

Grading States For Not Degrading People: Human Trafficking Assessments

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Thank you Chairman Smith for inviting me, and with Representative Bass, welcoming me to offer my observations to the Subcommittee. I would ask that my full written testimony be incorporated into the record, and I will summarize my main points more briefly now.

Mr. Chairman, you have played a central role in equipping the State Department’s Office to Monitor and Combat Trafficking in Persons (TIP) with the tools to elicit cooperation from other countries to fight the slavery of today – a slavery characterized by deceit, psychological terror, violence, robbed autonomy, and coarse degradation, if not actual chains and shackles. As primary author of the 2000 Trafficking Victims Protection Act (TVPA) and a number of reauthorizations, you deserve thanks from past victims, potential victims, and me, for that matter, as former chief U.S. diplomat for the function that legislation created.

The TVPA works because of candor and tough love – offering rankings of other governments based on their energy and success in attacking the problem of human trafficking. When I was Ambassador-at-Large directing the TIP Office from 2007 until 2009, Democratic and Republican partners on Capitol Hill asked for input on what became the December 2008 William Wilberforce TVPA Reauthorization. A big issue was

whether a nation could stay indefinitely on the second-lowest tier, Tier 2 Watch List, indefinitely. While the official State Department position was that Congress should not tie its hands with an automatic downgrade, I felt then and now that a 'Watch List' is meaningless if there is no palpable prospect of a downgrade. It is sound that the Congress placed a time limit on Tier 2 Watch List status. After all, if it were not for Congress, there would not only be no time limit, but no tiers, no assessments, no global report, and no dedicated TIP Office to ensure that human trafficking is not deprioritized relative to other U.S. strategic or economic interests – real or alleged.

Generally speaking, the State Department does a tremendous job in producing a report which tells it like it is, offering objective rankings. Yet at times it pulls punches, typically due to the urging of regional specialists rather than the TIP Office's dedicated experts on trafficking. Facing a legislative time limit on a Tier 2 Watch List ranking, the State Department upgraded **India** from Tier 2 Watch List to Tier 2 in the June 2011 report. There have been veritable advances on national law establishing that bonded labor is human trafficking and some intensified action of state-level authorities. Yet, having myself learned of a Tier 3 ranking being overturned by the very highest level of State Department leadership just days before I was confirmed to become Ambassador at Large in May 2007, it appears to me that the upgrade may have had even more to do with strategic relations with India than the merits.

India is the demographic epicenter of human trafficking in the world, notably with millions of bonded laborers with rights on paper from a 1976 law which are infrequently enforced. India has a federal system like the U.S. It is high time the Indian national government do what its U.S. counterpart resorted to in the 1960s – pushing federal authority to the hilt when discrimination and segregation persisted in U.S. States. If state and local authorities do not act vigorously to enforce the 1976 law, federal authorities in India must not resign themselves to inaction.

For this year's report, the key tests of whether India deserves not to be downgraded are spelled out in the crucial Recommendations section of a country of the 2012 *TIP Report*, which encourages India to:

- Develop or amend laws to match the UN Palermo Protocol, with adequate penalties;
- Increase prosecutions and convictions; including punishing complicit officials;
- Push states to form special anti-trafficking courts
- Enlarge the rehabilitation and restitution offered bonded laborers under the 1976 law;
- Better protect victims testifying against their tormenters; and
- Ensure that certified trafficking victims actually receive benefits provided for on paper.

If India has not addressed these points, they do not deserve to stay of Tier 2 for a third year running. The upgrade of India in 2011 is reason for the Congress to watch all the cases of Tier 2 Watch List countries with an eagle eye in the 2013 rankings released in June.

Before turning to those very cases, I would like to note one other case far higher in the rankings, and in the heart of the Western world: **The Netherlands**. The Government of the Netherlands is to be commended for efforts at victim identification and prosecution of traffickers, and for averting the gross injustice of punishing victims and those trapped in the sex trade. Desires authorities in Amsterdam have intermittently shown to circumscribe the zone of legal prostitution offer glimmers of encouragement.

Nonetheless, government policies not only fail to punish and reduce demand, but downright encourage it – as a tourist attraction no less. Government policies sustaining the enabling environment for sex trafficking are highly problematic. The existence of legal prostitution with no accountability for sex buyers makes it all the more possible for the application of force, fraud, and coercion to adults, and of commercial sexual exploitation of minors to persist.

Moreover, the TVPA is very clear on the need to account for complicity of government officials in human trafficking. Taken along with government policy sustaining sex trafficking's enabling environment, the failure to hold the retired Dutch Justice Ministry Secretary-General Joris Demmink to account for substantial allegations of rape of two males in Turkey while they were minors means that the Netherlands Tier 1 ranking deserves some further thought. Government officials should be held to the highest standards. More generally, the Netherlands also should give traffickers sentences commensurate with the enslaving crime, like many other EU nations.

In the set of six nations which face a potential automatic downgrade from Tier 2 Watch List to Tier 3 (with possible sanctions), first and foremost is **China**. It is good that Suzanne Schulte is here addressing how China's treatment of those fleeing North Korea subjects so many to human trafficking. Those fleeing North Korea are triply violated. First, political repression and government-spurred economic chaos in North Korea violates their dignity. Second, the Chinese government's treatment of them as economic migrants rather than refugees creates leverage for traffickers to victimize them as sex slaves, brokered brides, or forced laborers. That leverage is given to exploiters by the very real prospect of a third violation: being arrested by Chinese authorities and deported back to North Korea where they face brutal punishment and, at times, execution.

There are many other concerns about China. Last year the International Labor Organization came out with an estimate that at least 20.9 million people in the world are human trafficking and forced labor victims. Of those, this robust ILO study found that 2.2 million, or over ten percent, result from forced labor compelled by governments, militaries, armed groups. A sizable proportion of that global figure is represented by those political prisoners in the *laogai*, or "reeducation through labor" prison camps, in China. Those responsible for East Asia in the State Department actually temporarily fought with the TIP Office when I was its Director as to whether the *laogai* – documented publicly in the annual Department *Human Rights Report* – would be considered trafficking victims, as they are.

Population policies and practices in China remain a driver of human trafficking. The number of children continues to be limited under threat of official penalties, and a strong societal preference for male children persists. A woman's choice to bear child is abridged, and females experience the ultimate form of discrimination – not being allowed to be born, due to sex selection abortion. The result is a skewed male/female ratio in China, spurring demand for brides and commercial sex – a magnet for human trafficking, including of North Koreans.

There have been some advances in China in recent years: ratifying the Palermo Protocol, forming a national action plan, and expanding efforts of a women's affairs bureau. Yet, the Chinese Government must address the numerous, clear Recommendations of the 2012 *TIP Report*, which include:

- Closing the "reeducation through labor" camps;
- Enacting legislation matching the 2000 UN Palermo Protocol, and bringing China's definition of trafficking in line with the Protocol (e.g., not conflating human smuggling with it);
- More transparency of government anti-trafficking efforts, and publishing the national plan of action;
- Ending pre-trial detention of trafficking victims and anti-TIP activists;
- Prosecuting officials whose corruption and complicity sustain trafficking;
- Changing the nature of contracts for Chinese workers working domestically and abroad to provide protections and eliminate punishment for fleeing trafficking situations;
- Instituting victim identification within vulnerable groups, while expanding shelter and services; and
- Ending victims deportation to home countries where they will be punished (e.g., North Korea).

More generally, the Chinese autocracy treats trafficking as a law and migration enforcement matter, and leaves societal groups vulnerable to trafficking-level abuse, like those migrating without social protections from rural areas or Uighurs ushered out of East Turkistan (permitting a stronger Han Chinese hold on that territory). Moreover, some local authorities compel children to perform manual labor in farms or factories in

so-called “work-study” programs—again notably applied to Uighurs. Onerous child labor in brick kilns is often left unfound or undisturbed by authorities. Absent addressing a number of these problems, China deserves to finally be placed on Tier 3 after eight years on a so-called “Watch List.”

When serving as Ambassador-at-Large before the 2008 TVPA Reauthorization, if asked for the best example of a country belonging in a category between Tier 2 and Tier 3, I would have said **Russia**. Yet of all the countries discussed today, it is the one which clearly is moving backward, not forward, on addressing human trafficking, despite active U.S. efforts.

When the TVPA and Palermo Protocol were fashioned some thirteen years ago, the context in the region was largely females migrating within and from Russia into *sex* trafficking. Yet economic circumstances are such that in recent years the primary dynamic is trafficking *into* Russia from other states of the former Soviet Union, and within Russia, for *forced labor*. The 2012 *TIP Report* recommends that Russia:

- Develop guidance for law enforcement, labor inspectors, and health officials for identifying trafficking victims and referring them to social services;
- Offer funding to state and NGO agencies to care for and rehabilitate victims;
- Reverse policies permitting victims to be detained or punished after being trafficked;
- Ensure alternatives to deportation to home countries where victims will be punished;
- Increase prosecutions of perpetrators and complicit government officials; and
- Address forced labor in construction projects, including for the 2014 Sochi Winter Olympics.

As an aside, my colleagues at Human Rights Watch and Amnesty International have expressed great concern to me about the construction in preparation for the Sochi games, to which one must add the propensity for international games to enlarge sex trafficking. In sum, Russia deserves to be downgraded after eight years on the Tier Two Watch List if it does not address these concerns very plainly enumerated in the 2012 Report and by diplomatic demarche in Moscow.

Current Deputy Secretary of State Bill Burns was particularly kind and frank when I came to Russia in 2008 as Ambassador-at-Large and he was Ambassador to that nation. He confirmed Russian authorities did not look at human trafficking as a human rights matter, instead seeing it as only a security and immigration enforcement matter. In the absence of a supervisory Undersecretary, the TIP Office will rely on Deputy Secretary Burns to adjudicate differences of opinion over tier rankings. Russia is backsliding, and he should note that.

Azerbaijan has been on the Tier 2 Watch List for five years running. The government has been found to be complicit in labor and sex trafficking, including the Internal Affairs Anti-Trafficking Department no less. A similar case of the anti-trafficking department in Moldova’s Government being found complicit in human trafficking landed Moldova on Tier 3 in 2008 under my tenure. The Department then refused to cover up the embarrassment of Moldova having been one of eight nations selected to receive substantial aid under a Bush anti-trafficking presidential initiative, funding that very department. And a Tier 3 ranking worked to get that government’s attention to reverse the corruption in question.

The State Department has made crystal clear that the Government of Azerbaijan should:

- Transparently punish complicit government officials;
- Train labor inspectors to boost victim identification and improve a national victim referral mechanism;
- Amend its law to require work permits for migrant construction workers, and improve inspections of those workers’ conditions;
- Improve access to justice for victims, including by protecting them during court proceedings;
- Enforce its own ban against withholding of migrant workers passports; and
- Train working-level law enforcement on treating victims as victims.

Absent tangible progress on these counts, Azerbaijan merits the automatic downgrade provided for by Congress.

I think the most appalling case in the neighborhood of the former Soviet Union, though, is **Uzbekistan**. I co-authored with former Clinton-era State Department official Bennett Freeman a March 13, 2013 opinion piece on it (see <http://www.opensocietyfoundations.org/voices/uzbekistan-must-end-state-sponsored-slavery>). Uzbekistan retains a vestige of Soviet command economy practices in compelling young people to pick cotton in the harvesting season. A few years ago, the Government has ratified two ILO Conventions on child and forced labor, and yet justice exists only on paper. Recent *TIP Reports* indicate an enlargement of the practice. It appears that in the last cotton harvesting season, the government shifted the age cohort of those mobilized into involuntarily labor upward. Yet, despite a limitation on the number of students under the ages of 16 or 17, it is still forced labor for those older than that.

Let me be plain: There are loud voices within the U.S. Government who say the U.S. must downplay any distraction which might upset Uzbekistan's cooperation in the Northern Distribution Network getting supplies to troops in Afghanistan. China, Russia, and India may predictably avoid downgrades as great powers. But if as unreconstructed and unrepentant an autocracy as Uzbekistan is let off the hook because of a supply mechanism for troops being winnowed from Afghanistan anyway, it would be a travesty.

Uzbekistan's government must address the Recommendations in the 2012 *TIP Report* and U.S. demarches:

- End government-led forced labor in the annual cotton harvest;
- Hold officials complicit in forced labor to account;
- Allow independent inspectors access during the cotton harvest;
- Fund and support NGOs to assist and shelter trafficking victims; and
- Avert the punishment of trafficking victims.

The only basis for averting a downgrade should real progress on these grounds. In particular, despite some veritable action on the part of the Uzbek Government in recent years on fighting sex trafficking, as party to pertinent ILO Conventions, by refusing to let ILO inspectors with expertise check on cotton harvesting in progress, they deserve the automatic downgrade. Having all too slowly addressed the injustice and lingering legacies of slavery based on cotton-picking in America, the U.S. Government ought not to ironically shirk its duty to address forced labor for cotton in Uzbekistan.

So-called "extenuating circumstances" of strategic interests ought not to obscure a fair assessment of **Iraq** either. The Government of Iraq did not convict any traffickers in the last reporting year. The State Department has gone on record to suggest Iraq's Government should as its highest priorities:

- Put in place legislation prohibiting all forms of trafficking;
- Boost victim identification by comprehensively training law enforcement and immigration officials;
- Stop punishing coerced prostitution and other human trafficking victims, and decriminalize NGOs assisting sex trafficking victims;
- Provide shelter and services for victims, and aid NGOs to do so, including for victims found abroad
- Address forced marriage, which sustains both sexual and domestic servitude; and
- Regulate foreign labor brokers recruiting Iraqis into human trafficking conditions.

If Iraq is not found to have addressed these concerns in any substantial way, a downgrade is reasonable.

A Tier 3 ranking does not negate other successes in the U.S. policy with Iraq, but rather it exhibits honesty. Nor does a Tier 3 ranking mean an end to dialogue; it could indeed focus the mind of a U.S. ally facing armed threats, like it did for Israel or the Philippines in the past. Moreover, sanctions on Iraq triggered by a Tier 3 ranking can be waived for reasons of national interests, and should be. Yet a ranking should be determined on the merits.

Lastly, I want to address the **Republic of Congo**. The Government in Brazzaville does not get nearly the focus from the human rights community or the U.S. Government as the Democratic Republic of Congo does, and understandably so given the longstanding human suffering in the latter. Still, child prostitution in the Republic of Congo, however, is rampant, and the government has not convicted anyone under a 2010 law banning child trafficking. The 2012 *TIP Report* recommends that the Republic of Congo should:

- Boost prosecutions under its 2010 Child Protection Code.
- Ratify the UN Palermo Protocol.
- Amend its law to include all forms of trafficking, and not just of children;
- Train law enforcement, immigration, and social workers to identify victims among vulnerable population groups and to refer them to social services; and
- Establish anti-trafficking coordination between national government ministries now absent.

Once again, some action on these benchmarks would be necessary to avert an automatic downgrade to Tier 3.

There are *many* other countries in the world worth attention too. Particular focus is due in the Gulf and Middle East, that more general problems of armed conflict, government transitions, repression of dissent, and young unemployment do not trump a focus on human trafficking in the 2013 *TIP* rankings and future ones.

The *TIP Report* was an invaluable tools handed to the Executive Branch by Congress. It has worked. Political scientists Beth Simmons of Harvard University and Judith Kelley of Duke University established by rigorous quantitative methods that its rankings propel countries to strengthen their laws (see http://iilj.org/courses/documents/Judith_Kelley_Hauser.pdf, which Kelley granted me permission to cite).

To work better, candor about other nations' record requires candor about our own record. Secretary of State Hillary Clinton is to be commended for instituting a tier ranking and a more exhaustive country profile of the United States. This transparency about the U.S. started when John Miller and I were the Ambassador-at-Large. Ambassador Miller introduced a narrative about the United States in the *TIP Report*, based on a Department of Justice report on the U.S. required by the 2003 TVPA Reauthorization. He expended *State Department* TIP Office funds to publish the DOJ Report for international circulation when DOJ would only post it on the Internet. I circulated the *TIP Report* and DOJ Report on the same CD-ROM to governments and publics abroad, to show that we assessed ourselves as we assessed others. I convinced DOJ to realign its production of its domestic report to coincide with release of the State Department global report.

By being a more open exemplar, the important "tough love" effort to press other nations to improve has increased legitimacy. Yet, tough love is undercut by occasional misuse of devices created by a well-intentioned desire to give the Executive Branch flexibility to make judgments what steps will elicit the most action from other governments, such as:

- *The option for an immediate upgrade of a nation from Tier 3 if it provides the U.S. a concrete roadmap for action within 90 days.* I myself witnessed a case where this flexibility was used in the name of allegedly valuable strategic relationship with a small state when no truly concrete roadmap was given.
- *Waivers of sanctions on Tier 3 countries* (beyond the judicious exemption of humanitarian aid from cutoffs in the 2000 TPVA). I learned as Ambassador of the amusing term "double-hatted sanctions," which refers to having sanctions placed on nations for other reasons (e.g., sponsoring terrorism) also counting for human trafficking; there are too few cases of sanctions for only human trafficking reasons.
- *Delays and waivers from automatic downgrades* permitted under the 2008 TVPA Reauthorization.

Perhaps because it was in the Senate's bill attached to the important reauthorization of the Violence Against Women Act, Congress adopted in the 2013 TVPA Reauthorization further mechanisms to buoy grades. It added elements to the Minimum Standards guiding tier rankings which may undercut tough love and leverage. While no doubt well-intentioned, they accord credit in tier rankings to (1) mere attendance at multilateral fora on human trafficking; and (2) partnerships with businesses and NGOs.

As a UN specialist myself, avid funder of partnerships with NGOs worldwide as Ambassador, head of an anti-trafficking NGO (Polaris Project), and founding Board Member of a Global Business Coalition Against Human Trafficking (gbcata.org), I hail multilateral action and partnerships to fight trafficking. But if such partnerships are less transformative and more like cotton-candy (pretty, sweet, fluffy, and lacking substance), then these Senate-crafted provisions might have handed those at the State Department less inclined to objective tier rankings pretexts to justify inflated grades.

Across-the-board downgrades of countries to Tier 3 are not be justified unless based on objective assessment. I favor encouraging further progress by merited upgrades. As such, in 2008 I pushed for an upgrade for Mexico to Tier 2 when it passed a national law. Yet China, Russia, Azerbaijan, Iraq, Republic of Congo, and especially Uzbekistan deserve close examination. Even worse that using a permitted waiver of sanctions, or a waivers or delays of downgrades permitted by the TVPA as reauthorized, would be raising rankings to serve unrelated foreign policy equities. As a professor myself now, I urge against using alleged “extenuating circumstances” as an excuse for inflating grades. It would undercut U.S. and universal values of dignity, as well as undercut a great success story to date of U.S. leverage and public diplomacy made possible by architects at this end of Pennsylvania Avenue thirteen years ago.