



Testimony of

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The Trafficking Victims Protection Act at 20: A Look Back – and a Look Ahead

Co-Chairman McGovern, Co-Chairman Smith and members of the Tom Lantos Human Rights Commission, thank you for the opportunity to present the Solidarity Center's reflections on 20 years of efforts to address labor trafficking globally. We appreciate the continued leadership of members of this committee in combating all forms of human trafficking around the world, including trafficking for forced labor.

The Solidarity Center is an international non-governmental organization (NGO) that promotes and protects worker rights globally, with programs in more than 60 countries. The Solidarity Center is an allied organization of the AFL-CIO and a member of the Alliance to End Slavery and Trafficking (ATEST). Building upon more than 20 years of experience in the areas of child labor, migrant worker exploitation and supply chain accountability, the Solidarity Center raises awareness about the prevalence and underlying causes of forced labor and other forms of trafficking for labor exploitation, and implements programs with partners from myriad sectors to combat the problem. These programs include initiatives that address each of the four "Ps" that have become part of the anti-trafficking toolkit: prevention, protection of victims, prosecution (or as we prefer to describe it, "rule of law") and partnerships. The Solidarity Center has the unique ability to work across borders, in both origin and destination countries for trafficked workers, as we have long-term, on-the-ground relationships with local partners. Our anti-human trafficking programs span the globe from Africa (Kenya, Sierra Leone, South Africa), the Americas (Mexico, Central America), Asia (India, Indonesia, Malaysia, Nepal, Pakistan, Sri Lanka, Thailand, Uzbekistan), Europe (Moldova) and the Middle East (Jordan, Kuwait, Qatar).

As we reflect on the past 20 years of the Trafficking Victims Protection Act (TVPA), there is much to laud in terms of progress that has been made to address this horrific human rights abuse. There are significantly more resources dedicated to combating the problem from the public and private sectors. We have a much more clear definition of human trafficking and understanding of the scope of the issue. The U.S. government and governments around the world have passed more laws to combat human trafficking. We are much more knowledgeable about the underlying root causes of and vulnerabilities to human trafficking. As discussed below, however, we are now at a point where we must

address some of the more difficult and structural challenges that are sometimes harder to confront.

The Solidarity Center's anti-trafficking programs span the globe. And while each country we work in has its own unique circumstances and problems, we have found a common theme. Human trafficking and forced labor have, at their core, violations of worker rights and lack of labor standards and protections for workers. Twenty years ago when the Trafficking Victims Protection Act (TVPA) was passed, this connection was not widely accepted. Indeed, the majority of resources and attention went toward addressing sex trafficking. We have thankfully come a long way, and today we see more interventions centered on worker rights to counter human trafficking.

When the TVPA was first passed, the understanding of forced labor was low. Organizations like the Solidarity Center, through our programs, initiatives, research and publications, raised awareness of the vulnerability of marginalized workers—like migrant or immigrant workers, and workers in the informal economy—to forms of human trafficking such as forced labor, debt bondage and involuntary servitude. As acknowledged in the U.S. Department of State Trafficking in Persons report, human trafficking is now understood to describe the different types of exploitation or compelled service children, women and men end up in through the myriad forms of coercion and deceptive practices traffickers use. We have a generally accepted understanding that instead of shackles and chains, workers in our modern world are now enslaved through threats, debt and other forms of economic coercion.

Over the past 20 years, we have been able to better understand the scope of the problem. The International Labor Organization estimates that approximately 25 million people are trapped in forced labor globally: 16 million in the private economy, another 4.8 million in forced sexual exploitation, and 4.1 million in state-sponsored forced labor. Debt bondage affects half of all victims of forced labor imposed by private actors.

Human trafficking thrives in a context of private actors and economic coercion. Our collective response, therefore, must address this context, recognizing human trafficking as more than just sexual exploitation and more than just organized crime. We must exert economic pressure as a response and recognize the protection of worker rights as a key to trafficking prevention. We must also reject policies and practices that restructure and institutionalize harmful economic and business models that increase workers' vulnerability to human trafficking.

So as we acknowledge the great progress we have made together—through the leadership of the United States and other governments and of survivors, activists and advocates—we must also recognize where we still need to go and the more difficult steps we are going to have to collectively take to eliminate the scourge of human trafficking.

We must address what one leading global expert on the international law of human trafficking calls the “underlying structures that perpetuate and reward exploitation, including a global economy that relies heavily on exploitation of poor people's labor to

maintain growth and a global migration system that entrenches vulnerability and contributes directly to trafficking.”¹

As our executive director noted in her testimony before the Senate Foreign Relations Committee in late 2018:

Fundamentally, trafficking for forced labor is the result of the absence of human rights and effective governance. The failure of governments to protect worker rights in law, or employers to respect them in practice, creates an environment where workers are vulnerable to exploitation. It is no surprise, therefore, that countries that restrict civic freedoms, have weak rule of law and prevent the exercise of the right to freedom of speech, assembly, and association, including the right to form or join a trade union to represent their interests, are countries where trafficking for forced labor is common. That is why in our view, any approach to combating trafficking must begin with empowered workers who can stand up to exploitation when it occurs. Too little effort is being directed toward building worker agency and supporting worker representation; instead, voluntary corporate social responsibility policies continue to be promoted despite evidence that they do little to address the causes of forced labor or provide effective remedies to victims once a violation has been committed.²

Solidarity Center staff from around the globe could tell you story after story of workers we encounter everyday who are simply trying to provide for themselves and their families, and instead end up facing horrific exploitation due to the way governments and businesses structure work and fail to uphold rights. We could tell you stories about workers like Fauzia, who left Kenya after a labor broker told her she would work in Qatar as a receptionist. Instead, she was taken to Saudi Arabia, where she was forced to work 18 hours a day as a domestic worker cleaning two homes a day. Her passport was taken, trapping her in the country. “When you go there, you are a slave to them,” she says. Or the stories of 14 Burmese migrant workers who were charged with criminal defamation for filing a complaint against their employer with the National Human Rights Commission of Thailand (NHRCT). The workers alleged that the Thammakaset chicken farm in Lopburi province had subjected them to grueling work conditions, including forced labor. Instead of justice, the workers faced retaliation for daring to stand up for their rights.³

¹ “Selected Works of Anne T. Gallagher,” BePress. https://works.bepress.com/anne_gallagher/

² Testimony of Shawna Bader-Blau Executive Director Solidarity Center, before the United States Senate Committee on Foreign Relations November 28, 2018, presented at the hearing titled: *The Global Fight to End Modern Slavery*, https://www.solidaritycenter.org/wp-content/uploads/2018/11/Trafficking.SBB-testimony.SFRC_Global-Fight-to-End-Modern-Slavery.11.18.pdf

³ While the workers were eventually acquitted of the defamation charges, journalists and migrant workers in Thailand continue to be threatened with criminal charges for reporting abuses. See for example,

Within this context, we must re-examine the structures of the global economy and the institutional economic practices that allow conditions for forced labor, debt bondage and other forms of human trafficking to flourish.

*Global Supply Chains Tainted with Forced Labor*⁴

There is greater recognition today of the role of the private sector in perpetuating forced labor. There is acknowledgement that products made with forced labor are ending up on our grocery and retail shelves. Where we have less agreement—or less action—is in how to address this problem.

Over the past 20 years, the extent of forced labor in global supply chains has become increasingly clear. And yet, governments continue to fail to hold corporations to account. In recent years, the United Kingdom and France passed transparency laws patterned on the 2010 California Transparency in Supply Chains Act, which calls on enterprises to disclose the policies that may be in place to combat forced labor by subsidiaries and suppliers. While transparency requirements can help encourage companies to undertake due diligence to detect and address forced labor risks in supply chains, too few are following through in a meaningful way. Indeed, a recent report found that “only a handful of leading companies have demonstrated a genuine effort in their reporting to identify vulnerable workers and mitigate modern slavery risks.”⁵ The fact that few enterprises are penalized for failing to stem forced labor in their supply chain likely explains the lack of robust compliance.

Corporate social responsibility (CSR) approaches have largely proved to be bandages or window dressing. Non-binding codes of conduct, certifications schemes and third-party auditing do not work. For example, a recent study found that “ethical” certification schemes are largely ineffective in combating labor exploitation and forced labor in tea and cocoa supply chains. We need to move away from CSR to worker-driven corporate

https://www.washingtonpost.com/opinions/global-opinions/thailands-crude-attempt-to-intimidate-a-journalist/2019/12/31/4462c28e-2b46-11ea-9b60-817cc18cf173_story.html

⁴ Portions of this testimony are excerpted, adapted and updated from Testimony of Shawna Bader-Blau Executive Director Solidarity Center, Before the United States Senate Committee on Foreign Relations November 28, 2018, presented at the hearing titled: *The Global Fight to End Modern Slavery*, https://www.solidaritycenter.org/wp-content/uploads/2018/11/Trafficking.SBB-testimony.SFRC_Global-Fight-to-End-Modern-Slavery.11.18.pdf and Testimony of Neha Misra, Senior Specialist, Migration and Human Trafficking, Solidarity Center, Before the Tom Lantos Human Rights Commission, U.S. House of Representatives, Thursday, July 24, 2014, titled *End Worker Exploitation to End Human Trafficking*, <https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/Lantos%20Human%20Rights%20Commission%20-%20TIP%20Hearing%20-%20Testimony%20of%20Neha%20Misra%20Solidarity%20Center%20%28July%2024%202014%29.pdf>

⁵ “FTSE 100 and the UK Modern Slavery Act: From Disclosure to Action,” Business and Human Rights Resource Center, 2018. <https://www.business-humanrights.org/en/ftse-100-the-uk-modern-slavery-act-from-disclosure-to-action>

accountability, providing support for workers to express their agency and have representation in the workplace. Freedom of association and collective bargaining are a key way to do that. From rubber plantations in Liberia to households in Hong Kong and along the eastern coast of Kenya, the Solidarity Center has seen time and time again how democratic worker organizing and collective bargaining can eliminate forced labor in a workplace.

Companies must also rethink their business practices. For example, it is a common business practice for employers to subcontract hiring and human resources management responsibilities to labor brokers or employment agencies. These labor recruiters are redefining work, compelling workers—who have no other viable opportunities for employment in their home village or country—to pay exorbitant recruitment fees for the “privilege” of laboring under harsh and often inhumane conditions. Many of these migrant workers end up trafficked into forced labor and debt bondage. Despite the proven connection between recruitment fees and vulnerability to forced labor, governments are institutionalizing these practices through increased temporary migration programs and the under- or non-regulation of labor recruiters. Businesses are perpetuating the problem by contracting out their responsibilities and not holding their supplier and subcontractors accountable. Governments also give businesses immunity from the actions of their suppliers and subcontractors further exacerbating the lack of accountability.

Companies also engage in other common practices that encourage vulnerabilities to trafficking. For example, when I testified before this committee in 2014, I noted that in general, it is difficult to quantify the extent of forced labor in global supply chains; however, as those supply chains reach down to more and more suppliers, in countries where laws protecting workers are lax or unenforced, the chances that trafficked people are in the labor force increase. Indeed, businesses practices often lay the foundation for human trafficking to flourish. For example:

- When buyers and multinational corporations demand cheap or unrealistic pricing from suppliers, severe labor abuses, including forced labor, often result in their supply chains. The pricing structure as a cause of human trafficking cannot be overemphasized, but it is a factor employers, business, corporations and consumers can all address. As described in the Solidarity Center’s 2008 report, *The True Cost of Shrimp*: “As a commodity, the price of shrimp fluctuates according to supply and demand, and price pressure is significant all along the supply chain. Retailers, sensitive to the risk involved with importing fresh food, press import companies for faster distribution, acceptable quality and the lowest prices. Importers, aware that market fluctuations can affect prices, leverage their bulk purchasing power to demand speedy delivery from producers. Trapped between producers and importers are labor-intensive shrimp factories. Often, the factories’ response to price pressure is to squeeze wages, neglect workplace health and safety regulations, and cut other corners that leave shrimp workers bearing the social cost of affordable shrimp.”
- When employers refuse to enforce or claim that it is too difficult to monitor adherence to core labor standards in their supply chains, the probability that they will find

forced labor, debt bondage and other severe forms of labor exploitation increases. Adherence to core labor standards requires zero tolerance policies from buyers, something few multinational companies are willing to impose on their suppliers.

Understanding more clearly now, 20 years on, the economic structures and practices that increase worker vulnerability to trafficking, economic pressure must be used as a way to change behavior. The Solidarity Center and others have been advocating for years for governments to use trade restrictions and import bans and other penalties on products made with forced labor. In fact, when I testified before this committee five years ago, I discussed how the “consumptive demand” loophole in the 1930 Tariff Act made the forced labor ban useless. It is a sign of true progress that today we are operating in an environment where Congress removed the consumptive demand loophole. Now, we have seen much greater enforcement of the Tariff Act through withhold and release orders on imported products made with forced labor, including five WROs just this past October stopping the importation of garments, rubber gloves, bone black, gold and diamonds from five different countries.

I also testified in 2014 before this committee about the 2013 AFL-CIO petition to the U.S. Trade Representative to suspend Generalized System of Preferences (GSP) status for Thailand due to rampant worker rights abuses, including forced labor among many of the millions of migrant workers in the country and widespread exploitation in the export seafood processing sector. Again, it is a sign of progress in our fight against human trafficking, that the USTR in October 2019 withdrew preferential tariffs for many imports from Thailand due to egregious, ongoing worker rights violations, including forced labor. While this is a definite step in the right direction, the U.S. government needs to take swifter action to use its trade mechanisms to enforce worker rights.

Mass Movements of People

We are witnessing the largest movement of people in human history: International migration surpassed 244 million people in 2015, an estimated 150 million of whom were migrant workers, and the number of refugees, internally displaced people and asylum seekers now tops 68 million people.⁶ At the same time, in a growing number of countries, governments have taken an authoritarian turn. Indeed, nearly half of the world’s population—3.2 billion people—live in countries where civic space is closed or repressed.⁷ In this context of rising authoritarianism, anti-immigrant rhetoric and accompanying policy also run high. The scapegoating and marginalization of refugees and migrants only increases these disenfranchised groups’ vulnerability to forced labor and other forms of modern slavery.

⁶ “Figures at a Glance,” UNHCR, 2018. <https://www.unhcr.org/figures-at-a-glance.html>

⁷ “OpenGlobalRights, 2017. <https://www.openglobalrights.org/under-threat-five-countries-in-which-civic-space-is-rapi/>

In our work around the world, the Solidarity Center has heard firsthand from migrant workers who fear reporting exploitation such as virtual enslavement, wage theft, forced overtime and gender-based violence (again, all indicators of forced labor) because of the toxic, anti-immigrant environment pervasive in many cultures and political environments in recent years.⁸ Moreover, closing pathways for humanitarian resettlement (like refugee programs) and narrowing grounds for asylum increase the chances that those fleeing violence and persecution will be forced to migrate through less safe channels, with a heightened risk of trafficking for forced labor. For example, the Business and Human Rights Resource Center found severe abuses of Syrian refugees in Turkish garment supply chains, including forced and child labor.⁹ Rohingya refugees fleeing violence in Myanmar are at heightened risk for both forced labor and commercial sexual exploitation as their precarious status in Bangladesh leads to desperate (and unsafe) ways to support themselves and their families.¹⁰

Migrant workers, whether documented or undocumented, are also disproportionately vulnerable to human trafficking. Traffickers—often in the form of unscrupulous employers or labor brokers—take advantage of irregular migrant worker’s lack of legal status to exploit them. Even workers in regular migration programs where oversight is theoretically stronger, such as guest-worker or temporary migration schemes (including cultural exchange programs such as those for au pairs), can face conditions of debt bondage, involuntary servitude and forced labor through high recruitment fees that leave them indebted, having their visas tied to a particular employer, and threats of forcing workers out of status and into deportation.

It is our measured experience working in 60 countries over more than 20 years that to address refugee and migrant worker vulnerability to trafficking, we need to level the playing field when it comes to rights and enforcement of rights of people living and working in a country. All workers, regardless of status—whether nationals or foreign, whether documented or undocumented, whether fleeing conflict or seeking family-supporting wages, whether in the informal or formal economy—should be treated equally when it comes to internationally recognized workplace rights and the ability to exercise them. When some people in a society are treated as lesser due to an innate quality (they are female or an ethnic minority or non-citizens), then the idea that they can be exploited becomes more accepted, possible and prevalent. Indeed, that is the very notion upon which slavery has always been based: Some people are just lesser.

⁸ “ILO Indicators of Forced Labor,” Special Action Program to Combat Forced Labor, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

⁹ “What’s Changed for Syrian Refugees in Turkish Garment Supply Chains?” Business and Human Rights Resource Center, 2017. https://business-humanrights.org/sites/default/files/Syrian%20Refugeess%20in%20Turkey_Public%5B2%5D.pdf

¹⁰ “Human Trafficking and the Rohingya Refugees Crisis,” Human Trafficking Search, 2018. <http://humantraffickingsearch.org/human-trafficking-rohingya-refugee-crisis/>

Despite the clear evidence that discriminatory and restrictive immigration laws and practices contribute to the vulnerability of migrant workers to human trafficking and that unsafe migration processes and the lack of labor law and other legal protections for migrant workers make them particularly vulnerable to forced labor, governments clearly lack political will to do much about it. The potential profits to be made from the global labor migration business—by government officials, employers, employment agencies and labor recruiters—seem to trump initiatives to combat migrant workers’ vulnerability.

Conclusion and Recommendations

We cannot eliminate human trafficking without fundamentally changing how labor migration is managed around the world, how companies do business and how governments monitor and enforce human and labor rights.

Recommendations:

1. In addition to supporting the State Department’s Office to Monitor and Combat Trafficking in Persons (J/TIP), reinforce support for USAID (especially the democracy and governance programs and TIP-specific work of the agency), the State Department’s Bureau of Democracy, Human Rights and Labor (DRL), and the Labor Department’s Bureau of International Labor Affairs (ILAB) anti-trafficking and forced labor initiatives, especially its technical assistance programming. These agencies conduct important work to address the root causes of trafficking vulnerability—including poverty alleviation, workforce development, trade capacity, research, ending gender-based violence and providing support to marginalized communities, such as migrant or disabled workers— and provide much-needed technical assistance to governments.
2. Encourage the State Department to put more diplomatic pressure on states to uphold rights. The United States needs to be a strong defender of human rights around the world if we are serious about combatting modern slavery. This includes a foreign service officer corps specifically trained in and given a mandate to prioritize worker rights, human rights and the broader agenda for civic freedoms; a comprehensive and robust annual Human Rights Report; engaging in multilateral initiatives that are connected to advancing human rights and the rights of marginalized people; and supporting the work of UN agencies, such as the ILO. The State Department should also increase the number of and support to dedicated labor reporting officers in U.S. embassies as they are the frontline for the U.S. government in tracking worker rights conditions, including forced labor and other forms of trafficking for labor exploitation.
3. Use trade pressure to eliminate forced labor in supply chains. The U.S. government needs to continue to leverage tools such as AGOA, GSP, trade agreements and the Tariff Act to pressure governments and companies to eliminate forced labor in supply chains. These tools should be updated to reflect a renewed focus on labor rights and

trafficking for labor exploitation, especially provisions that would protect migrant workers from these abuses. The closing of the consumptive demand loophole was a good first step. Now, we urge Congress to insist that the Administration promulgate regulations that facilitate the effective enforcement of Tariff Act prohibitions on the importation of goods made with forced or child labor. Such regulations should make it easier to bring complaints and shift the burden of proof to companies and importers when a product is on the Department of Labor's *List of Goods Made with Forced or Child Labor*. Goods on that list should not be imported unless the importer can demonstrate that such goods were made free of forced labor or child labor. We support legislative action to suspend certain trade benefits for countries that do not take steps to combat human trafficking.

4. Currently, business already has responsibilities under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multination Enterprises to respect fundamental worker rights, including a prohibition on forced labor. While important, these are not binding. We therefore urge the Committee to support the negotiation of the UN Treaty on Business and Human Rights, which would direct governments in its current draft to adopt laws creating binding obligations on business to respect labor rights in their supply chains, to undertake mandatory due diligence, and to provide an effective remedy to workers when their rights are violated. We would also encourage the United States to support standard setting in the ILO to respect labor rights in supply chains.
5. We understand that Congress is considering reintroducing a bill similar to the 2010 California Transparency in Supply Chains Act. We urge you to instead consider a stronger bill that moves beyond simply transparency to more of a mandatory, due diligence model.
6. Congress and other governments should strictly regulate labor recruiters and employment agencies, and eliminate worker recruitment fees and shift costs back to the employer. Workers should not be required to pay fees associated with recruitment, the migration process or placement. Employers must be held liable for the abuses of the labor recruiters they hire. In addition, workers must have a way to ensure that a recruiter is legitimate and licensed.
 - a. To that end, over the past decade, both the House of Representatives and the Senate have introduced bills to regulate labor recruitment in the U.S. nonimmigrant visa programs. If passed, these bills would be a significant step toward addressing labor trafficking. Congress should make efforts at the earliest possible time to pass such legislation to end fraud in our nonimmigrant visa programs and prevent trafficking in the labor recruitment system. Not only will such a law help to protect migrant workers in the United States, it will also serve as a powerful model for other countries, which need to pass and enforce similar laws and policies.

7. The U.S. Congress and executive branch (J/TIP, DRL, DOL, DOJ), along with other governments, should emphasize safer migration processes for workers. This means ending operations that result in mass deportations of undocumented migrant workers without first implementing effective measures to identify and support trafficking victims and exploited workers. It also means ensuring that deported workers are provided with safe passage home. Finally, governments should amend their laws and policies to make it easier for migrant workers to obtain valid work permits and residency documents at little or no cost, in streamlined processes.
8. Governments should increase the number of prosecutions and convictions for forced labor. This means training police and prosecutors to better investigate and prosecute forced labor cases, and protecting workers and the organizations that represent them from retaliation by powerful employers, business owners or high-level government officials for bringing cases forward.
9. Governments also should penalize abusive workplaces by strengthening enforcement and penalties against employers who are found to have trafficked workers or who have bought products or raw materials made by forced labor. This means prosecuting employers and imposing stiff penalties. Employers must be held accountable for the abuses of their subcontractors, including labor recruiters, and for abuses in their supply chains.
10. Congress, the executive branch, other governments and multinational corporations should ensure freedom of association—the right to organize, join trade unions and collectively bargain for all workers—regardless of status or nationality, in both origin and destination countries.
11. Freedom of association must be assured in practice and not just law. This means strict penalties for employers who fire, blacklist, retaliate against or collude with government officials to deport migrant workers who try to organize; and reform of laws that prohibit migrant workers from joining or holding leadership positions in unions, and from participating in collective bargaining.
12. Governments should reform their labor and other laws to include and protect migrant and domestic workers. All workers—whether national or foreign, documented or undocumented—must have equal and full protection of the law. In addition, governments and employers must recognize and enforce all ILO core labor standards, including the freedom of association and right to organize.
13. Congress, the executive branch and governments in the region should give equal attention not only to passing better laws, but also to implementing, monitoring and enforcing those laws. To do so, governments must enhance the role of labor inspectors. Labor inspectors must be engaged in and be an integral part of law enforcement initiatives to combat human trafficking. In particular, labor inspectors must be given special training to recognize the signs of human trafficking in a workplace, including debt bondage and other forms of economic coercion that result

in human trafficking, and to identify victims. Governments must also ensure that there are sufficient numbers of labor inspectors, and that they have the responsibility to inspect all workplaces—including those with high percentages of migrant workers.

14. Congress and other governments must pass national whistleblower protection laws regarding trafficked workers. Also, companies should ensure that there are such protections in company policy all along the supply chain, and advocate to governments for such protections for workers.

Thank you again for the opportunity to testify and for your continued leadership in combating trafficking for forced labor and other forms of severe labor exploitation around the world. I am encouraged by your commitment to finding solutions and welcome your questions.