

U.S. Spotlight on Human Trafficking: Taking Stock of What Has Worked

Prepared statement by

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Thank you Mr. Chairman, and Congresswoman Ros-Lehtinen, for inviting me to testify on an important subject: the slavery of today. This committee has for years been committed to addressing imperatives of human rights which cross partisan lines, and were it not for members of this committee, including the indefatigable Mr. Smith, there would be no Trafficking Victims Protection Act (TVPA) or Trafficking in Persons (TIP) Office. Thank you. I would ask that my full written statement be put into the record, and I'll summarize my main points now.

On page seven, the latest TIP report estimates there are 1.8 trafficking victims for every one thousand people in the world. And that is based on a very conservative International Labor Organization (ILO) estimate of 12.3 million victims globally—less than half of what scholar Kevin Bales estimates. So think about it: *at least* one out of every 555 people in today's world is a human trafficking victim.

Based in part upon my experience as the TIP Office director, I would like to comment on two key priorities in the global context today ten years after the TVPA, the creation of the TIP Office, and the Palermo Protocol to the UN Crime Convention. Then I would like to offer recommendations on four key areas of action.

Two Global Trends and Priorities

The Need for Rule of Law in Practice. Human traffickers treat vulnerable groups such as women, children, migrants, minorities, and disadvantaged castes as if they are not human beings in full. They get away with it when—through neglect, prejudice, and complicity—societies, businesses, and government personnel permit them to, leaving those vulnerable groups without equal access to justice. The main tangible impact of the TVPA, TIP Office’s diplomacy, and Palermo Protocol has been the passage of new laws addressing human trafficking in well over half the countries of the world. This is a major achievement for rule of law and demanding equal access to justice for TIP victims.

Yet rule of law consists of so much more than laws on the books—whether in the United States, or the least developed of nations. There has been a lot of progress training law enforcement officials and empowering nongovernmental organizations (NGOs) as their partners to help find victims and get them access to justice. But transformative change has not yet taken place. Of the TVPA’s and Palermo Protocol’s “three Ps”—prosecution, protection, prevention—*prosecution* has been the emphasis to date. The TIP report documents 7,992 prosecutions in the whole world in 2003, and down to 5,506 in 2009. Of the 5,506, only 432 were for labor trafficking. Prosecutions are limited, down from a few years ago, and minimal for non-sexual exploitation. Lots of effort is apparently not “moving the needle” of change a great deal. We need *implementation* of rule of law.

The Need to Address All Vulnerable Populations. I am often asked where are the more significant places for human trafficking globally—beyond answering simply, “The Tier-3 countries.” India is one, because of the 27 million TIP victims in the world Dr. Bales estimates, two-thirds are there, chiefly in bonded labor. China is another, because of the underrecognized extent of the problem in so many forms, due to migrating workers without a safety net, a Wild West sex trade, official discrimination against Uighurs and Tibetans, and failure to treat North Koreans fleeing atrocious political and economic conditions as refugees. East Asia is of particular concern, given the prevalence of human trafficking for both major forms: for labor and for commercial sex. And the Gulf is a major flashpoint, where despite some strides prompted by U.S. diplomacy and self-interest, to be a woman or foreign guest worker—or worst of all both—you are likely to be treated as a lesser human.

Despite global trafficking foci and flashpoints, there are no “lesser” victims of trafficking. Since TIP’s essence is groups denied equal dignity, let us not in our anti-TIP policy privilege some victims over others. They are all of equal value in humankind.

One reason the ten-year-old effort is not moving the needle more is the fissuring of efforts and siloed focus on particular vulnerable groups. It is more than a mere division of labor.

For instance, victims of forced labor are no less important than victims of sex trafficking—and vice versa. That was a signature feature of my tenure directing the TIP Office.

Sex trafficking is not the only source of exploitation and violence against women. Take three examples: As ambassador, I met a Burmese woman who had been beaten and had her head shaved in a forced labor camp in Thailand. As executive director of the NGO Polaris Project, I met two Chinese women in Japan who were victimized in a foreign labor trainee program exempt from Japanese labor law. *Chinese victimized in Japan*. I also met a woman from an African nation Polaris served as a client right here in Washington. She spoke of the attention America paid to treating animals humanely in the United States—since some people like her are treated like animals here. All females victimized for labor.

Some think sex trafficking has been overemphasized due to alleged moralism, but to focus solely on labor would be equally wrongheaded. As the TIP Office director who established parity of emphasis for labor slavery, I hope the pendulum is not swinging toward focus on labor to the near exclusion of adult sex trafficking. On page eight of the 2010 report, the highlighted box on “What Is Not Human Trafficking?” emphasizing that prostitution is not trafficking is counterproductive. I do not think prostitution is one and the same as slavery. Few contemporary abolitionists do. But prostitution is the enabling environment for sex trafficking—whether in brothels, or seedy streets or, until recently, on craigslist in the United States. Sex trafficking and its basic enabling environment of men fueling demand for purchasing (chiefly) females globally ought not to lose attention.

One sees fissuring elsewhere. Some devoted to combating sex trafficking focus only on children (I myself serve on the advisory committee of End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), the leading NGO fighting commercial sexual exploitation of children). This is easier territory given global consensus that there is no meaningful consent by minors to be prostituted. But sex trafficking is not confined to minors. First of all, if lured into the sex trade as a minor, does it suddenly become a choice the day someone turns eighteen? Moreover, we know that numerous adult females in the global sex trade are subject to force, fraud, or coercion—including subtle psychological terror and trickery—making them trafficking victims even under the strict standards of the Palermo Protocol.

There is one other serious area of fissuring: “Trafficking” may sound like it refers to crossing borders, but it actually refers to turning people into commodities robbed of autonomy. Despite what some at the U.S. Department of Labor, the ILO, and some businesses think, crossing borders is not a necessary element of trafficking. The families freed from bonded labor I met in Tamil Nadu, India or the Mexican girl prostituted as a minor I met in Chiapas, Mexico are just as much TIP victims as those who moved across borders. So we need *rule of law* and *equal dignity*, both rightly understood. Rule of law depends on implementation, beyond passage of laws. And the global fight for the dignity of human trafficking victims requires equal value and energy accorded to *all* the victims. These two tests will be the basic signs to show whether we are successfully on the road to abolishing modern-day slavery.

A Four-Pronged Mission

Let me note four important areas of activity most important to meeting these two tests of success, and to stamping out human trafficking.

An Exemplar. First, the United States must be an exemplar. The clear continuity from Ambassador John Miller’s tenure to mine to Ambassador CdeBaca’s has been the steadily increasing emphasis on the United

States being a good example, using the chairmanship of the inter-agency Senior Policy Operating Group codified by Congress. As TIP Office director, a central premise was that the United States needed to be an exemplar to be an effective promoter of the anti-trafficking agenda globally. Let me say, I had very much in mind by analogy how U.S. detainee policy undercut U.S. promotion of freedom, good governance, and credible anti-terrorism policy internationally.

For example, it was pertinent to the country I focused on most: Mexico. I visited Mexico and its attorney general in his office twice. I met with the Mexican senate majority leader, head of the opposition to the Mexican president. I convened a trilateral meeting with Mexico, the United States, and Canada, and included executive and legislative branch officials from each. Throughout this effort, we emphasized what the United States was doing—and not doing so well—at home. It surprised the Mexicans, who hate assessments, which they associated with the U.S. narcotics certifications. Mexico enacted a comprehensive TIP law and moved up to Tier 2 in 2008.

Under the last administration we put a profile of the United States in the TIP report, disseminated in hardcopy and CD-ROM the U.S. Department of Justice (DOJ) annual report on the U.S. record on TIP, and got DOJ to produce it same month as the TIP report (assessing ourselves just as we assessed others). I think it is tremendous that U.S. Secretary of State Hillary Clinton has gone farther, including a profile with a ranking and more lengthy recommendations about areas of weakness.

ECPAT submitted a comment on that U.S. profile in the report, noting it did not say that according to U.S. government's statistics from 2008 and 2009, almost three times as many prostituted children were arrested as were offered protection and assistance. To be transparent about this matter, as TIP Office director I volunteered to co-lead the U.S. delegation to report to the UN Committee on the Rights of the Child on how we were implementing two optional protocols which the United States has ratified (on sale and prostitution of children and on child soldiers). I knew we would face criticism for not having ratified the Convention on the Rights of the Child—the protocols' mother treaty, pardon the pun. Admitting failings is helpful in pressuring other governments to do more. I saw the South Korean head of that UN committee at Georgetown University recently, and she noted that benefit of our candor.

A Helping Hand. Persuading other governments to do more also benefits from offering a helping hand. It is not fully appreciated, but the assistance given to NGOs and more efficacious international organizations—like the International Organization of Migration (IOM)—is as important a part of the U.S. policy as any. If this fight against human trafficking is about rule of law and access to justice, civil society organizations are crucial partners to law enforcement to identify victims, make them feel safe, and help them. Victims become more stable, helpful witnesses to punish their exploiters in the process.

A helping hand can be offered directly to some governments too. Training for law enforcement helps turn law on paper into reality. Law enforcement, immigration officials, and judges in other countries (just like our own) need a helping hand to learn to see a victim as a victim, not as a dirty or willful criminal. Governments with a will to change (on Tier 2 and Tier 2 watch list), but with limited resources deserve help. I commend the attention being paid to Africa now, where Ambassador CdeBaca went on his first trip. Less developed African nations need not so much “grading on a curve” in the TIP report as they need tangible assistance.

Tough Love. Being an *exemplar* and offering a *helping hand* are important complements to pressuring other governments. Yet make no mistake: pressure governments we must. After ten years, we still need the “tough love” embodied by the TIP Office and its unique report—one that gives grades. The TVPA has manifestly worked—as the rankings and global awareness raised by the report has put pressure on governments. Sure, there are intransigent governments, both undemocratic and democratic. Yet in case after case, we have seen how the report and rankings have worked, even among allies unused to prodding from the United States: Turkey, Israel, the Philippines, the UAE, even Ireland, which recently appointed an anti-trafficking “czar.”

When some say this “tough love” has not worked, it is flatly untrue. The TIP Office and the report focus the mind of other governments on the problem; and they focus the mind of U.S. diplomats who would otherwise wish this issue not get in the way of other priorities.

I had the privilege to observe President Bush sign in the Oval Office the Wilberforce TVPRA Reauthorization this committee launched. One of its most important and welcome provisions was a time limit on Tier 2 watch list status. Please conduct oversight to ensure this device is used and the fair-minded flexibility you have given to the Executive Branch to defer or avert an automatic Tier 3 ranking is not misused in the name of alleged national interests. Some countries objectively deserve a ranking between Tier 2 and 3, but a so-called “watch list” is only meaningful if there is a significant prospect of a downgrade to Tier 3.

There is one other area for tougher love. One of the places where trafficking for labor and victimization of women converge takes place right here on U.S. soil. Thanks to the American Civil Liberties Union, I met with a woman from Goa who was the human trafficking victim of a Kuwaiti official stationed in the United States. She said the family treated her far worse as a domestic servant in the United States than in Kuwait because there was even less reason to think they would face consequences in the United States than in a Gulf country. That should make us pause in horror. It was *worse in our country* because of the impunity delivered by diplomatic immunity. I commend the TIP Office and now others at the department for working hard to reduce the vulnerability of domestic servants to abuses qualifying as TIP by diplomats in the United States. Congress was crystal clear in the TVPA, thrice reauthorized, that attention should be paid to government officials found complicit in human trafficking. Official complicity is precisely the issue here. It is inevitable governments may exercise the option to withdraw accused diplomats rather than agree to lift diplomatic immunity to allow prosecution. Still, to meet the intent of the TVPA, these cases should be cited in the report (without using individual names as the report never does)—as the TIP Office was overruled on in my tenure.

The Role of Business. So both carrots and sticks, both honey and vinegar, in U.S. diplomacy are essential. U.S. Secretary of State Clinton is carrying forward an approach of the Clinton and Bush administrations to mobilize partnerships with NGOs, philanthropies, and businesses in our foreign policy. She calls “partnerships” a fourth “P” along with prosecution, protection, and prevention—more labeling a continuing, sound, non-partisan policy than introducing an initiative.

Chief among these partners is the business community. But it is high time businesses become more actively and tangibly involved in the global fight against human trafficking. For ten years, governments, NGOs, and

international organizations have dedicated sizeable efforts to fight trafficking. More definitive results—more “movement of the needle” to squeeze trafficking and make it less profitable—will come if businesses work together to help. A business coalition would seize the opportunity to leverage varied and unique resources to take a quantum leap in the fight, with the goal to *abolish* trafficking. Let me be transparent here. I have been a paid consultant of a business engaged in a corporate responsibility campaign related to combating human trafficking: LexisNexis, Inc. It is working with others to explore such a coalition. In a week and a half, major businesses from sectors as diverse as information technology, soft drinks, cosmetics, labor placement, energy, the auto industry, the airline industry, travel and hospitality, legal publishing and information solutions, and entertainment are meeting to explore such a business coalition.

Businesses should go farther than they have to date: dialogue with government and the UN; public awareness efforts not involving accountability of their own business operations; and single-sector accountability efforts like apparel, electronics, chocolate, or hotels. How can we end human trafficking if businesses are not fully engaged in reducing enabling environments, and working across siloed sectors. If they did so, we would have a much more significant chance to abolish this contemporary form of slavery. We must recognize that market demand is a powerful force. Demand for cheap products and commercial sex are drivers of human trafficking. The U.S. Department of Labor finally fulfilling the mandate of the 2005 TVPA Reauthorization to produce a list of goods tainted by forced and child labor empowers consumers. If consumers knew some businesses were committed to reducing human trafficking, then demand would become an enormous force for *good*—creating an incentive for businesses to get ahead of the curve and join the fight. Globalization need not inexorably lead to slavery—but it will take the proactive efforts of businesses to prevent it. It is not too much to ask: take preventive action against the most extreme and autonomy-denying forms of exploitation, which are manifestly illegal under domestic and international law.

Out of the Shadows

Human trafficking victims are indeed in the shadows—vulnerable, women, men, children, migrants, and minorities marginalized socially and economically. Let us move from trafficking victimizing the marginalized, to actually *marginalizing trafficking*—through diplomatic pressure strengthened by being a good example and a helping hand to partners, and through the business community stepping up to the plate too. Only this way can we make sure that rule of law is *fully realized* and that *all* types victims are offered a chance to reclaim their inherent dignity.

The TIP Office and report have done a lot to take the issue of human trafficking out of the shadows. It is worth thinking how much the TIP Office which Congress created ten years ago has found a formula for doing something in the last decade which has so flummoxed the U.S. Department of State and Executive Branch—public diplomacy. Creative, feisty, unbureaucratic, the TIP Office has told the story of universal values and the partnership we offer to extend them. That role has been even more important than its traditional diplomacy, and has indeed strengthened that traditional diplomacy.

Thanks for your effort to take this crucial issue out of the shadows with a full committee hearing on it, and the chance for me to participate.