplomats of their domestic workers have become increasingly commonplace. Yet, without exception, none of these diplomat traffickers have been brought to justice through criminal prosecutions nor have their domestic workers succeeded in holding them civilly accountable. In each case, diplomatic immunity has been found to prevent these traffickers from being subject to criminal or civil jurisdiction in the United States. As a result, their victims are unprotected and unable to seek the restitution and redress provided by the Trafficking Victims Protection Act of 2000 (TVPA). The effect of diplomatic immunity is that, under the cover of foreign relations, diplomat employers can enslave their workers with indifference to our constitutional and statutory prohibitions on slavery and without repercussion.

We call on Congress to stem the scourge of modern-day slavery in the United States by amending the TVPA to ensure that diplomats can be held to account and that their victims have access to justice. Trafficking cannot be truly eradicated in the United States until *all* traffickers are equally accountable and subject to the law.

Stories of Abuse

Of the women who have had the courage to speak out against the trafficking abuses of their diplomat employers, none have yet to achieve any redress through the courts on account of diplomatic immunity.

Mildrate Yancho, a Cameroonian national on an A-3 visa, worked for eleven months for a diplomat employed by the Cameroonian Embassy. The employers never paid her, never gave her a day off, severely beat her, and confiscated her passport. She won her civil suit against the diplomat in Maryland district court to reclaim her passport from the employers, but the decision was later vacated when the diplomat raised the defense of diplomatic immunity.[2]

Vishranthamma Swarna, an Indian national on an A-3 visa, worked eighteen hours each day for four years for a Minister to the Kuwait Mission to the United Nations. He promised her a salary of $2,000 per month in her employment contract, but paid her $200. Forbidden from leaving the apartment unaccompanied, her employer subjected her to psychological abuse and regularly raped her.[3] The Southern District of New York dismissed her civil suit after her employer asserted diplomatic immunity. She has a new case pending before the Southern District of New York.

Shamela Begum, a mother of three from Bangladesh moved to the United States with a special visa to work for a diplomat at the Bahraini Mission to the United Nations in New York. The diplomat confiscated Ms. Begum's passport as soon as she arrived, forced her to work seven days a week, and forbade her to leave the apartment alone. Ms. Begum was paid only $100 per month. She sued her employer in the Southern District of New York. Her case was settled for an undisclosed amount in 2000.[4]

Mani Kumari Sabbithi, an Indian national on an A-3 visa, was brought by a Kuwaiti Attaché to the Embassy of Kuwait and his wife to work in their home in McLean, Virginia. The employers forced her to work sixteen to nineteen hours per day without a day of rest, confiscated her passport, confined her to the house, deprived her of food, rest and medical care, and severely beat her. The employers paid her family in India approximately $242 per month, but paid her nothing. Ms. Sabbithi sued the diplomat and his wife in January 2007 for trafficking and forced labor. Her case is pending before D.C. District Court.[5]

The U.S. Visa Program Currently Facilitates Trafficking and Labor Abuse

The United States gives the employees of foreign missions and international organizations the privilege of bringing household and childcare workers into the United States on special A-3 and G-5 visas. Each year, the United States issues more than 2,200 A-3 and G-5 visas.[6] Currently, because of the lack of oversight and accountability, the visa program enables diplomats to traffic and exploit these workers.

Under the Vienna Convention on Diplomatic Relations, diplomats have a clear obligation to abide by U.S. federal and state employment and labor laws in the United States.[7] The U.S. Department of State has emphasized this obligation in at least two circular diplomatic notes sent to foreign

missions in 1996 and 2000 regarding the employment and treatment of domestic workers by their diplomats and staff. However, the routine disregard by diplomats of basic U.S. employment and labor laws prompted the Department of State to impose stricter requirements for obtaining A-3 and G-5 visas. The Department of State now requires foreign diplomats to sign labor contracts with their domestic employees that fully comport with U.S. law and to guarantee that they will provide their employees with decent and fair working conditions in order for the U.S. to issue an A-3 or G-5 visa to their employees.[8]

Diplomatic immunity makes these contracts, as well as the obligations of diplomats to respect U.S. laws on trafficking and labor standards, entirely unenforceable. Abusive diplomat employers, knowing that they will not be held accountable because of their immunity, sign these contracts and make fraudulent representations to the U.S. government and their domestic workers that they will provide legal and fair labor conditions. The U.S. government issues these special visas and workers agree to their employment in reliance on these false and ultimately unenforceable promises.

Numerous organizations that provide services to trafficking victims in the New York and D.C. areas have documented these fraudulent representations by diplomats. In the worst cases, diplomat employers flout U.S. laws by subjecting their personal servants to forced labor and trafficking. Organizations have documented abuses such as physical and sexual abuse, fourteen to nineteen hour work days, wages as little as fifty-eight cents per hour or as little as $150 per month, deprivation of travel documents and passports, forced imprisonment with no opportunity to leave the home, and restrictions on communications with family. Because these workers, mostly women, work hidden in private homes, they are extremely vulnerable to the exploitation by unscrupulous diplomats because of their sex, immigration status, nationality and race.

To date, no agency has implemented any other meaningful preventative programs or enforcement mechanisms. For example, the Department of State does not consistently ensure that domestic workers on these special visas have copies of their employment contracts, understand their rights in the U.S. know where to turn for assistance, nor does it monitor their work conditions or even their arrival or departure from the U.S.[9] Moreover, the Department of State's interpretation of diplomatic immunity precludes prosecution of diplomat traffickers and forecloses victims' opportunities for civil redress. In fact, when these workers have attempted to seek assistance from U.S. courts, the Department of State has intervened to assert the immunity of the diplomat, shutting the courthouse doors to these victims.

Without additional measures to prevent abuse and to provide an avenue for redress for victims, the United States will continue to facilitate these patterns of labor abuse and trafficking.

Congress Should Prevent the Exploitation of Domestic Workers on Special Visas and Ensure that No Class of Traffickers is Exempt from Punishment

This issue is ripe for Congressional intervention. Congress should prevent the exploitation of these workers and ensure that these trafficking victims can seek redress for the abuse they suffer.

Congress should make certain that no class of traffickers is exempted from punishment and no class of victims remain unprotected.

A. Congress should ensure that all victims of trafficking in the United States have enforceable rights. Victims on A-3 and G-5 visas must have an ability to seek redress for their abuses. One of the following policy solutions would ensure a system of redress is available:

(1) Option 1

a. Ensure that the contracts that diplomatic personnel sign with their domestic workers are enforceable against the diplomats in U.S. courts by including a waiver of civil and possibly criminal immunity by the sending country; and

b. Require sending countries to co-sign these contracts so as to guarantee that even if the diplomat is transferred or maintains no assets in the United States, the domestic worker will be able to pursue redress; or

(2) Option 2

a. Create an administrative remedy that would compensate aggrieved workers by requiring diplomats or sending states to put up a bond insuring against labor abuse; or

(3) Option 3

a. Adopt an interpretation of the "commercial activities exception" under the Vienna Convention on Diplomatic Relations that includes contracts for domestic or personal employees.

B. Congress should require measures to prevent the abuse of workers on A-3 and G-5 visas. Domestic workers on A-3 and G-5 visas are often completely isolated in the home and unaware of their rights and the services available to them in the United States. Deprived of this information, victims often find themselves trapped in abusive conditions without any recourse to obtain help or escape. A policy solution would require the U.S. Department of State or Department of Labor to implement preventative programs to ensure that:

(1) Domestic workers are informed of their rights in the United States; and

(2) Domestic workers know how to obtain assistance should they find themselves in an abusive or exploitative situation; and

(3) A federal agency monitors their employment conditions in the United States through record-keeping and periodic check-ins with domestic workers.

Congress's efforts to root out modern-day slavery and trafficking internationally and in the United States and to provide its victims with a measure of justice have been laudable. However, no one should be allowed to remain above the law for such heinous practices and every trafficking victim must, as Congress intended, have access to redress. Viable solutions exist that take into account U.S. foreign relations considerations while also ensuring that the human rights of these women workers in the United States are respected.

We look forward to working with the Chairman and the members of the Subcommittee to implement solutions that will respond to the needs of household workers and nannies who are

trafficked into the United States by employees of foreign missions and international organizations. Thank you for the opportunity to speak on their behalf.

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[1] *See, e.g.*, Frank Langfitt, *Servants: Diplomat Held Us as Suburban 'Slaves.'* NPR, Mar. 1, 2007; Henri Cauvin, *Workers Allege Abuse by Kuwaiti Attache*, Wash. Post, Jan. 18, 2007; Colbert I. King, *The Slaves in Our Midst*, Wash. Post, Dec. 23, 2006, at A21; Lena Sun, *"Modern-Day Slavery" Prompts Rescue Efforts: Groups Target Abuse of Foreign Maids, Nannies*, Wash. Post, May 3, 2004, at A1 (reporting that a Bangladeshi maid working for a Bahraini diplomat in New York was never paid or allowed to leave the apartment until she was rescued by police; an Indian maid for a diplomat in Potomac, Maryland was paid $100 for 4,500 hours of work over 11 months and physically and mentally abused; an Indonesian domestic servant employed by a diplomat at the United Arab Emirates Embassy in Washington, D.C. was physically abused, threatened with death, and underpaid); Sandra Evans & John Burgess, *Maid Says Saudi Diplomat Withheld Wages, Food*, Wash. Post, Nov. 30, 1988, at D1 (reporting that a Thai domestic worker for a defense attaché to the Saudi Arabian Embassy in Washington, D.C. alleged exploitation after escaping from the diplomat's home by crawling out a window).

[2] *Nchang v. Nyamboli*, Civil Case No. 0502-0001-794-2005 (Md. Cir. Ct., Prince George Cty., Nov. 30, 2006).

[3] Complaint, *Swarna v. Al-Awadi*, 06cv4880 (S.D.N.Y. filed June 2006).

[4] *See* Somini Sengupta, *Settlement Reached in Maid's Suit Against Diplomat*, N.Y. Times, July 15, 2000.

[5] Complaint, *Sabbithi, et al. v. State of Kuwait, et al.*, Civil Action No. 0-70115EGS (D.D.C. filed Jan. 18, 2007).

[6] *Nonimmigrant Visas Issued by Classification; Fiscal Years 2001-2005, available at:* http://www.travel.state.gov/pdf/FY05tab1cXVIb.pdf (last visited Jan. 16, 2007).

[7] Vienna Convention on Diplomatic Relations, art. 41(1), Apr. 18, 1961, 500 U.N.T.S. 95, *entered into force* Apr. 24, 1964 (providing that "it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State").

[8] 9 FAM 41.21 N6.2.

[9] There have been various reports, for example, of diplomats being granted new visas each year to bring new domestic workers without demonstrating that their former domestic workers have departed. Some evidence exists that diplomats have subcontracted these workers out to family and friends.

Department of Justice

STATEMENT

OF

GRACE CHUNG BECKER
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

"LEGAL OPTIONS TO STOP HUMAN TRAFFICKING"

PRESENTED ON

MARCH 26, 2007

STATEMENT OF

GRACE CHUNG BECKER
DEPUTY ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON HUMAN RIGHTS

Good afternoon, Chairman Durbin and Senator Coburn. Thank you for the opportunity to report on the progress the Civil Rights Division has made in our fight against human trafficking, a form of modern day slavery that touches virtually every community in America. The fight against trafficking is a priority of the President and the Attorney General, and I am pleased to report that the Civil Rights Division has undertaken a comprehensive, robust, and aggressive strategy that includes infiltration of the dark places of prostitution and forced labor, rescue of victims and prosecution of perpetrators. In addition, our work includes comprehensive training, design of proactive investigative methodologies, coordination with multi disciplinary task forces in 42 U.S. cities, full-time participation in the interagency Human Smuggling and Trafficking Center, development of partnerships across agencies and with non-governmental organizations, and sharing of intelligence -- all under a concept we call a victim-centered approach. The reward of this effort for the investigators, attorneys and restorative care providers is the knowledge that their efforts support the foundational values of our nation: the liberty promised by the Thirteenth Amendment to our Constitution.

As the Civil Rights Division prepares to celebrate its 50th Anniversary this year, it is an honor to appear before this Subcommittee to talk about the Division's continued efforts in the area of human trafficking. Since 1957, the Civil Rights Division has been

committed to protecting the constitutional rights of all individuals who are forced to labor against their will.

Today, under the Trafficking Victim's Protection Act of 2000, our work means that when young girls from Mexico are offered good jobs in America along with false promises of marriage, and then through deception and coercion are introduced to the dark world of forced prostitution – the Justice Department gets involved. In April 2005, Gerardo Flores Carreto, Josue Flores Carreto, and Daniel Perez Alonso pleaded guilty in federal court in New Jersey to all charges in a 27-count indictment that alledged several criminal violations, including Conspiracy to Commit Sex Trafficking, Sex Trafficking, Forced Labor, Mann Act violations, and Alien Smuggling. The defendants were members or associates of an extended family whose principal business was to profit by compelling young Mexican women into prostitution through force, fraud, and coercion. The defendants, who often lured the women into romantic relationships, used beatings, rapes, deception, psychological manipulation, and false promises to overcome the will of the victims, compel them into prostitution, and force them to turn over virtually all the proceeds to the defendants. The investigation revealed extensive sex trafficking activity between Mexico and the United States, prompting initiatives to coordinate multi-jurisdictional, multi-agency investigations.

On April 27, 2006, Gerardo Flores Carreto and Josue Flores Carreto each were sentenced to 50 years in prison. This is one of the highest sentences ever obtained in a human trafficking case. Daniel Perez Alonso was sentenced to 25 years in prison. Additional defendants were sentenced to shorter terms of incarceration. In addition, at least one defendant is currently awaiting trial on related charges, having been extradited

from Mexico at our request. Some of these young girls had children that they left behind in Mexico with the recruiters' families. Our team worked with the Mexican government to rescue the children and reunite them with their mothers, who now have started a new life through the generous restorative care services provided through our partners at the Department of Health and Human Services.

Our intensified efforts to combat the evil of human trafficking have required us to correct some confusion in the popular media and elsewhere concerning human trafficking—and it is worth a moment to clarify exactly what is meant by the term "human trafficking." As you know, human trafficking requires the use of force, fraud, or coercion by a trafficker to compel a person into labor, services or commercial sex. Generally speaking, we see two types of cases: Sex trafficking and labor trafficking. Victims of this crime are U.S. Citizens and non-citizens, alike.

Human trafficking is not human smuggling. Human smuggling is the importation of people into the United States via deliberate evasion of immigration laws. Human trafficking, on the other hand, does not require the movement of people or crossing an international border as a necessary element of the offense. In addition, while not all prostitution is human trafficking, prostitutes can be victims. As you know, prostitution has traditionally been and continues to be a crime prohibited by state law and is prosecuted by local District Attorneys across the country. While many people are trapped in prostitution through substance addiction or due to past trauma or abuse (and there are creative interventions for this population, often led by survivors), the jurisdiction of the Federal Government is limited. The federal government cannot prosecute every prostitution case. Rather, the Department of Justice can only prosecute

these types of cases where a federal interest is implicated—such as the Thirteenth Amendment or the Commerce Clause of the United States Constitution.

The Civil Rights Division has come a long way in 50 years. Our human trafficking efforts continue at an unprecedented pace. Working with United States Attorney's Offices, the Civil Rights Division has prosecuted 360 human trafficking defendants, secured almost 240 convictions and guilty pleas, and opened nearly 650 new investigations since 2001. That represents a six-fold increase in the number of human trafficking cases filed in court, quadruple the number of defendants charged, and triple the number of defendants convicted in comparison to 1995-2000. In addition, federal prosecutors can bring prosecutions against those who prostitute adults and children in interstate or foreign commerce under the Mann Act.

The Child Exploitation and Obscenity Section ("CEOS") in the Criminal Division is an important partner in our fight against human trafficking, working together with United States Attorney's Offices around the country and our law enforcement partners. As CEOS has specialized expertise in dealing with child victims, in the trafficking area they focus on cases involving child sex trafficking. For example, CEOS has worked with the Federal Bureau of Investigation and the National Center for Missing & Exploited Children through the Innocence Lost Initiative to address the problem of children victimized through prostitution in the United States through. Through January 2007, the Innocence Lost Initiative has led to 697 arrests, 160 informations and indictments, and 136 convictions in both the federal and state systems. CEOS also works child sex tourism cases, often with the Department of Homeland Security's Immigration and Customs Enforcement.

Modern traffickers prey on United States citizens and foreigners alike, exploiting their vulnerabilities to hold them in such forms of service as forced prostitution, domestic service, and migrant agricultural labor. The evil presented by human trafficking can be found wherever there are vulnerable people who can be exploited by others. Thus this modern-day form of slavery does not have any geographic or economic boundaries. Employers in urban centers as well as isolated parts of the economy find it possible to hold their workers in bondage through threats and force. Individuals can be exploited and forced to labor in affluent communities as well as in neighborhoods that have pockets of poverty. In short, this is a crime that can occur anywhere, any time, and against any vulnerable person. The victims we have seen include college students coerced into commercial sex in Atlanta, homeless men forced to work as farm laborers in Florida, and individuals with hearing impairments forced to peddle sign language cards on a New York City subway.

In addition to the Carreto sex trafficking case I spoke of earlier, here are just a few more examples of the recent successes by the Civil Rights Division:

- In May 2006, Jefferson Calimlim Sr. and his wife, Elnora Calimlim, who are both medical doctors, were convicted by a Milwaukee federal jury of Forced Labor. In 1985, the defendants recruited and brought a 19 year old young woman from the Philippines to the United States to be their domestic servant. Over the next 19 years, until federal agents removed her from the house in 2004, the woman was coerced, through fear and psychological harm, into being the doctors' domestic servant for as little as 100 dollars a month. Although the victim in this case was never beaten,

these defendants used psychological coercion to instill a fear of serious harm in the victim. The Calimlims threatened the victim with imprisonment if she disobeyed them, and confined her inside of their home. They did not allow her to socialize, to communicate freely with the outside world, or to leave the house unsupervised. The victim was required to hide in her basement bedroom whenever non-family members were present in the house. The defendants used fear and intimidation to make the victim believe she had no choice but to remain in their service. On November 16, 2006, the defendants were sentenced to serve four years in prison. The court also ordered the defendants to pay the victim over $900,000 in restitution.

- On April 12, 2006, a 28-count indictment against Harrison Norris, Jr., Aimee Allen, and Cedric Lamar Jackson was unsealed in federal district court in Atlanta, Georgia. The indictment charged that from April 2004 through August 2005, Norris conspired to use force, fraud, and intimidation to recruit women to work as prostitutes. The women were United States citizens. This case first came to light in August 2004, when several young women, left unattended in a store, ran to a police officer for help in escaping the defendants' clutches. The subsequent investigation revealed that Norris would recruit young women through physical force, by paying legal fines or bail for them, and by using false pretenses, frequently offering to train them as wrestlers (Harrison Norris is a retired

professional wrestler, who wrestled under the name "Hardbody Harrison"). According to the indictment, once Norris lured women into his service, his cohorts used physical violence, sexual abuse, threats of force, sleep and food deprivation, constant monitoring, and an elaborate debt system to keep the women working involuntarily as prostitutes. The conspirators also confiscated the women's mobile phones and identification documents. On May 1, 2006, Allen and Jackson pleaded guilty to Conspiracy. Two other defendants – low level members of the organization – had previously pleaded guilty to giving false statements to federal investigators. A trial date for Norris has not yet been set, and as with every criminal defendant, he remains innocent until proven guilty.

- In June 2006, Abdel Nasser Eid Youseff Ibrahim and Amal Ahmed Ewis-Abd Motleib pleaded guilty to Forced Labor, Involuntary Servitude, Harboring, and Conspiracy. The juvenile victim in this case was nine years old when she was sold into servitude by her parents in Egypt. In 2000, when she was twelve years old, she was brought to the United States and forced to work as domestic servant in the defendants' home. The defendants, who lived in a gated community in Orange County, California, forced the child to cook for a family of seven, clean the entire house, and babysit the defendants' younger children. Meanwhile, the young girl was forced to eat only leftover food and live in squalor in the defendants' garage. To maintain control over the child, who could not speak English,

> the defendants took her passport, assaulted her, and forbade her to have friends or go to school. The defendants also told the girl that they would have her older sister in Egypt reported to the police for previously stealing from the defendants if she left their employ. In October 2006, the defendants each were sentenced to serve three years in prison. They will be placed in removal proceedings and likely deported to Egypt after serving their sentence. The defendants paid $78,000 in restitution to the victim before sentencing as a condition of their plea agreement.

There is a more complete summary of the human trafficking prosecutions in the *Report on Activities to Combat Human Trafficking, Fiscal Years 2001-2005,* which was published by the Civil Rights Division last year. This report provides greater background on the scope of the human trafficking problem, the tools for investigating and prosecuting human trafficking, as well as an in-depth discussion of successful investigation and prosecutions.

This Administration has been committed to carrying out the provisions of the Trafficking Victims' Protection Act of 2000. In addition to the 600% increase in the number of cases filed, the Civil Rights Division is devoting its resources and expertise to investigating, prosecuting and coordinating complex, multi-jurisdictional cases that involve multiple districts, multiple law enforcement agencies, and numerous victims, and can require the cooperation of other countries. This effort has been made without diminishing the Civil Rights Division's long-standing commitment to the vigorous

prosecution of other important civil rights violations, such as bias-motivated crimes and crimes committed under the color of law.

The Civil Rights Division has adopted a victim-centered approach to investigating and prosecuting these crimes. Law enforcement works very closely with non-governmental service providers, who have expertise in providing much needed services to these vulnerable victims. Many of the groups we work with have a track record of success working with battered immigrant women, migrant workers, victims of torture, or prostitutes attempting to escape the streets. The federal government has tried to nurture these groups through funding and technical assistance from the Department of Justice's Office for Victims of Crime and the Department of Health and Human Services' Office for Refugee Resettlement. We will continue to work together to ensure the victims' safety and housing, to see that their medical and psychiatric needs are taken care of, and to cooperate in normalizing their immigration status to assist the prosecution and to prevent retaliation if they were to return home. This approach is an unprecedented partnership between law enforcement and the non-profit sector, but must be established before we go into a raid and before we interview victims so we can respond to the victims' needs in tandem.

Recognizing the need to work together, the Civil Rights Division has guided the development of anti-trafficking policy and trained thousands of prosecutors, law enforcement agents, and non-governmental organizations - both nationally and internationally - on the implementation of a victim-centered, multi-disciplinary approach to prosecuting traffickers and restoring the rights of their victims. For example, in October 2006, the Justice Department convened the second national anti-trafficking

conference in New Orleans. The Criminal Section of the Civil Rights Division played an important role in training over 600 participants from federal, state, and local law enforcement officers, victim advocates, prosecutors, academics and non-governmental victim service providers.

On the international front, Civil Rights Division attorneys have provided training or engaged in information exchanges with dozens of other countries about our efforts to combat human trafficking, including Mexico, Canada, Tanzania, Indonesia, Austria, Germany, Singapore, El Salvador, Czech Republic, Moldova, Belize, Venezuela, Colombia, Russia, Georgia, Malaysia, Saudi Arabia, Poland, Sweden and the Netherlands.

Let me say something about victims. Providing restorative care for victims is the right policy in these cases, and the United States leads the world in the generosity of services and immigration relief it provides to the victims of this devastating crime. An added benefit is that without the empowerment that comes from these services, the victims are unable to tell their story and provide evidence of criminal activity. This victim cooperation is essential to a successful prosecution. Without victim cooperation, human traffickers stand a better chance of going free.

To build on the Civil Rights Division's success in this area, the Attorney General recently approved the formation of the Human Trafficking Prosecution (HTP) Unit in the Civil Rights Division. The HTP Unit is the Department's specialized enforcement unit focused exclusively on combating the crime of human trafficking. The new Unit enhances the Department's ability to investigate and prosecute significant human trafficking and slavery cases, including those that cross jurisdictional boundaries and

involve complex financial crimes. The Unit also serves as a resource for training, outreach, and policy development on human trafficking and slavery issues.

The HTP Unit, while assuming a leading role in many human trafficking prosecution and policy matters, will remain an integral part of the Civil Rights Division's Criminal Section, which not only has a broad base of seasoned trafficking prosecutors, but also has a depth of experience with the civil rights issues that lie at the heart of human trafficking. The launch of the HTP Unit within the Criminal Section will increase the Civil Rights Division's capacity to respond, ever more efficiently and effectively, to the challenges that lie ahead in the struggle to eradicate human trafficking. The Unit is currently staffed with attorneys from within the Criminal Section – there have been no FTEs reprogrammed for this effort.

The HTP Unit provides training, technical assistance and coordination with the 42 Anti-Trafficking Task Forces. These task forces are led by United States Attorneys and funded by the Bureau of Justice Assistance. The Department initiated the Task Force program in 2004, and, perhaps not surprisingly, the jurisdictions with Task Forces are the jurisdictions that have seen an increase in trafficking cases. The Task Forces are a locally based, multi-disciplinary approach to investigating and prosecuting human trafficking cases. Each task force is comprised of members from the local United States Attorney's Office; federal, state, and local law enforcement; and representatives from non-governmental organizations who reach out to and provide services to restore the victims of this terrible crime. Our goal at the Civil Rights Division is to work closely with our partners in the judicial districts and at the state level.

Of course, all these efforts consume enormous resources. One complex, multiple-victim case alone can require thousands of hours of attorney time. That is why the President, in his proposed budget for fiscal year 2008, has asked Congress for an additional thirteen positions (including eight attorney positions) and $1,713,000 to address current case demands and to further enhance the Civil Rights Division's anti-trafficking program. With your support, we can continue to build our human trafficking program – to identify and prosecute human trafficking crimes where they occur, and to restore the victims of this terrible crime.

I look forward to answering any questions that the Members of the Subcommittee may have.

INTERNATIONAL JUSTICE MISSION®

Testimony of Holly J. Burkhalter
Vice President, Government Relations
International Justice Mission

On "Legal Options to Stop Human Trafficking"
Senate Judiciary Subcommittee on Human Rights and the Law

March 26, 2007

Thank you for holding this hearing, Chairman Durbin and Senator Coburn, and for inviting me to testify on behalf of International Justice Mission. It is a significant time to be holding a hearing on trafficking and slavery.[1] This year marks the 200th anniversary of the abolition of the British slave trade. On March 25, 1807 – two hundred years ago yesterday – a bill, the *The Slave Trade Act*, received Royal Assent – comparable to being signed into law by the executive branch – in Great Britain. The Act prohibited the traffic in slaves, so that no ship could clear out from any British port after May 1st, 1807, with slaves on board and that no slave should be landed in the Colonies after March 1, 1808.

The enactment culminated the life's work of British parliamentarian William Wilberforce, who introduced the measure every year for sixteen years. To accomplish this goal Wilberforce and his colleagues had to take on England's most powerful economic and political interests and abolish an industry that generated extensive private and public revenue and supported tens of thousands of jobs. Wilberforce describes his commitment to the issue: "So enormous, so dreadful, so irremediable did the Trade's wickedness appear that my own mind was completely made up for Abolition. Let the consequences be what they would, I from this

[1] In this testimony, IJM uses the words slavery and trafficking to encompass debt bondage, involuntary servitude, commercial sexual exploitation of children, hazardous child labor, as they are defined in the TVPA, PL106-386, Section 103. Additionally, IJM relies upon the Trade Act, 19 U.S.C. Section 2462(b)(2)(G) for its definition of internationally recognized worker rights, including "A prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and a prohibition on the worst forms of child labor."

time determined that I would never rest until I had effected its abolition." It is hard for a modern day human rights activist to imagine a challenge more difficult.

Today, slavery is illegal virtually everywhere. Yet this most durable of crimes against humanity continues, albeit wholly illegally. Millions of women, men and children suffer a daily physical reality of violent, dangerous, degrading, and unpaid conditions of labor and lives of the bleakest misery. Wilberforce's work will not be done until, in his words, "we extinguish every trace of this bloody traffic...."

Members of the United States Senate and the House of Representatives in our day have already risen to the challenge of abolishing in fact as well as law the violent, degrading, injurious, unpaid, forced, and coerced conditions of labor at home and abroad. Thanks to the great and good work of Senator Paul Wellstone, Senator Sam Brownback, Representative Chris Smith and others, we have the Trafficking Victims Protection Act. More than a decade earlier, Representative Don Pease and Senator Tom Harkin led a successful effort to explicitly linked U.S. trade benefits to beneficiary countries' abolition of slavery and child labor. The authors of the Millennium Challenge Act, including Senators Lugar and Biden and Representative Tom Lantos conditioned access to large amounts of foreign assistance to meeting a standard of good governance that included an end to corruption – a key factor in the existence of slavery today.

While these and other statutes might be improved by various amendments and excisions, the most difficult and significant work for this Congress is to insist on the execution of existing law that we have in our hands today that speaks directly to the enduring, contemporary crime of human trafficking and slavery. If supported and enforced, these statutes could contribute substantially towards the abolition of these crimes in our lifetime.

In my testimony today I will focus on three laws, the Trafficking Victims Protection Act, the Trade Act, and the Millennium Challenge Act, and look at a non-legislative initiative in the area of child labor.

Trafficking Victims Protection Act: As you know, the TVPA, enacted in 2000 and reauthorized in 2003 and 2005, includes the requirement that the U.S. Government evaluate the performance of governments in the area of trafficking and slavery. Over the past six years, this law has led to the freeing of unknown thousands of women, men, and children from forced prostitution or forced labor slavery. The process whereby U.S. State Department representatives (including officials from the State Department Trafficking in Persons office as well as diplomats serving in our Embassies abroad) take up specific issues of prevention, prosecution, and victim relief has made the TVPA one of the most useful human rights tools the Congress has ever enacted.

An important piece of the law is the annual report requirement. With every passing year the annual report generated by the State Department Trafficking in Persons Office, as well as the State Department Human Rights Report, becomes more sophisticated and credible. We note with satisfaction, for example, that the 2006 report that was released in June, included much more information about forced labor slavery, enhancing a report that was already known for its excellence in reporting on sex trafficking.

We would urge close Congressional oversight about the way in which the law has been implemented with respect to sanctions against recipients of U.S. foreign assistance that fail to meet the legal standard for eliminating trafficking/slavery. The anti-trafficking/anti-slavery conditions contained in the Act are quite precise about what governments must actually do to merit certain forms of U.S. foreign assistance.

I am sure that the Senators and staff are familiar with the Minimum Standards for the Elimination of Trafficking, but it is worth including them here for the written record of this hearing:

Sec. 108 Minimum Standards for the Elimination of Trafficking:
(b) Criteria. In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country

is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

Despite the fact that the TIP report itself describes conditions among certain countries that clearly do not meet the minimum standard, several among them have not been threatened with Tier III and the loss of foreign assistance that accompanies that status. Countries that the United States does not wish to offend remain on Tier II, despite their visible failure to have met the conditions required to obtain that status.

In IJM's view, governments' provision of data on prosecutions and convictions are the single most important indicator of governments' alacrity in addressing slavery and trafficking. Every effort should be made to encourage governments to provide such data, including technical assistance.

One thing I want to point is that there exists a Tier II Watch list and governments working to eliminate slavery may be unclear what the status means and what is required for them to do to meet the minimum standards. Indeed, we're confused ourselves. Clarity about what constitutes measurable progress will strengthen local anti-trafficking efforts as well as American diplomatic discourse on the subject.

Trafficking Victims Protection Act and U.S. Contractors: As you know, Mr. Chairman, there were troubling media accounts of forced labor slavery of workers from Nepal and the Philippines who were brought to Iraq by American contractors/subcontractors under false pretenses. These reports describe physical violence, passport theft, and grossly substandard working conditions by actors associated with one of the United States principal contractors in Iraq.

The Department of Defense and the Trafficking Inter-Agency Working Group have issued a number of "zero tolerance" regulations relating to the abuses described above and the TVPA has twice been amended to address the problem. IJM yields to the expertise of others on the panel with regard to the need for additional clarification in law. We would, however, like to associate ourselves with appeals by others in the human rights community for assistance to victims of forced labor slavery by American contractors/subcontractors abroad, and for resources to be made available for independent investigation of these crimes that would make possible the criminal prosecution of those responsible in American courts.

I am sure that there is no disagreement on this Committee that the United States' ability to encourage foreign governments' compliance with their own countries' domestic laws against trafficking and slavery is not enhanced by reports of our own inability to prevent abuses by those working abroad under U.S. Government auspices.

U.S. Trade Act: In 1988, Congress enacted labor rights and anti-slavery provisions in the Generalized System of Preferences (GSP) program.[2] GSP, as you know, offers duty-free access to American markets for developing countries. This benefit is for many countries of much greater significance than foreign assistance. Accordingly, it can be an especially useful diplomatic tool with countries that are not dependent on foreign aid, and where the threat of sanctions under the TVPA does not offer significant leverage.

Country eligibility for GSP trade benefits is conditioned upon a country's meeting a standard of internationally-recognized worker rights. A country is legally disqualified for this benefit if they do not meet a clearly articulated labor rights standard. Interestingly, the disqualification provision contains many of the same crimes that are articulated in the TVPA's Minimum Standards. Abuses that are addressed in both statutes include child sexual exploitation and forced and bonded labor of children.

Over the years, human rights and labor rights activists have filed dozens of petitions to the U.S. Trade Representative under this Act, requesting official review of GSP beneficiary countries' worker rights/anti-slavery records. Those of us in the human rights community who filed these petitions could see very clear advances that took place when the USTR took up the petitions for review and held foreign governments to account on specific failings and violations. For example, a petition generated by Human Rights Watch and the International Labor Rights Fund on slavery in the Dominican sugar cane industry resulted in official hearings by the Reagan Administration and serious conversation between U.S. and Dominican officials on such specific

[2] 19 U.S.C. Section 2462.

matters as the lack of Creole-language labor contracts, and failure to inspect particularly abusive sugar plantations and production facilities. Tangible changes occurred as a result.

To my knowledge, the provision has largely fallen into disuse. I am not aware of outside groups submitting new petitions in recent years, nor am I aware of the USTR itself engaging in investigations or inquiries in the context of its annual GSP review. It is unfortunate that this potentially powerful legal tool to encourage and reward alacrity and accomplishment in eliminating forced labor slavery, child labor, and forced prostitution is seldom invoked.

Recommendation: The worker rights provisions of the GSP and the anti-slavery, anti-trafficking provisions of the TVPA should be invoked simultaneously, so as to increase the effectiveness of each. TVPA could be amended to include in its sanctions regimen eligibility for beneficiary developing country designation under the auspices of the GSP program of the Trade Act. Reciprocally, the Trade Act might be amended to link designation of beneficiary developing countries to actions taken by the TIP office. The USTR and State Department TIP office should collaborate on data collection and diplomatic dialogue.

Millennium Challenge Act: As you know, President Bush announced four years ago an unprecedented program of un-tied budgetary support for countries meeting certain economic and governance standards. The purpose of the Act, which has been generously supported by Congress, which has appropriated billions of dollars every year since then, is to provide significant assistance to countries that are enacting policies that are thought to be particularly conducive to development. Eligibility criteria include the requirement that beneficiary countries demonstrate a commitment to combat corruption.[3]

There is no quality of good governance that has more significance for the abolition of modern day slavery than ending official corruption. IJM works with police of competence and good will in each of the thirteen offices where we are located. Indeed, our local staff lawyers, investigators, and social workers have no legal authority to engage in law enforcement, and we do not do so. Our local staff people are only able to assist in establishing perpetrator accountability because local authorities, including police, are eager for justice to be served. It is also the case, however, that official complicity is almost required for the trafficking and enslavement of human beings to occur. The malfeasance of local officials undermines local authorities of integrity and purpose, and erodes the achievements that their countrymen and women have secured at high cost.

Official corruption is especially visible in the commercial sex industry. Brothel owners, traffickers, and pimps offer adults and children to the public on a daily, hourly basis. To obtain maximum profits, the product must be visible enough to the public so that it can be purchased repeatedly. If customers can find minors and trafficked, non-consenting adults, then clearly local police can find them, as well. Indeed, local police often have the advantage because they were involved in the trafficking in the first place. In case after case, IJM clients describe how a policeman was involved in some aspect of coercion, transport, or violence against her. In one case in Southeast Asia, for example, a girl who escaped from a brothel told IJM that she saw a large number of minor girls. Her testimony included her description of other minor girls who ran

[3] Millenium Challenge Act of 2003 Section607(b)(1)(E)

away from the brothel and were brought back by people she said were local police in their car. Thereafter, she reported hearing gunshots, and later saw two bodies wrapped in a carpet when she was ordered to clean up the blood.

It is important to note that police in many countries around the world engage in physical violence, theft, shake-downs, bribes, and protection rackets that not only facilitate the trafficking in children and forced adults, but are a source of constant misery and fear for poor and vulnerable adult women in the commercial sex industry, whether or not they have been trafficked. In some large cities with a thriving sex industry, aspiring local police will pay tens of thousands of dollars to be assigned to the Red Light District, where they will make vastly more money from brothel owners in protection money and pay-offs. Such individuals make a perversion of the rule of law, using it as they do, as a weapon against those who need its protection the most.

Without making excuses for them, one reason why police officers in many places throughout the world are corrupt or engage in crimes is because they receive desperately low wages, and the temptation to accept bribes is especially great for them. Low wages are often the norm, even for those in relatively high level positions, in many police bureaucracies, ensuing that there are many places along the police chain-of-command where traffickers can attempt to exploit police officers' financial vulnerabilities.

International Justice Mission has investigated and assisted in the prosecution of corrupt and abusive local authorities in many of the thirteen countries in which we work. These are among the most difficult and dangerous cases we under-take, and we and the local prosecutors whom we support, are often unsuccessful. When local prosecutors are successful in convicting corrupt or abusive police or other officials, such actions can have a disproportionate impact on the conduct of others on the force.

In this context, I would note that Section 134 of the TVPA provides for assistance to help governments meet the anti-trafficking minimum standards in the law. We at IJM strongly endorse the provision and ask the Congress to do their utmost to enlarge funding in this area, even knowing that the proposed budget for the State Department TIP office has been cut significantly. In many of the cases we have worked on in Africa, Latin America, and Asia, law enforcement officials of good will have simply not received training, much less equipment and vehicles to investigate and apprehend perpetrators, much less bring them to trial and conviction.

The good governance conditions of the Millennium Challenge Act (MCA) and dialogue under its auspices between the United States as a donor and potential beneficiary governments offers a rich opportunity to press them on corruption, trafficking, and forced labor slavery. These dialogues and the prospect of very significant foreign assistance should serve as a powerful incentive for governments to take action against trafficking, slavery, and inhumane working conditions. It is vitally important that determinations of progress or back-sliding be based on an objective measurement. This Congress did not mean for the program to be simply a reward for political friends. Accordingly, MCA administrators should collect specific data that indicate whether prospective beneficiaries are actually doing something about official participation in trafficking and slavery, as opposed to merely talking about it.

Recommendation: We urge that the MCA require, as a precondition for assistance, that governments provide statistics and documentation on the number, type, and location of investigations, prosecutions, and most especially convictions under local law for the specific crimes of forced labor slavery, child labor, abusive working conditions, and sex trafficking. These indicators are the most important, measurable, and tangible gauge of a government's seriousness about eliminating trafficking. The number of judicial and administrative actions taken against complicit authorities is a vital component of that data.

The Harkin-Engel Child Labor Initiative: In closing, Mr. Chairman and Members of the Committee, I would like to say a word about a non-legislative initiative undertaken by Senator Tom Harkin and Representative Eliot Engel of New York. These child labor abolitionists and their fine staff have invested nearly six years and hundreds of hours of time to create a credible, voluntary industry-wide standard of public certification for the chocolate industry. The protocol has been joined by the industry, nongovernmental organizations, and governments to eliminate child labor from the growing and processing of cocoa.

The effort is an inspiration not only because of the progress that has been made, but because of the progress continues to be made in this industry. It may well provide inspiration to other industries that have had a significant child labor problem. We would be very grateful if the Committee would include the attached document in the record of this hearing.

In closing, I wish to thank the Subcommittee for its attention to the important matter of modern day trafficking and slavery. I welcome your questions.

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

APR 14 2006

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS)

SUBJECT: Alleged Trafficking in Persons Practices by Department of Defense (DoD) Contractors in Iraq (Your February 6, 2006 Memorandum)

In response to your subject memorandum (attached), I am providing the results of our inquiry into the events leading up to the deaths of 12 Nepalese nationals inside Iraq on August 31, 2004.

The DoD Inspector General (DoD IG) has no authority to investigate foreign nationals or foreign companies inside Nepal or Jordan. However, based on coordination with Service Inspectors General in Iraq, Logistics Civil Augmentation Program (LOGCAP) Contracting Officers, and representatives from Kellogg, Brown, and Root (KBR), we have found no reason to question the sequence or accuracy of events outlined in the Chicago Tribune articles published on October 9 and 10, 2005 (attached).

The following is the chronological review of the incident.

- In late June/early July 2004, a Nepalese company called Moonlight Consultant Pvt, Ltd recruited Nepalese civilians for work in Jordan and Iraq. While some of the recruited workers knew they were bound for Iraq, others apparently were told they would work in hotels in Amman, Jordan. Moonlight Consultant Pvt, Ltd was reportedly paid a substantial up-front fee by each recruited worker—a fee equivalent to the average Nepalese's annual wages.

- The Nepalese workers were transported to Amman, Jordan, and handed off to a Jordanian company called Morning Star for Recruitment and Manpower and Supply. The Nepalese lived for about a month in a house apparently owned by the Morning Star company. During this period, they did not routinely work in a hotel or anywhere else. An additional "fee" charged by this Jordanian company to find work for the Nepalese was considerably more than the Nepalese expected.

- The Nepalese were eventually transferred to another Jordanian company called Bisharat and Partners, who provided transport overland from Jordan to U.S. bases in Iraq. In Iraq, the Nepalese were to work for a third Jordanian company called Daoud and Partners, a subcontractor of KBR. Some of the Nepalese clearly felt they had been

deceived about their place of employment (Iraq versus Jordan), but felt they could not back out since their families had gone deeply in debt to get them there.

- Bisharat and Partners did not provide any significant security for the overland trip into Iraq. On August 19, 2004, two of the vehicles got ahead of the rest of the convoy after crossing the Jordan/Iraq border checkpoint. These two vehicles were stopped inside Iraq by men dressed as Iraqi Security Forces. The 12 Nepalese in the two vehicles were kidnapped.

- The 12 Nepalese were murdered on August 31, 2004, by their kidnappers, a tragedy that occurred before starting their employment with the KBR/Halliburton subcontractor.

While it would appear that some foreign-based companies are using false pretenses to provide laborers to KBR/Halliburton subcontractors in Iraq, we must note that none of the allegations in the Chicago Tribune articles are against U.S. persons or U.S. contractors. There are no privities of contract between DoD and the foreign companies allegedly guilty of these trafficking practices; therefore, the U.S. has no jurisdiction over the persons or the offenses (even if there are violations of U.S. or foreign law). The prime contractor (KBR/Halliburton) let a subcontract and the subcontractor obtained labor from third party independent contractors, who are non-U.S. persons. To date, there are no clauses in contracts between KBR/Halliburton that make them responsible for labor fraudulently procured by independent contractors or subcontractors. (Per your note in the memorandum, there is a proposed Defense Federal Acquisition Regulation (DFAR) clause that would make contractors ensure their subcontractors comply with U. S. Government (USG) anti-Trafficking In Persons (TIP) policies. However, that DFAR clause has not yet been finalized and approved.) In the absence of such clauses or evidence against U.S. persons or U.S. companies, there are no potential criminal violations to be investigated or DoD contracts that can be legally terminated.

We strongly support the Department of State, the USG lead for TIP issues, as they aggressively pursue anti-trafficking efforts with foreign governments. As part of the USG initiative in this area, the DoDIG is currently conducting an "Evaluation of Department of Defense (DoD) Efforts to Combat Trafficking in Persons (TIP)." However, if foreign companies or foreign citizens are to be held accountable for trafficking offenses committed in foreign countries, the sovereign government with jurisdiction must take appropriate action, in accordance with their laws.

Based on our analysis of the situation regarding issues related to TIP, in general, and labor trafficking specifically, we recommend the following:

- DoD continue to prosecute military members who become involved in TIP or TIP-related activities, in accordance with the Uniform Code of Military Justice (UCMJ).

- DoD ensure that all new contracts incorporate the language of the anti-TIP DFAR clause, once it is approved.

- DoD evaluate rewriting existing contracts to incorporate the language of the anti-TIP DFAR clause, once it is approved.

- Military Department and Combatant Command Inspectors General continue their involvement in DoD efforts to combat TIP, within the limits of their authority to do so.

My point of contact for this action is Mr. Stanley Meyer at 703-604-9130, e-mail Stanley.Meyer@dodig.mil.

Thomas F. Gimble
Principal Deputy

Attachments:
As stated

Statement of Sen. Dick Durbin
Senate Judiciary Committee
Subcommittee on Human Rights and the Law
"Legal Options to Stop Human Trafficking"

March 26, 2007

Good afternoon, and welcome to the second hearing of our new Subcommittee on Human Rights and the Law. Unfortunately, our ranking member, Senator Coburn, is not able to be here today. But I know he feels as strongly as I do about the issue we will discuss today, and about the mission of this subcommittee.

This is the first time in Senate history there has been a subcommittee focused on human rights. At this moment in time, it is crucial to our national interest to promote greater respect for human rights around the world. Repressive regimes that violate human rights create fertile breeding grounds for terrorism, war, poverty, and instability. Our nation and our world will never be fully secure as long as fundamental human rights are not honored.

Our first hearing, last month, addressed the issue of genocide and the rule of law, focusing on the mass killings in Darfur. As a result of that hearing, I introduced bipartisan legislation to promote divestment in Sudan and to expand the reach of U.S. law so we can prosecute non-U.S. nationals who are in this country for crimes of genocide they committed abroad. We will continue to focus this subcommittee on legislation, not lamentations.

At today's hearing, we will consider the issue of human trafficking. This issue is as old as mankind. From the beginning of time there has been evidence of exploitation and slavery, and we have not been spared in our time.

Few issues in the world today raise as many human rights implications as the insidious practice of trafficking in human beings. It is estimated that a million people are trafficked across international borders each year and pressed into labor or servitude by the use of force, fraud, or coercion. Human trafficking represents the commerce in human misery.

As an introduction to today's hearing, I would like to show a brief video on human trafficking. It begins with a short public service announcement put together by the United Nations to help raise awareness of the trafficking issue. The second part of the video is an interview with a trafficking victim in Cambodia. It will help put a human face on this global tragedy.

[SHOW VIDEO]

Former U.N. Secretary-General Kofi Annan has said: "The world is now wrestling with a new form of slavery – trafficking in human beings, in which many vulnerable people are virtually abandoned by legal and social systems into a sordid realm of exploitation and

abuse."

If there is any silver lining to this tragic problem, it is that the world has now opened its eyes. There are 117 signatories to the United Nations trafficking protocol, and many of these countries have passed tough anti-trafficking laws in the past few years. The United States passed its first major anti-trafficking law in 2000.

It is impossible to discuss the issue of human trafficking here in the United States Senate without mentioning the visionary leadership of the late Senator Paul Wellstone. Senator Wellstone called the trafficking of human beings "one of the most horrendous human rights violations of our time."

On the day Congress passed the Trafficking Victims Protection Act on October 11, 2000, Senator Wellstone went to the floor of the Senate. He was very happy that day. He praised his lead co-sponsor, Senator Sam Brownback, who has been a great champion of human rights for years. Senator Wellstone praised the broad coalition of groups that had come together to work on the bill – human rights groups, women's rights groups, Evangelical and Jewish groups, and members of the Clinton Administration. And he said this:

"I believe with passage of this legislation...we are lighting a candle. We are lighting a candle for these women and girls and sometimes men forced into forced labor.... This is the beginning of an international effort to go after this trafficking, to go after this major, god-awful human rights abuse."

Senator Wellstone's commitment to stopping human trafficking and other human rights abuses stands as one of his most enduring legacies. Despite his untimely passing, the candle Senator Wellstone lit nearly seven years ago is still burning bright, and we rekindle it again today.

Thanks to passage of the Trafficking Victims Protection Act of 2000, and the legal tools that Paul Wellstone gave the U.S. government, we have made progress in combating this major human rights abuse.

The State Department – under the leadership of my friend and former colleague in the U.S. House of Representatives, John Miller – has pushed recalcitrant countries around the globe to pass anti-trafficking laws and to help victims.

Of course, human trafficking is not just a phenomenon happening in far off lands, but here at home as well. The Department of Justice has done an admirable job of investigating and prosecuting trafficking cases in the United States. These cases are often very difficult to bring because trafficking victims are isolated and trapped. If victims are able to break free, they are often reluctant to talk to law enforcement out of fear of deportation or prison.

For this reason, the role of victim and legal service providers is especially important in

the fight against human trafficking. Organizations like the National Immigrant Justice Center in Chicago are trusted sources of aid for trafficking victims, and these groups work closely with prosecutors to gain the trust of victims and make the case.

At today's hearing, we will ask: Seven years after passage of the Trafficking Victims Protection Act, what progress has the U.S. government made in combating human trafficking in the United States and abroad? What are we doing right, and what do we need to do better?

What aspects of the Trafficking Victims Protection Act and its 2003 and 2005 re-authorizations should be strengthened or changed?

Should Congress amend U.S. law to make it easier and quicker for trafficking victims in the U.S. and their family members to receive a "T visa" and other government benefits?

We will also ask: Why hasn't the U.S. government done more to punish U.S. contractors in Iraq and other foreign countries who engage in human trafficking?

And how can we hold foreign diplomats in the U.S. responsible for trafficking despite the existence of diplomatic immunity?

I intend to introduce legislation that will help address some of the problems that are identified at today's hearing. Several parts of the Trafficking Victims Protection Act are set to expire at the end of 2007, so it is time to look carefully at this law and figure out what more needs to be done to further the fight against human trafficking.

United States Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
Hearing on Legal Options to Stop Human Trafficking
March 26, 2007

Statement of Katherine Kaufka
National Immigrant Justice Center

Chairman Durbin and Distinguished Members of the Subcommittee:

Thank you for the privilege to testify today on behalf of the survivors of human trafficking, who are victims of some of the most horrific human rights violations that we see today. I am an attorney and have represented dozens of trafficking victims at the National Immigrant Justice Center, a leading national advocate for the protection of human rights of non-citizens. In addition to the counter-trafficking project, our comprehensive program affords high quality legal representation to immigrants, refugees, asylum seekers, unaccompanied immigrant children, detained immigrants, and survivors of gender and sexual-orientation-based persecution.

Serving nearly 8,000 individuals each year, the National Immigrant Justice Center, a partner of Heartland Alliance, is a leader in litigation-based advocacy for immigration reform. We have built the largest pro bono network in the nation, with 700 pro bono attorneys handling individual cases and impact litigation in the federal courts. The National Immigrant Justice Center has conducted anti-human trafficking trainings both nationally and internationally to law enforcement authorities and social service providers.

In my testimony today, I will address three areas of the law that fail to provide adequate protections for human trafficking victims. These are (1) the need to provide greater protection for victims and their families; (2) the need to ensure that victims who make an effort to cooperate with law enforcement are adequately protected; and (3) the need to respond to the special needs of children who are victims of human trafficking. For each issue, I will provide examples of victims the National Immigrant Justice Center has represented, and use pseudonyms for clients in order to protect their identities.

The two laws that operate to provide immigration benefits and other protections to victims of trafficking are the Victims of Trafficking and Violence Protection Act (TVPA) and the Trafficking Victims Protection Reauthorization Act (TVPRA). These statutes are consistent with international laws such as the United Nations Convention against Transnational Organized Crime and its Protocols addressing human trafficking and the smuggling of migrants. The statutes address the problem of human trafficking through a human rights framework using a three-pronged approach of protection, prosecution and prevention. The laws create new trafficking crimes, increase sentencing requirements, and provide legal status and protection to trafficked persons who cooperate with law enforcement to

Heartland Alliance for Human Needs & Human Rights | National Immigrant Justice Center
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phone: 312-660-1370 fax: 312-660-1505 website: www.immigrantjustice.org

investigate and prosecute traffickers.

The two forms of immigration relief available to trafficking victims are "Continued Presence," which allows a non-citizen to remain in the United States in a temporary immigration status while their traffickers are being investigated and prosecuted, and the "T" nonimmigrant visa, which allows trafficking victims who aided in the prosecution of criminal traffickers to obtain legal status and eventually apply for green cards and citizenship. These two key statutes, the VTVPA and TVPRA, also allow victims to obtain services, witness protection, and the right to mandatory restitution and to file civil actions.

The most recent estimates claim that approximately 14,500-17,500 men, women, and children are trafficked in the United States every year. However, since the passage of the VTVPA seven years ago, approximately 400 trafficking cases have been prosecuted on human trafficking charges and 1,500 T visas have been issued.

While it was the intent of the VTVPA to punish traffickers and protect victims, these statistics show that we have failed to fulfill our goal of identifying victims and tracking down and prosecuting traffickers operating in the United States. We believe that a principal cause of this failure is that the burdens placed upon the victims are too high. Our laws should convey the message to this vulnerable population that they will be protected while their abusers are prosecuted. The statute should guarantee that those who assist or attempt to assist law enforcement will in fact be afforded protection and access to services. As written and implemented, however, the statute demands too much, leaving victims unable to meet the necessary criteria.

I. Providing Greater Protection to Trafficking Victims and Their Families

Many survivors of human trafficking are intimidated by their traffickers with threats against the safety and livelihood of immediate family, most often family members who are outside the United States and whom the trafficking victim feels powerless to warn or protect. The victim's fear of harm to his or her family prevents the victim from reporting the trafficking crime to authorities. If a victim reports the crime, he or she may be frightened away by the threats so that the victim does not fully assist with an investigation or prosecution of a trafficking case.

One client we represent, "Anuja," was trafficked to a suburb of Chicago, called Burr Ridge, IL, from a small Indian village when she was about eleven years old. She was promised an American education, but instead, was forced to cook, clean, and take care of two small boys for an Indian family. Four years later, she managed to escape with the assistance of a "Good Samaritan," and was subsequently referred to the National Immigrant Justice Center. Anuja was interviewed by authorities, who quickly became frustrated with her because she was unwilling to provide information for them to corroborate her story. Finally, in tears, Anuja she confessed that she did not want to tell law enforcement certain details because she was afraid her traffickers were going to hurt her little sisters in India, a threat she heard many times while she lived with her traffickers. At such a young age, Anuja was terrified by the threats to her family. Let me be clear — she was eager to see the traffickers prosecuted. However, Anuja would have been better able to assist law enforcement if she knew her family was safe and if she was able to receive their support during the prosecution of the traffickers.

We recommend that victims of trafficking who cooperate with law enforcement have the option to be united with family to support them through the legal process. Specifically, derivative continued presence status should be granted to immediate family members of trafficking victims. If those family members reside outside the United States, they should be allowed to enter the U.S. temporarily to aid the prosecution's efforts. This change to the law will not only enhance victim protection and rehabilitation, it will simultaneously facilitate cooperation between victims and law enforcement, leading to more successful prosecutions of criminal traffickers.

II. Ensuring Full Protection for Victims Who Make an Effort to Assist Law Enforcement

The second problem that I want to discuss stems from the fact that a victim's access to protection and services is contingent upon law enforcement's discretion to open a criminal investigation. If law enforcement fails to act, declines to open an investigation or delays the process, the trafficking victim will have no opportunity to assist in the investigation and prosecution of a case. Additionally, the victim will be prohibited from accessing immigration protections and services afforded to victims of human trafficking under our statutes. If law enforcement declines to pursue the case, the trafficking victim is left to battle either a deportation proceeding or possible criminal prosecution against him or herself. This creates a chilling effect on other victims in the community, discouraging them from reporting trafficking crimes, and leaving victims undocumented, underground, and unidentified.

In cases where trafficking victims are able to escape without the assistance of service providers or law enforcement, if often takes time for the victims to learn that they can play a role in the investigation and/or prosecution of their traffickers. Because of the passage of time, these cases often become a low priority for law enforcement. We represent a woman, "Padma" and her two daughters, who were trafficked from India to Countryside, Illinois to work under forced labor conditions in a restaurant in 1998. Padma and her daughters finally escaped in 2001. They lived in hiding and were too frightened to seek assistance until 2005, when a legal advocate at a women's shelter referred them to the National Immigrant Justice Center.

Padma wanted justice for what she and her daughters endured, so we immediately reported the crimes to the Department of Justice and the Chicago FBI office. Padma needed legal status to remain in the United States to seek services and help the federal authorities prosecute the case. It was only after interviews occurred one year later that Padma and her daughters were legally recognized as victims and received the protection and services they needed. Padma's previous *attempts* to cooperate were not recognized under the law.

In other cases across the nation, victims have struggled to schedule a single interview with authorities, precluding protection for these survivors. We recommend that the survivor of human trafficking who makes a good faith attempt to cooperate with law enforcement should be eligible for T visas under the VTVPA. The current law requires proof that the victim complied with requests for assistance. Where the victim tries to assist authorities, but law enforcement takes no action, the victim should not be denied protection.

III. Recognizing the Special Needs of Children Victims of Human Trafficking

The third recommended revision of law is to enhance protection for victims of human trafficking who

are unaccompanied children. These are the most vulnerable of our victim population.

Trafficked children are frequently picked up during raids of business establishments suspected of illicit activity or of relying upon the forced labor of trafficking victims. Unfortunately, all too often, law enforcement fails to recognize potential trafficking victims and treats these children as if they are participants in the allegedly criminal activity. Rather than immediately extending protection to these children, authorities have interrogated the victims, further traumatizing children in an already fragile state.

One of our clients from El Salvador, "Sonia" was just fifteen years old when federal law enforcement agents discovered her in a brothel. Officers from the Department of Homeland Security interrogated her for hours. Sonia was ashamed, and fearful of both the traffickers and the federal agents, so she said that "nothing happened" in the brothel. Sonia was held in custody in Chicago, and immediately placed in deportation proceedings.

Sonia's case demonstrates the great sensitivity that must be applied to cases involving children. We recommend that whenever law enforcement authorities encounter a child in an environment that involves forced labor or commercial sex, the officials should assume that the child is a victim of trafficking and refer the child immediately for appropriate services and legal counsel. In Sonia's case, she was transferred to a shelter in Chicago that provides care and custody for unaccompanied minors. An initial legal screening by attorneys with the National Immigrant Justice Center suggested that she was a trafficking victim. Eventually, we were able to transfer Sonia to foster care and obtain a T visa for her.

Rather than leaving the child victims of trafficking in the hands of law enforcement officials who tend to exacerbate their fears, the Department of Health and Human Services (HHS), Administration for Children and Families should have exclusive authority to make prompt determinations of eligibility for assistance for unaccompanied children who may be victims of human trafficking. HHS should be responsible for providing care to these children care while they obtain legal counsel and referrals to the services they require.

Conclusion

In closing, in order to identify victims and effectively prosecute traffickers, we recommend that this issue be approached from the victim's perspective. We need to recognize the burdens encountered by survivors in the course of being identified as a victim of human trafficking, and the obstacles that are faced by these same victims in accessing protection and assisting law enforcement. Providing protection not only to victims, but also to their immediate family members will relieve the fears that prevent many victims from reporting their cases and participating as victim-witnesses in our justice system. We must afford protection to victims who make a good-faith attempt to aid authorities in the investigation and prosecution of human trafficking cases. To deny these victims protection is unjust. Special considerations must be given to the needs of child victims of human trafficking. Furthermore, potential child victims of human trafficking must be immediately referred to HHS, provided appropriate services, and guaranteed access to legal counsel. Finally, as you consider modifications to the law, we urge you to ensure all trafficking victims have access to high quality and affordable legal counsel. In this way, we can ensure that the rule of law is applied and enforced, and that victims' fundamental human rights are protected.

Prepared Statement of
Martina E. Vandenberg, J.D.
Senate Judiciary Subcommittee on Human Rights
"Legal Options to Stop Human Trafficking"
March 26, 2007

Mr. Chairman and Members of the Subcommittee:

It is an honor to testify before you today on a grave violation of human rights, trafficking in persons. My name is Martina Vandenberg, and I am an attorney in private practice with the firm of Jenner & Block. I am the author of two reports on trafficking in persons: *Hopes Betrayed: Trafficking in Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, published by Human Rights Watch, and *Trafficking of Women to Israel for Forced Prostitution*, published by the Israel Women's Network. I also represent trafficking victims *pro bono* in civil suits against their traffickers here in the United States.

I would like to thank Senator Durbin and the members of the Subcommittee for convening this hearing. The panel today provides a rare opportunity to identify gaps in the United States government's implementation of international human rights norms in the area of trafficking in persons.

Traffickers often flourish because they operate in zones of lawlessness and impunity. Over the past decade, Congress, the executive branch, and non-governmental organizations have worked together to develop innovative criminal and civil remedies to assist victims and bring traffickers to justice. But gaps do still exist, and traffickers continue to operate with impunity within these lacunae.

I would like to focus this afternoon on three concrete trafficking cases that illustrate these gaps. I will begin with the human rights norms — the substantive international law on trafficking. I will then turn to the case studies: one in Iraq, one in Bosnia and Herzegovina, and one right here in the Washington, D.C. suburbs.

I. International Law

Trafficking in persons is a gruesome human rights violation, which traps men, women, and children in debt bondage, forced labor, and forced prostitution. Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, defines trafficking as the recruitment, transportation, transfer, harboring or receipt of persons, by the threat or use of force or any other means, for the purpose of exploitation.[1] The Protocol, while

[1] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, annex II, U.N. Doc. A/RES/55/25 (November 2, 2000) [also referred to as the Palermo Protocol]. The Trafficking Protocol supplements the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex I, U.N. Doc. A/RES/55/25 (November 2, 2000). The Trafficking Protocol, to which the United States became a state party on December 3, 2005, entered into force on December 25, 2003.

fundamentally an international crime control cooperation treaty, nevertheless includes protections for victims of trafficking. The inclusion of these provisions merely reflects that states have a duty to protect and provide remedies to victims who have suffered violations of their most fundamental human rights.[2] Specifically, the Protocol presses states to provide appropriate shelter for victims; counseling and information in a language the victim can understand; medical, psychological, and material assistance; witness protection; and the possibility of obtaining compensation.[3]

Research by Human Rights Watch and other human rights organizations has shown that historically, states have treated victims of trafficking as illegal migrants, criminals, or both, often detaining them, prosecuting them, and then summarily deporting them. Protection of victims, and the creation of visa regimes to permit victims to remain legally in countries of destination, is a fairly recent phenomenon. And while the model adopted by the international community has tended to focus largely on law enforcement measures, some countries, including the United States, have opted for a victim-centered approach.

It would be too far a stretch to characterize this as a "rights-based" approach, unfortunately. Obtaining a special trafficking victim visa, or T-visa, in the United States still requires cooperation with law enforcement. But the steps that have been taken do go some distance toward eliminating what Ann Jordan, director of the Global Rights Initiative Against Trafficking in Persons and one of the leading experts on trafficking in persons, once dubbed "the disposable witness syndrome." Victims cannot be used, and then abandoned. Victims must be viewed as individuals with human rights, and not as mere tools for states to obtain trafficking convictions in order to avoid landing on the State Department Trafficking In Persons report's tier III. At a minimum, victims must have witness protection, without which they cannot safely testify against those who perpetrated these crimes. This is particularly true in light of the crucial role played by official corruption, both in countries of origin and countries of destination. Without protections and services for victims, impunity for traffickers will remain the rule.

I offer these case studies to illustrate the gaps in the United States' own legal regime, in the hope that these gaps can be plugged with legislation or enhanced political will.

II. Impunity for Trafficking of Persons into Iraq for Forced Labor

On August 19, 2004, insurgents kidnapped twelve Nepalese men traveling on the road from Amman to Baghdad. All twelve were executed on August 31, 2004. An intrepid *Chicago Tribune* reporter, Cam Simpson, launched an investigation into the events leading up to their abduction and deaths. The *Chicago Tribune* series, "Pipeline to Peril," uncovered a trafficking network stretching from the remote mountains of Katmandu to U.S. military bases in Iraq.[4] The

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[2] For a full discussion of the Protocol and trafficking prevention generally, *see* Janie Chuang, " Beyond a Snapshot: Preventing Human Trafficking in the Global Economy," *Indiana Journal of Global Legal Studies*, Vol. 13, Issue 1 (Winter 2006). *See also* Global Rights, *The Complete Annotated Guide to the U.N. Trafficking Protocol*, available at *http://www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723* (accessed March 22, 2007).
[3] Trafficking Protocol, Article 6.
[4] Cam Simpson, "Pipeline to Peril," *The Chicago Tribune,* October 9-10, 2005, available at http://www.chicagotribune.com/news/specials/chi-nepal-specialpackage,1,3634847.special?coll=chi-newsspecials-hed (accessed March 22, 2007)

chain began with recruiters in the men's villages, who promised the workers lucrative jobs in five-star hotels in Jordan. In exchange for facilitating these job opportunities, the recruiters demanded upfront payments amounting to nearly one year's wages for an average Nepali. The Nepalese men's families borrowed heavily to advance the funds, in some cases mortgaging the family farm.

The recruiters delivered the men to a Jordanian company in Amman, which demanded additional payment for placement services. The company held the men in apartments and did not provide the promised jobs in Jordanian luxury hotels. Instead, the Nepalese workers found themselves transferred into the hands of yet another Jordanian company, which provided their transportation into Iraq in an unguarded convoy. Upon arrival in Iraq, the traffickers intended to hand the workers off to a third Jordanian company, a subcontractor to Kellogg, Brown, & Root (KBR). Insurgents killed the Nepalese workers before they began their employment with the KBR subcontractor.

The meticulously researched *Chicago Tribune* series did not constitute the first allegation of trafficking for forced labor in U.S. military bases in Iraq. Indeed, at a joint issues forum co-hosted by the House Armed Services Committee and the Helsinki Commission in September 2004, Senator Clinton questioned the Department of Defense Inspector General about a story in *The Washington Post* reporting labor violations against third country nationals in Iraq.[5]

In the wake of the *Chicago Tribune* series, the Department of Defense (DoD) Office of the Inspector General launched an investigation. On April 14, 2006, in a memorandum to the Under Secretary of Defense for Personnel and Readiness, Thomas Gimble, the Principal Deputy DoD Inspector General, reported that he "found no reason to question the sequence or accuracy of events outlined in the *Chicago Tribune* articles published October 9 and 10, 2005." The memorandum also confirmed that "[s]ome of the Nepalese [men] clearly felt they had been deceived about their place of employment (Iraq versus Jordan)."[6]

But, troublingly, the memorandum concluded that "while it would appear that some foreign-based companies are using false pretenses to provide laborers to KBR/Halliburton subcontractors in Iraq, we must note that none of the allegations in the *Chicago Tribune* articles are against U.S. persons or U.S. contractors." There is no indication that the DoD Inspector General delved into the issue of criminal complicity by U.S. persons or contractors. Indeed, there is no hint of any investigation whatsoever into involvement by U.S. contractors in a criminal conspiracy. Instead, the DoD conflated criminal and civil law principles, finding that "[t]here are no privities of

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[5] Ariana Eunjung Cha, "Iraq: Many Foreign Laborers Receive Inferior Pay, Food and Shelter," *The Washington Post*, July 1, 2004. At a joint issue forum held on September 21, 2004, Senator Clinton asked, "[T]his past July and August, there were press reports indicating that subcontractors on DoD subcontracts may have kept Indian laborers in debt bondage...to the Inspector General, will you be considering labor trafficking and debt bondage issues as well as sex trafficking in your inspection process?" "Enforcing U.S. Policies Against Trafficking in Persons: How is the Military Doing?" 108th Congress, 2nd Session, Issue Forum Jointly Convened by the Commission on Security and Cooperation in Europe and the House Armed Services Committee, September 21, 2004, p. 20.

[6] Memorandum to the Under Secretary of Defense for Personnel and Readiness from Thomas Gimble, Principal Deputy DoD Inspector General, April 14, 2006.

contract between DoD and the foreign companies allegedly guilty of these trafficking practices; therefore, the U.S. has no jurisdiction over the persons or the offenses."[7]

This statement is simply incorrect as a matter of law. Under the Military Extraterritorial Jurisdiction Act of 2000, the United States does have criminal jurisdiction over felonies committed abroad by U.S. DoD contractors. Congressman John McHugh questioned Gimble on precisely this issue in a joint hearing convened by the House Armed Services Committee Subcommittee on Military Personnel in June 2006.[8] Gimble's responses point to a level of superficiality in both the DoD Inspector General's analysis and investigation. Responding to Congressman McHugh's question on why the U.S. government did not attempt a criminal prosecution under the Military Extraterritorial Jurisdiction Act of 2000 (MEJA), Gimble stated:

> [T]here [were] no clauses in the contract, and these were not U.S. contracts. So we didn't think we had the authority to go down into those. So far as prosecution, that probably should go back into the local -- the Iraqi government should be the one prosecuting the murders on that.[9]

The issue, however, was not the prosecution of the killings, but the criminal prosecution of the underlying trafficking offenses. And on that issue, the DoD Inspector General's analysis was inadequate for two reasons. First, while these twelve Nepalese workers did not make it to the U.S. base in Iraq, between 35,000 and 48,000 third country nationals did. It is clear that some fraction of that work force suffered the same trafficking abuses as the twelve Nepalese men who died. Colonel Boyles, formerly of Joint Contracting Command Iraq, testified at the June 2006 hearing that he had to force contractors to comply with General Casey's order to return passports to third country nationals by May 1, 2006.[10] Boyles told the members of Congress present at the joint hearing that gaining compliance from contractors withholding third country nationals' passports was "like pulling teeth."[11] And while the DoD Inspector General apparently interviewed 850 third country nationals in Iraq, no one from the Department of Defense at the joint hearing answered a fundamental question posed by Congressman Chris Smith. Congressman Smith asked, "the real question is, was there any knowledge that American contractors or members of the military had knowledge of the trafficking that was taking place by the subcontractors?"[12] That question, the key to a criminal prosecution, remains unanswered.

The lack of an investigation into that question reflects a problem identified by Dr. Sarah Mendelson of the Center for Strategic and International Studies in her report, *Barracks and Brothels*. Dr. Mendelson observed the Inspector General's formal investigation in 2003 into complicity of DoD personnel in the Balkans, and concluded that the investigation was "superficial and pro forma." She wrote: "Had DoD personnel followed the leads they were

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[7] *Id.*
[8] "Implementation of Zero-Tolerance for Human Trafficking," 109th Congress, Second Session, House of Representatives Armed Services Committee, Military Personnel Subcommittee Joint Hearing with the House International Relations Committee, Africa, Global Human Rights and International Operations Subcommittee on Human Trafficking, June 21, 2006.
[9] *Id.* at 18.
[10] MNF-I FRAGO 06-188 (April 2006).
[11] *Id.* at 23.
[12] *Id.* at 36.

given, they would have found evidence of civilian contractor complicity in human trafficking." They did not pursue those leads, nor did they meet with non-governmental organizations or trafficking victims.[13]

And even if the IG had asked the right questions and pursued all available leads in 2003, that institutional memory is gone. All of the IG staff members who have conducted trafficking investigations, save one, have left the office.

So what is the bottom line? Impunity. After an exposé in a major U.S. newspaper, a DoD Inspector General investigation confirming the trafficking allegations, and a congressional hearing, not a single contractor has been terminated, and not a single criminal prosecution is underway. Indeed, it appears that many of the subcontractors implicated in the scandal continue to enjoy DoD subcontracts in Iraq. The U.S. military, after the issuance of General Casey's order, seems to have declared victory. I see no evidence that would support such a claim.

So let me tell you, in the inimitable words of Paul Harvey, the rest of the story. Through the efforts of the *Chicago Tribune* reporter, Cam Simpson, the families of the murdered Nepalese trafficking victims found *pro bono* counsel in the United States. The attorneys filed for a death benefit under the Defense Base Act, which requires all contractors and subcontractors to carry insurance for their employees who perform work overseas. The Department of Labor processed the claims quickly, and attempted to facilitate the insurer's payment of death benefits to the families in Nepal. The insurer, however, has refused to pay the families. Three years after the trafficking and brutal murders of these workers, their families have yet to receive any compensation whatsoever from the United States.[14]

In January 2006, Ambassador Miller of the State Department Trafficking in Persons Office told the *Chicago Tribune* "Our view is that the U.S. contractor has to take responsibility."[15] But three years later, no one has taken responsibility. Three years later, the victims' families remain strapped by the original debts they incurred to send their relatives abroad.

This impunity is just business as usual for the Department of Defense on trafficking issues.

Take the case of Bosnia & Herzegovina.

III. Impunity for Contractors and Trafficking in Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution.

The case of trafficking into post-conflict Bosnia & Herzegovina is the poster child for impunity for U.S. defense contractors. Deputy Principal Inspector General Thomas Gimble, testifying in June 2006 about the lack of prosecutions in Iraq, stated:

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[13] Sarah E. Mendelson, *Barracks & Brothels: Peacekeepers and Human Trafficking in the Balkans*, CSIS, February 2005, p. ix.

[14] According to the *Chicago Tribune*, each family received approximately $14,000 from the Nepalese government. Cam Simpson, "Into a War Zone, on a Deadly Road," *Chicago Tribune*, October 10, 2005.

[15] Cam Simpson, "U.S. to Probe Claims of Human Trafficking: *Tribune* Series on Iraq Abuses Sparked Action," *The Chicago Tribune*, January 19, 2006.

> It's kind of the same thing, as you recall, back in the Bosnia issue where they had the prostitution ring back in 2002 that we had reported.... We referred that back to the local jurisdictions over there, and I'm not sure whether they ever investigated or prosecuted or not..."

There was neither an investigation, nor a single prosecution. Nor was this a simple "prostitution ring." In a three-year investigation I conducted for Human Rights Watch, researchers uncovered at least eight cases of U.S. personnel who allegedly bought trafficked women and girls.[16] Despite these purchases of human beings as chattel, no prosecutions occurred in Bosnia or the United States. In four of the cases, the individuals were State Department contractors, and beyond the reach of MEJA. In the other four cases, the contractors were whisked out of the country before local Bosnian law enforcement could intervene. Even if the local authorities had wanted to prosecute the Americans, which they did not, it would have been impossible to do so. The alleged perpetrators had fled.[17]

The allegations came to light after two whistleblowers, one a State Department contractor serving as an International Police Task Force officer with the United Nations Mission in Bosnia & Herzegovina, and the second a DoD contractor serving at Eagle Base, came forward. Both whistleblowers were then fired by their employer, DynCorp.

In all, Ben Johnston, the DoD whistleblower, identified eight DynCorp employees who allegedly admitted to him that they had purchased women and girls from brothels in 1999 and 2000.[18] Some had used the women for sexual services and as domestic servants in their local housing units. A U.S. Army Criminal Investigation Command investigation confirmed some of the allegations, and several DynCorp employees were repatriated as a result of the investigation.

Kathryn Bolkovac, the Department of State contractor who raised public allegations of trafficking, did so after one of her fellow American police officers confessed that he had purchased a woman and her passport from a local brothel. In testimony before Congress in 2002, Robert Gifford of the State Department Bureau for International Narcotics and Law Enforcement Affairs testified that six U.S. police officers had been sent home from Bosnia and Herzegovina for "sexual misconduct."[19]

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[16] Human Rights Watch documented these cases through Freedom of Information Act (FOIA) requests to the Department of State, interviews with U.N. and U.S. government personnel, review of U.S. Army Criminal Investigation Command incident reports from Bosnia & Herzegovina, and interviews with two U.S. contractor whistleblowers.

[17] For a full account of the trafficking allegations in Bosnia & Herzegovina, *see* Human Rights Watch, *Hopes Betrayed: Trafficking in Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, Vol. 14, No. 9(D), p. 66 (November 2002) (available at http://www.hrw.org/reports/2002/bosnia/).

[18] Testimony of Ben Johnston, "The U.N. and the Sex Slave Trade in Bosnia; Isolated Case or Larger Problem in the U.N. System?" Hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations of the House of Representatives, 107th Congress, April 24, 2002, Serial no. 107-85, available at http://commdocs.house.gov/committees/intlrel/hfa78948.000/hfa78948_0f.htm.

[19] Testimony of Robert Gifford, "The U.N. and the Sex Slave Trade in Bosnia; Isolated Case or Larger Problem in the U.N. System?"

In separate lawsuits for wrongful termination, the two whistleblowers accused the company of retaliating against them for reporting that their colleagues had purchased women and girls from brothels and nightclubs. The alleged purchasers confessed and returned to the United States. They were not prosecuted.

The trafficking victims in Bosnia & Herzegovina, most of whom hailed from Ukraine, Romania, and Moldova, never anticipated that they would be forced into prostitution in Bosnia & Herzegovina. Promised lucrative jobs in Europe in the entertainment, service, or sex industries, the women and girls instead found themselves trapped in debt bondage, stripped of their passports, and forced to provide sexual services to truck drivers, local police officers, and peacekeepers alike. Corrupt Bosnian police officers colluded with traffickers and brothel owners to prevent the women's escape.

Again, as in Iraq, the DoD Inspector General confirmed that the allegations of trafficking were credible. In a report on Bosnia and Kosovo, published in December 2003, the IG concluded that the information the inspectors were able to collect in the field "suggests that DoD contractor employees may have more than a limited role in human trafficking. We were unable to gather more evidence of it precisely because there are no requirements and no procedures in place compelling contractors to gather such information regarding their employees or to report it to U.S. military authorities."[20]

This lack of transparency, which continues four years later, guarantees impunity for contractors who engage in trafficking.

IV. Civil Remedies for Trafficking Victims, Including Domestic Workers Trafficked into the United States by Diplomats.

On January 18, 2007, the ACLU Women's Rights Project filed a complaint in federal court in the District of Columbia.[21] Three Indian women plaintiffs brought the suit against a Kuwaiti military attaché and the Embassy of Kuwait in Washington, D.C. for trafficking the women into forced labor in violation of 18 U.S.C. § 1590. The plaintiffs, who had been "forced to work as domestic employees and childcare providers against their will," rooted their complaint in part on the civil remedies authorized under the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), 18 U.S.C. § 1595. They brought additional claims for relief under the Thirteenth Amendment to the United States Constitution, the Fair Labor Standards Act, contract theory, fraud, false imprisonment, assault, and battery. According to the complaint, the plaintiffs toiled seven days a week, sixteen to nineteen hours per day, and received less than fifty cents per hour. Until they escaped by running to a neighbor's house, the women alleged, the diplomat and his wife threatened them, refused to allow them to leave the house, subjected them to slavery-like conditions, and physically abused one of the women on numerous occasions.

I raise this case for three reasons. First, it is likely that the defendants will raise a defense of diplomatic immunity, as numerous defendants have done in the past in the face of similar suits

[20] Office of the Inspector General, "Assessment of DoD Efforts to Combat Trafficking in Persons: Phase II Bosnia-Herzegovina and Kosovo," December 8, 2003, p. 25.
[21] *Sabbithi v. Al Saleh*, No. 07-cv-00115 (D.D.C. January 18, 2007).

by domestic workers. Should that immunity be allowed to shield the defendants from these allegations of slavery-like practices, they will enjoy complete impunity. The federal district court, should defendants prevail on an immunity claim, would dismiss the civil suit, leaving these victims without any remedy.

Second, these victims, counter-intuitively, are among the lucky ones: they have lawyers. Most do not. The need for legal services for trafficking victims in the United States is revealed by the dearth of civil trafficking cases brought in U.S. federal courts since the creation of the civil right of action in the TVPRA (2003). The Attorney General reported to Congress that between 2001 and the end of 2005 the U.S. government charged 248 defendants with trafficking offenses and convicted 140.[22] And although 841 victims have received trafficking victim certifications and letters of eligibility from the Department of Health and Human Services in the same time period, [23] trafficking victims brought fewer than twenty civil trafficking suits under 18 U.S.C. § 1595.[24] And although the U.S. government has achieved restitution for victims in criminal cases under the mandatory restitution provision, 18 U.S.C. § 1593, it is unclear how often victims actually receive any of those funds.

Finally, I raise this case because those trafficked into domestic servitude in the United States, and particularly those trafficked by diplomats, are among the most invisible trafficking victims in our country. And yet, as Colbert King pointed out in an op ed published in *The Washington Post*, enslavement of domestic workers by diplomats occurs within just a few miles of the White House.[25]

And, more often than not, the diplomats enjoy impunity.[26]

V. CONCLUSIONS AND RECOMMENDATIONS

In the eternal words of the philosopher Nikolai G. Chernyshevsky, "what is to be done?"

On the Department of Defense contractor front, I would propose the following concrete reforms:

- ***Conduct thorough investigations and, where appropriate, bring indictments for trafficking into forced labor or forced prostitution by contractors and military personnel serving abroad.*** The Military Extraterritorial Jurisdiction Act has been used

[22] Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2005, June 2006, at 16.
[23] *Id.* at 6.
[24] Author *interview* with Daniel Werner, Legal Director, Workers' Rights Law Center of New York, Inc., March 22, 2007. Jennifer Nam, a Columbia Law School student, has compiled a list of fourteen cases filed between December 2004 and January 2007.
[25] Colbert I. King, The Slaves in Our Midst, December 23, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/12/22/AR2006122201019.html?nav=rss_opinion/columns (accessed March 22, 2007).
[26] *See Tabion v. Mufti*, 73 F.3d 535 (4th Cir. 1996) (holding that the Vienna Convention barred suit by live-in domestic employee against a diplomat and his wife). *See also* Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas*, Vol. 13, No. 2 (G), June 2001, available at http://www.hrw.org/reports/2001/usadom/ (accessed March 22, 2007).

only twice to bring prosecutions in the United States. Neither of those cases has involved allegations of trafficking. Without investigations by trained personnel, and without protections for victims, contractors will continue to enjoy impunity in the face of credible trafficking allegations. With zero prosecutions, zero tolerance has zero credibility.

- ***Create an extension of the T-visa regime to permit victims trafficked by contractors or military personnel abroad to come to the United States to testify, and to remain in the United States as holders of T-visas.*** At the present time, victims trafficked by a U.S. contractor or military personnel abroad cannot enter the United States to testify and obtain benefits as trafficking victims. If the U.S. is to attempt prosecutions in such cases, the victims of these crimes must be brought into the United States and afforded the same protections and benefits as victims trafficked into the United States.
- ***Amend the UCMJ to explicitly criminalize trafficking in persons.*** The 2005 amendment to the Manual for Courts-Martial only criminalizes "patronizing a prostitute."[27] It is necessary to add a provision explicitly criminalizing all forms of trafficking, particularly trafficking for forced labor.[28]
- ***Mandate that the Attorney General's Report on U.S. Government Activities to Combat Trafficking in Persons include a report card on Department of Defense Activities.*** The Department of Defense has been woefully absent from this annual report card. The DoD's implementation of the zero tolerance policy must be held up to public scrutiny. The report should include the amount of funding budgeted for trafficking in persons activities. The DoD budget currently has no line item dedicated to combating human trafficking. In addition, the report to Congress should include data on debarments, terminations, and other adverse contracting outcomes related to trafficking, as authorized under the Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulations Supplement (DFARS) anti-trafficking provisions.[29]
- ***Train Military criminal investigators and prosecutors to use existing provisions in the Uniform Code of Military Justice, the Manual for Courts-Martial, and the Military Extraterritorial Jurisdiction Act to identify and prosecute human trafficking cases.*** The House Armed Services Committee Report for the FY07 DOD Authorization Act (H.R. 5122; Report 109-452, pp. 316-317) mandates that the Department of Defense carry out this training.
- ***Ensure that the Department of Defense focuses on all forms of human trafficking, and not just trafficking for forced prostitution.*** The Department of Defense has evidenced a tendency to conflate prostitution with trafficking. Training modules designed for dissemination among soldiers focus almost entirely on reducing demand for sexual services, ignoring the need to provide training on trafficking for forced labor. This myopic approach is particularly problematic in light of the allegations raised in the *Chicago Tribune* series.
- ***Investigate the lack of compensation for the executed Nepalese victims of trafficking under the Defense Base Act.***

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[27] E.O. 13387, signed October 14, 2005.

[28] Legal guidance is also required for application of the UCMJ to civilians and contractors in contingency operations, as mandated in the Defense Authorization Act of 2007. PL 109-364.

[29] DFARS Case 2004-D017 (October 26, 2006); FAR Case 2005-012 (April 19, 2006).

On the civil remedies front, I would recommend the following:

- ***Request a GAO study into the incidence and prevalence of trafficking by diplomats in the United States.*** Such a study would include interviews with trafficking victims, their civil attorneys and case workers, and the relevant Department of State and Department of Justice personnel. Questions would include how many cases have been registered by the Department of State, and how many investigations launched by the Department of Justice.
- ***Increase funding for legal services to trafficking victims to pursue civil remedies and enforce criminal restitution orders.*** Despite efforts by the private bar to train civil attorneys to undertake these cases on a *pro bono* basis, service providers form the core of legal representation for victims. Even when service provider staff attorneys farm cases out for *pro bono* representation, they must still monitor and supervise the cases. Increasing funding to support staff attorney positions is vital.
- ***Mandate that the Attorney General's Report on U.S. Government Activities to Combat Trafficking in Persons include a report card on trafficking victims' access to civil remedies, as well as the U.S. government response to trafficking by diplomats.*** The current report makes absolutely no mention of trafficking by diplomats. Nor does the report currently track the use of 18 U.S.C. § 1595 or collection rates under the mandatory restitution provisions of § 1593. These items should be added to the report to Congress.

In closing, I can only point to the theme running through my remarks today: impunity. Ultimately, holding traffickers accountable for these horrible human rights violations can only be done when their victims are safe, secure, and able to rebuild their lives. By focusing on the human rights and fundamental needs of the victims, we can close off the zones of impunity in which the traffickers thrive.

Again, thank you for inviting me to testify today. I would be happy to answer any questions that you might have concerning the issues raised here today.

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