

# **Freedom in the World, and Freedom from Slavery**

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Persons Report”

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Chairman Smith, Ranking Member Bass, and members of the subcommittee, I am pleased to again take part in your annual oversight effort anticipating the next pending State Department *Trafficking in Persons (TIP) Report*.

The central theme of my testimony today is the primary cause and essence of human trafficking. Many associate trafficking with movement and migration of people – given one vernacular connotation of “trafficking.” Swelling global refugee crises enhance that focus. Yet, while trafficking often involves migration, it need not. Ask a prostituted U.S. citizen minor in the U.S. or a Dalit trapped by debt in a rice mill or brothel in India.

It is also assumed trafficking is created by poverty. Poverty does lead many to take risks for a better life, but it is not solely or even predominantly those in the most abject poverty who end up ensnared in modern slavery.

Trafficking is not so much solely about being poor as it is about poor governance, poor rule of law, and poor access to justice. The most vulnerable to trafficking are those

groups denied equal protection under the law in practice – minorities, migrants, women, or those who fall into more than one of those categories.

When I was Director of the TIP Office at State, I had the following passage placed in the introductory analysis of the 2008 *TIP Report*, included in full in my written testimony, which I ask that you kindly admit to the record:

[O]ur assessment of a country's performance is based strictly on the trafficking-specific criteria stipulated by the TVPA.

Nevertheless, our broad study of the phenomenon of trafficking corroborates that healthy, vital democratic pluralism is the single most prevalent feature of states conducting effective anti-trafficking efforts. A vibrant democracy is the best guarantor of human dignity and respect for the human rights and fundamental freedoms of all persons, including women, children, prostituted people, and foreign migrants, who are among the vulnerable populations susceptible to trafficking.

In many countries, the disempowerment of such groups permits trafficking to flourish, because victims are reluctant to step forward to seek protection and redress under the law.

A key indicator of a vibrant democracy is the existence of an independent judiciary and the rule of law. In the context of trafficking, these are reflected in a government's ability to hold traffickers to fullest account, notably in the form of sentencing reflecting the severity of the crimes they have committed.

The absence of corruption—or at least effective government responses to corruption when it does occur—is one element of the rule of law and critical to the fight against trafficking. Too often, victims seeking protection under the law from police, judges and immigration officials, find that those who should be their advocates are in fact furthering their degradation.

A strong and independent civil society, including cooperation between governments and NGOs, is yet another element of a healthy democracy, and a vital tool to effectively combat human trafficking. NGOs have played particularly important roles in many countries in the area of victim identification and support. By contrast, in other countries, government ambivalence or even hostility to NGOs and other civil society actors has at times hindered victim identification efforts, thereby limiting the ability of the government to effectively combat human trafficking. In light of the magnitude and global reach of this problem, collaboration between governments and NGOs is of critical importance to efforts to eradicate modern-day slavery.

While democracy does not guarantee the absence of slavery, and some struggling democracies and even autocratic regimes have effectively fought trafficking, autocracy and weak or 'emerging' democracies are less equipped to tackle this horrific human rights challenge. Respecting the human rights, fundamental freedoms, and dignity in full of women, people in prostitution, and migrants, holding traffickers fully to account, and expunging corruption as the catalyst of human trafficking, are matters of governing justly. In particular, an independent judiciary, the rule of law, and a dynamic civil society are the markings of governments that are governing justly, and are central to the success of modern day abolition efforts.

One official at the State Department actually fought with me about including this passage, questioning whether it was necessary to become democratic to fight TIP. My response to him in negotiating the final text was, "No, but it sure helps."

Governance, rule of law, access to justice, and democracy in full (and not just elections) are at the heart of Freedom House's work. *Freedom House* celebrates its 75<sup>th</sup> anniversary this year after a 1941 founding designed to stir the U.S. public out of an insular funk (to take on the Nazis, whose party was headquartered at "*Brown House*"). The insular context sounds all too familiar today. Freedom House started putting out reports giving grades to other countries (and to the U.S.) 29 years before the first TIP Report. Perhaps, Chairman Smith, you and your colleagues may have had it, along with other models, in mind as the TIP Report tier system was fashioned.

The latest annual *Freedom in the World* report, released on January 27, 2016, shows that more countries have gone in the wrong direction (72) than the right direction (43) – with the largest gap between those two figures in six years. In every one of the last ten years there have been more cases of declines than improvements – the first such time in 44 years of the report of a decade-long slide.

If one looks at the subscores on political rights and civil liberties measured consistently since 1972, one finds the biggest declines in three areas – all pertinent to human trafficking:

- Freedom of expression (where the press and civil society shine a light on the evidence of modern slavery in a nation);
- Freedom of association (where civil society organizations and labor unions are needed to press for all vulnerable groups' access to justice and needed as partners to governments to find, assist, and re-empower slavery's survivors); and
- Rule of law (as corruption is so often what permits traffickers to exploit victims with impunity).

Spanning two of these areas, Freedom House today assists journalists in Moldova to cover corruption. In the aforementioned 2008 *TIP Report*, I insisted we endure the embarrassment to the U.S. government of giving Moldova a Tier 3 ranking, standing in the

way of it becoming a Millennium Challenge Corporation “threshold” country. It was embarrassing because the ranking was due to evidence that the head of Moldova’s inter-agency anti-trafficking unit created with U.S. funds given to 8 countries in an initiative announced by President George W. Bush at the UN General Assembly – was directly complicit in trafficking. The U.S. had to hold Moldova to account.

Anticipating the 2016 *TIP Report*, let us look on the one hand at a few countries of particular concern to Freedom House’s assessments, and on the other, at some hopeful cases of improvement on rule of law and human rights. In both categories, it is worth highlighting countries due for a downgrade in the 2016 *TIP Report* unless a waiver is invoked or an assessment changed.

As for countries of particular concern in Freedom House’s overall assessment, take three in East Asia:

- **Malaysia** is ranked as partly free in the 2016 edition of *Freedom in the World*, receiving a score of 4 for both political rights and civil liberties. (A score of 1 is most free and 7 is least free.) As the prime minister faces increasing pressure over an embezzlement scandal, authorities have intensified enforcement of conservative dress codes and restrictions on LGBT people. We listed Malaysia as a country to watch in the coming year, given a prospect of political repression intensifying. Malaysia represented the single most suspect ranking in the 2015 *TIP Report*, upgraded rather than getting Tier 3, perhaps in order to maintain its viability to enter the Trans-Pacific Partnership. I favor the TPP as a rules-based arrangement helpful to rooting in robust democracy and rooting out slavery in East Asia, but *not* for Malaysia as it stands today.
- **Vietnam** is ranked as not free in *Freedom in the World*, with a score of 7 for political rights – the worst possible score – and a score of 5 for civil liberties. Deputy Secretary of State Anthony Blinken offered a rather different – rosier picture of

Vietnam in a keynote address at a conference on U.S. democracy-promotion policy at Freedom House last October. Yet corruption, limits on free press and civil society, and lack of protections for migrants entering and leaving Vietnam is among the reasons it remains a hazard zone for trafficking. The Tier 2 ranking Vietnam has received for 4 years deserves as much scrutiny as its entire human rights record.

- **China** is ranked as not free in *Freedom in the World*, receiving scores of 7 for political rights and 6 for civil liberties – nearly the worst of the worst. With the crackdown under President Xi Jinping intensifying as China’s economy slows, prospects for rule of law and human rights in the coming year look grim. The human trafficking situation in China is no exception. China has been on the Tier 2 Watch List for 2 years and needs its first waiver or a tier change to avert a downgrade to Tier 3. Several factors make China an acute case for trafficking: lack of independent unions and protections for workers who migrate internally to cities and lose their social protections; treatment of North Koreans as economic migrants to be sent back to certain harsh treatment or execution rather than the refugees they truly are under China’s treaty obligations; and a legacy of population policies, which however loosened recently, have created a new meaning to “gender gap” – a female deficit fueling sex trafficking and illicit bride-peddling.

Another set of nations of special concern to Freedom House lie in the Middle East and North Africa.

- In the **Gulf countries** in general, since the Arab Spring, governments have tightened the squeeze on civil society under the pretext of counter-terrorism. Sadly, the United States has been too muted in its public and private criticism of these unsavory, ossified, misogynist governments seen as partners in U.S. foreign policy and commerce. The lack of civil liberties and access to justice in these nations is

uniformly bad, but worse for women and foreign workers. Onerous sponsorship laws make even documented guest workers vulnerable.

- **Qatar** is ranked as not free in *Freedom in the World*, receiving a score of 6 for political rights and 5 for civil liberties. The problems one sees elsewhere in the Gulf pertain, particularly labor trafficking involving fraud about the nature of the work to come, slavery-like work and living conditions, effective debt bondage, and confiscation of passports and papers, as well as anemic protection or deportation of victims. Yet revelations in the press about the construction of facilities for upcoming international competitions and for American universities' campuses makes Qatar all the more troubling. I have to say that as a former international ethics professor at ethics-focused Georgetown University, that university and others with campuses in Doha could do more to mitigate trafficking with the leverage they have. Qatar has been on the Tier 2 Watch list for 2 years and requires its first waiver or a tier change not to be downgraded to Tier 3. A very, very skeptical eye is due.
- **Saudi Arabia**, one of the twelve worst human rights abusers in the world, is ranked as not free in *Freedom in the World*, and receives the lowest possible score of 7 for both political rights and civil liberties. In 2015, Saudi Arabia had its highest number of executions in 20 years. The kingdom's military campaign in neighboring Yemen showed a similar indifference toward protecting innocent lives. Women in Saudi Arabia must still obtain a male guardian's permission to conduct many basic daily activities, though were finally permitted to participate in tightly controlled elections for largely powerless municipal councils. As far as trafficking goes, the story is similar to that in other Gulf states. Yet, Saudi Arabia does not even have the pretext deployed by other Gulf governments that foreign workers far outnumber citizens and therefore must be kept in check; foreign workers make up 56 percent of Saudi

Arabia's total work force.<sup>1</sup> Saudi reforms to address trafficking are the most important in the region; lack of action as the biggest player in the region is a signal to or excuse for smaller states that they need not act. Saudi Arabia was raised to Tier 2 Watch List last year after 10 years straight at Tier 3. This year it is worth reviewing whether modest progress is continuing, and a ranking must not solely be a carrot to induce reform yet to come.

In Latin America, **Cuba** is ranked as not free in *Freedom in the World*, with a score of 7 for political rights and 6 for civil liberties. Little progress was made toward democratic reform in Cuba in 2015 despite the resumption of diplomatic relations with the United States. There was a modest expansion of rights for religious believers and private business owners, and more Cubans exercised their new ability to travel abroad. But, politically-motivated arrests have increased, the political system remains closed to all but Communist Party loyalists, and freedom of expression is highly restricted. Cuba was raised to Tier 2 Watch List last year, and that in turn raised some eyebrows. U.S. officials say that an opening of dialogue has increased the information available to the United States to assess the situation, and an upgrade was merited. Profoundly unfree conditions for workers without an independent voice from state power, and the raucous sex trade marketed to tourists remain reasons for close examination whether Cuba's human trafficking situation is truly improving.

Despite the decade long "recession of freedom" documented by Freedom House, there are several rays of hope, which may represent harbingers of a positive trend of civil society asserting itself and democracy deepening rather than fraying globally. It is worth looking at the troubling situation of trafficking even in these hopeful cases. First, two nations in Asia merit mention:

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<sup>1</sup> <http://www.wsj.com/articles/saudi-arabia-puts-squeeze-on-foreign-workers-1425683630>

- Myanmar is ranked not free in *Freedom in the World*, receiving a score of 6 for political rights and 5 for civil liberties, again with a 7 being the worst possible score. A huge voter turnout produced an overwhelming victory in parliamentary elections for longtime opposition leader Aung San Suu Kyi and her National League for Democracy (NLD), an exemplar of positive change after a quarter century of democracy stolen by a junta. Yet armed military attacks against the religious and ethnic minority in Kachin State and widespread public discrimination and attacks against the Rohingya remain serious problems. Myanmar has been on the Tier Two Watch List for 4 years. Despite democratic reforms and the NLD victories, the will or capacity to improve the trafficking situation for ethnic and religious minorities displaced within or migrating from the country is in question. Myanmar ought not to be given a pass or unfounded bonus in its ranking.
- Sri Lanka is ranked partly free in *Freedom in the World*, receiving a score of 4 for both political rights and civil liberties. In 2015, voters in Sri Lanka ousted their increasingly authoritarian and divisive president, Mahinda Rajapaksa, in favor of Maithripala Sirisena. Upon taking office in January, Sirisena overturned some of Rajapaksa's repressive policies and began repairing relations with both the country's Tamil minority and the international community. Rajapaksa was again rejected in parliamentary elections later in the year. Sri Lanka has been on the Tier 2 Watch List for 3 years and needs a waiver or tier change so as not to fall into the "cellar" category. When I visited Sri Lanka in 2008 as Ambassador at Large, it was argued that the civil war and lack of government openness and capacity stood in the way of addressing trafficking. Trafficking there still ranges from what one could call the "South Asia bonded labor syndrome" (extending beyond India), to Sri Lankan migrant workers given insufficient help by their government when abroad, to male and female child sex trafficking. In an improved situation of governance, tackling trafficking should be somewhat easier, and if not tackled, it should not get "grade inflation."

In the Middle East and North Africa, **Tunisia** is the one country in which freedom has truly flowered following the so-called Arab Spring. It ranked free in *Freedom in the World*, with a score of 1 for political rights and 3 for civil liberties, with 1 being the best possible score. With its new constitution and free elections, it is crucial that the United States and its democratic allies provide robust support for rule of law, good governance and civil society in Tunisia to ensure gains are not lost. Tunisia has been on the Tier 2 Watch List for 3 years and would need a waiver or tier change, or else it would be automatically downgraded. Problems include: labor trafficking, domestic servitude, and sex trafficking of Tunisian street children, adult women, and women from other countries of the Middle East and North Africa. If Tunisia does not implement the written plan it supplied the U.S. to avert a downgrade in 2015, or pass a comprehensive law on all forms of trafficking, the U.S. is doing it no favor with a “mercy ranking” or “mercy waiver.”

In sub-Saharan Africa, the vast region’s most populous country and biggest economy, **Nigeria**, is ranked partly free in *Freedom in the World*, with a score of 4 for political rights and 5 for civil liberties. Since fiscal year 2012, only five countries in Africa have received more than 60 percent of all democracy, human rights, and governance (DRG) funding for the region – a bigger funding challenge that must be addressed. Luckily, however, Nigeria was one of those countries, and the funding provided supported Nigerian civil society and election monitoring. In 2015, voters fed up with rampant corruption and insecurity rejected the incumbent president, Goodluck Jonathan, and elected Muhammadu Buhari to replace him, the first time ever that the opposition gained executive power through elections. Buhari’s government has begun to address the country’s massive corruption problem and accelerate the military campaign against the terrorist group Boko Haram, but challenges remain. Nigeria has been at Tier 2 for 4 years, and may well deserve it again. Anti-corruption efforts should be focused on trafficking specifically, since corruption is so often its global enabler. In the country’s tense security situation, the vigilante “Civilian Joint Task Force” should be held to account for recruiting child soldiers.

And anti-trafficking efforts should be integrated into the National Police and Ministry of Labor, and not left to the longstanding dedicated anti-trafficking agency, NAPTIP.

As for rays of hope on human rights and democracy in Latin America, **Argentina** is ranked as free in *Freedom in the World*, with a score of 2 for both political rights and civil liberties, with 1 being the best possible. In 2015, opposition candidate Mauricio Macri won the presidency by defeating the nominee of incumbent Cristina Fernández de Kirchner, who with her late husband, Néstor Kirchner, had dominated the executive branch for over a decade. Combined with the encouraging Venezuela results, Macri's victory may augur the beginning of a rollback of Latin America's populist movements, which had previously made impressive gains across the region. Argentina has been at Tier 2 since it got Tier 2 Watch List rankings during my tenure as TIP Director. According to the State Department, its needs are: more prosecutions of perpetrators, immigration relief for foreign victims, a focal-point agency and a *funded* national anti-trafficking plan. The tide away from impunity and corruption which Macri's election signals needs to be applied to officials complicit with trafficking. And a government which delivers more for its people in a stable, growing, internationally-integrated economy should be expected in time to make further progress against trafficking, despite a mess to clean up from the Kirchners.

In conclusion, there are a number of governments to watch closely which lie on that cusp of modestly addressing the problem (Tier 2 Watch List) and not appreciably trying (Tier 3). These include Malaysia, China, Myanmar, Sri Lanka, Qatar, Saudi Arabia, Tunisia, and Cuba. The *Trafficking Victims Protection Act*, as wisely amended, time-limits how long countries can stay in the former rather than be automatically bumped to the latter—absent a waiver or justified assessment. It is worth looking where such nations fall in the larger picture of trends in governance and human rights in the last year and last decade, as Freedom House monitors. Slavery is a special abomination, but it is inextricably part of the larger global scope of *meaningful* democracy in which all human beings resident in a country get justice in practice, or don't.