

“The U.S. Anti-Trafficking Report and Diplomacy: Sustaining Candor and Credibility”

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Introduction

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify about the *Trafficking in Persons (TIP) Report*. I ask that my written testimony be admitted into the record.

Mr. Chairman, as primary author of the Trafficking Victims Protection Act (TVPA) of 2000 and several reauthorizations, you rightly ask about the content, impact, and integrity of the Report to which you helped give birth. Many legislators of both parties stand with you in their focus on combating slavery.

Thematic Issues

First, it is worth noting themes in the Report. While getting less attention, the Report each year highlights themes in the rich if succinct analytical text preceding the actual country narratives, and like those narratives, they are also elaborately drafted and cleared within the Department. Given my current job, it is amusing in retrospect how I fought when Ambassador-At-Large in that clearance process with some who objected to highlighting correlation between Freedom House’s scores and TIP rankings, with the obvious implications: veritable democracy helps fight trafficking.

There is a temptation to highlight *somewhat* related issues to “sell” trafficking as a problem when a focus on its fundamental scale and barbarity suffice:

- Calling trafficking a national security threat from illicit migration diverts attention from the exploitation defining it and the profit incentives to its perpetrators.
- In recent years, some have pointed to a very real trafficking vulnerability found in spiking refugee flows, seen so starkly in Europe, or in Islamic State enslavement of women and children. But these phenomena must not obscure *longstanding* problems among legal guest workers (such as in the Gulf), bonded laborers (such as in South Asia), and those trapped in the sex industry (including in Europe).
- There has been some effort to connect trafficking to climate change to win new allies in the fight against slavery.

I commend the TIP Office when it resists suggesting abduction, unregulated adoption, organ sales, and human smuggling by coyotes are at the core of human trafficking. These are all public policy issues worth addressing. Yet some trends, or merely trendy issues, should not obscure the heart of the matter: the intentional snookering, grooming, and/or coercing into sexual or labor slavery of marginalized groups hoping for a better life.

The 2015 Report highlights some very important issues:

- Global supply chains -- featuring (1) the findings of the most impressive NGO focused on that area, Verite, and (2) cues for private sector opportunities to fight the problem.
- Harmful cultural norms (not succumbing to moral relativism), although the report should have additionally highlighted cultural tolerance of wide-scale sex buying in Latin America, Europe, Southeast Asia, and Japan as a market driver of sex trafficking.
- Seeking alternatives to testimony of traumatized trafficking survivors as evidentiary means for holding their tormentors to account (such as financial and credit card records, as recommended by my colleagues at Human Rights First); relying on testimony propels law enforcement globally to leverage the properly-unconditional delivery of protection services to elicit cooperation for prosecutions from victims.

Page 48 of the 2015 Report features the **breakdown of total prosecutions and convictions globally compared to previous years, disaggregating those for sex and labor trafficking**. Readers of the 2015 Report must not miss these findings when one calculates percentages:

- There was a 23.1% drop in convictions worldwide from the previous year's modest 5,776 convictions.
- The percentage of prosecutions that were for labor rather than sex trafficking dropped from a modest 12.7 percent the previous year to only 4.2 percent this year. And the percentage of convictions for labor trafficking dropped from an already low 8.1 percent to only 4.9 percent this year. These stark facts amount to **veritable global impunity for labor trafficking**. (These figures included only 4 convicted in Malaysia, and exactly zero prosecuted in Vietnam in the realm of labor trafficking, rollicking in scale in both nations.)

As ever, this remains, since the time I headed the TIP office, the most important single source of information in the Report other than the chart comparing Tier rankings globally on page 54.

Country Situations

The Subcommittee has the opportunity today to hear from and question witnesses inside and outside the Executive Branch about particular countries. Let me address just a few:

Due to remaining stratification by caste, **India** is demographically the country with the largest trafficking problem. (This is not to mention its persistent problem of diplomats not vigorously fighting for its vulnerable guest workers abroad, and some diplomats shielded from accountability for subjecting domestic servants to trafficking conditions.) Yet it is **China** which represents the biggest governance problem in the world. Freedom House ranks China as Not Free. *Intrusive* actions by the state fuel the trafficking problem, including: residual effects of decades of population policies creating a shortage of females as spouses and sex partners; and the intentional efforts to displace and disadvantage the main ethnic and religious groups in occupied Tibet and Xinjiang. And the report strikingly says, "the government converted some RTL [reform through labor] facilities into different types of detention centers...that continued to employ forced labor." The eradication of the *laogai* system is a chimera.

What the Chinese state *neglects* also matters: not offering a safety net for those migrating to Chinese cities to seek work; and failing to match a national security approach to combating trafficking with sufficient survivor protection according to the benchmarks of the TVPA and UN's Palermo Protocol. The Report calls for it to "provide legal alternatives to foreign victims' removal to countries where they would face hardship or retribution"—most heinously in North Korea. As such, the situation offers traffickers a potent tool to coerce victims in China. Moreover, its arbitrary rule *by law* rather than clearly established and implemented rule *of law* are seen in the failure – noted in the Report -- to adopt clear legislation on all specific forms of human trafficking per se (aligned with the UN Palermo Protocol). The conviction of 35 traffickers is tiny relative to the size of China's population. In short, China's current ranking of Tier 2 Watch List is generous.

The major controversy of the 2015 Report is the unjustified upgrade of **Malaysia**. Freedom House ranks Malaysia as Partly Free. To be clear, I have endorsed the Trans Pacific Partnership on trade to subject illiberal regimes to open, accountable rules and norms. But the upgrade seems to coincide more with desires to make Malaysia more eligible to join the TPP than the merits. Corruption is rampant, and stunningly underemphasized in the Report's recommendations. What the Report does highlight seems inconsistent with an upgrade: There were only 4 convictions for labor trafficking or passport retention in the year rated. Migrant workers lack basic access to justice. Screening mechanisms to identify and assist trafficking victims are thin. Moreover, victims face forced repatriation to countries where they "would face retribution or hardship."

In the very same region, the State Department rightly sustained a Tier 3 ranking of **Thailand**. Freedom House ranks Thailand as Not Free. Unsurprisingly, given the nature of the post-coup regime in Thailand, authorities there have been touting a sort of law and order approach on steroids as evidence of progress. Victim identification, protection, and rehabilitation remain insufficient in the areas of vulnerability: the massive Thai sex industry; Thai and foreign workers in fishing, seafood and other labor sectors; and Thai citizens migrating to work elsewhere.

The upgrade of **Vietnam** to Tier 2 is bewildering. And the most important two paragraphs in all the narratives, the third and fourth, are too long to comport with a Tier 2 ranking. For instance, the Report cites an utter absence of prosecutions for labor trafficking, as well as significant official complicity. This is a clear case of the TIP Office getting to write the narrative when it lost on an internal dispute on the

ranking itself. That disjunction is the single biggest clue of a ranking favoring other diplomatic equities over the merits.

Uzbekistan was upgraded to Tier 2 Watch List for fining college directors and farms for using child labor to pick cotton, and for finally agreeing with the World Bank and ILO to permit the latter to survey recruitment into and practice of child and forced labor in a handful of regions. But the Report notes that child labor mobilization continued in some districts. And it says “government-compelled forced labor of adults remained endemic in the 2014 cotton harvest.” How can *state*-run trafficking earn anything but a Tier 3 ranking? This regime is one of the most heinous human rights abusers even among those rated by Freedom House as “Not Free.” What alleged U.S. strategic interests could motivate even a purely cynical upgrade?

Cuba was upgraded to Tier 2 Watch List. With a diplomatic opening unmatched by any political opening, Freedom House ranks Cuba as Not Free. Some might claim a past downward political bias against Cuba in U.S. trafficking assessments was removed with the diplomatic opening. I do not look at the past that way.

The grounds for an upgrade are deeply questionable. The Report says:

- “The penal code does not criminalize all forms of human trafficking” on paper, not to speak of enforcement.
- The Cuba regime did not even dissemble and claim any “efforts to prevent forced labor” nor “any trafficking-specific shelters.”

It is far-fetched to suppose that there is no forced labor in state enterprises or for political prisoners in one of the world’s few remaining Marxist-Leninist states. Also, a burgeoning sex industry – welcoming sex tourism – fuels exploitation, despite steps the Report notes taken by Cuba to address sex trafficking.

“Politics Triumph?”

The cases of Cuba and Malaysia sparked media and other observers to say the latest report is politicized. This mirrors the common criticism of the UN for being politicized, when it is a political body. To think no other considerations besides the merits come into play in TIP ranking discussions in the Department of State is much like the claim of being “shocked, shocked” to find gambling going on at Rick’s joint in the

film “Casablanca.” Yet, for the most part, there is a constructive tension between the specialists of the TIP office and the officers of the regional bureaus and U.S. embassies. The dynamic is revealed by those outlier cases where regional bureaus have not motivation to raise countervailing rationales to have a higher ranking. North Korea and Iran, for instance, have gotten the rankings the TIP Office recommended “by acclamation,” as it were; moreover, those are precisely the cases where a Tier 3 ranking leads to sanctions rather than them getting the waivers which you, Mr. Chairman, have justifiably long criticized.

Various Solutions

So what should be done to protect the integrity of the TIP Report rankings as a potent tool of global public diplomacy and bilateral diplomatic leverage? Some steps would be downright counterproductive. Legislative fixes proposed to increase the role and cooperation of the State Department’s regional bureaus risk making the malady worse. A few years ago, concerned that Singapore and – as it happens – Malaysia were getting unhelpfully low rankings given U.S. economic and strategic interests, a Senator – now no longer in office – proposed legislation markedly increasing the role of the regional bureaus. It was an ill-conceived idea. A more benign call for increased voice of the regional bureaus was included in the TVPA Reauthorization of 2013. In the TIP Office’s early life, as Deputy Secretary of State Richard Armitage, who no one can accuse of being a one-dimensional human rights idealist, decided to give the office the pen to do the first draft and proposed rankings for the Report. That role needs protecting.

Some proposals are like chicken soup for the malady; they may not help, but they would do not harm. For instance, some have proposed elevating the TIP Office to the level of a bureau and the Ambassador to Assistant Secretary rank. That ostensibly would help the TIP Director go toe to toe with the heads of regional bureaus at the same rank. But it might not achieve an appreciable effect on the integrity of the rankings in a Department inevitably dominated by regional bureaus controlling embassies worldwide.

The most productive solution is the Congress, including the Senate with its role in confirming appointees, insisting the TIP Ambassador’s position is filled, and with someone with strong experience, vision, and bureaucratic infighting chops. Delays nominating or confirming the leading U.S. envoy to combat trafficking inexorably lead to more disputed rankings ending up rejecting the substantive recommendation of the TIP Office. I am troubled how long it took to fill the post after Luis CdeBaca left, after the object lesson on liabilities of a long vacancy in the post of Ambassador-At-Large for

International Religious Freedom early in the Obama Administration. A fellow women's rights advocate – who I will not name out of respect for her – with deep experience in civil society partnerships and multilateral institutions was apparently rejected as a finalist for the post for being too concerned about commoditization of females in sex trafficking. Individual candidates picked or not aside, a strong advocate for fighting **both labor and sex trafficking** is crucial. What is the best way to get a TIP Report that reflects strength and integrity? It is for Congress to insist through vigorous oversight that the leader of the office it created reflects strength and integrity. Then the perfectly natural deliberative process in the Department will produce credible rankings offering the most leverage to get other nations to improve their laws, and all the more essential, to energetically implement them. Then there will be more calls like Thailand, and fewer like Malaysia, in the case of this year's report.

Once again, thank you for welcoming me to speak to this important global problem, where dignity or enslavement lie in the balance.