



NOT FOR PUBLICATION
UNTIL RELEASED BY
HOUSE COMMITTEE ON
OVERSIGHT AND GOVERNMENT REFORM

STATEMENT OF
LIANA WYLER
ANALYST IN INTERNATIONAL CRIME AND NARCOTICS
CONGRESSIONAL RESEARCH SERVICE
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM
HEARING ON
“ARE GOVERNMENT CONTRACTORS EXPLOITING WORKERS OVERSEAS?
EXAMINING ENFORCEMENT OF THE TRAFFICKING VICTIMS PROTECTION ACT”
NOVEMBER 2, 2011

Chairman Lankford, Ranking Member Connolly, and distinguished Members of the Subcommittee, thank you for this opportunity to appear before you on behalf of the Congressional Research Service. My testimony today will provide an overview of international and U.S. efforts to combat trafficking in persons, with particular emphasis on U.S. policy to prevent trafficking among contractors representing the United States overseas.

Human Trafficking: Definitions, International Treaties, and U.S. Policies

Trafficking in persons is believed to be one of the most prolific areas of international criminal activity and is of significant concern to the United States and the international community as a human rights issue. According to Department of State estimates, 600,000 to 800,000 people are likely trafficked across borders each year.¹ If trafficking within countries is included in the total world figures, estimates indicate that some 2 to 4 million people are trafficked annually and as many as 12.3 million adults and children are currently subjected to forced labor, bonded labor, and forced prostitution around the world.² Forced labor trafficking, sometimes also called involuntary servitude, is a major form of human trafficking that involves the exploitation of workers through coercion. Despite substantial international commitments to eradicate the scourge of human trafficking internationally, progress to hold traffickers accountable for their crimes has been mixed, particularly progress to combat forced labor trafficking. In 2010, a total of 6,017 trafficking cases were prosecuted globally.³ During the same time frame, only 237 cases resulted in successful prosecutions related to forced labor around the world.

United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children of 2000

The international community, with significant leadership from the United States, has long condemned human trafficking and related forms of exploitation and compelled service through multilateral and regional declaration, treaties, and other instruments. Current multilateral efforts center on the *United Nations (U.N.) Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* (hereafter *U.N. Protocol*), signed in December 2000 and entered into force in December 2003. The *U.N. Protocol* established the first internationally agreed upon definition of “trafficking in persons” and commits state parties to criminalize such trafficking, facilitate international cooperation for investigating and prosecuting trafficking cases, protect and assist trafficking victims, and prevent and combat future trafficking. The United States signed the *U.N. Protocol* in December 2000 and ratified it in November 2005.

¹ U.S. Department of State, *Trafficking in Persons Report*, June 2008 and June 2010. Notably, this estimate is from 2003 and the U.S. Government Accountability Office (GAO) has called the accuracy of the estimate into question, stating that there remain unexplained “methodological weaknesses, gaps in data, and numerical discrepancies.” See GAO, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825, July 2006.

² International Labor Organization (ILO), *ILO Minimum Estimate of Forced Labour in the World*, April 2005.

³ U.S. Department of State, *Trafficking in Persons Report*, June 2011.

The *U.N. Protocol* defines “trafficking in persons” as a set of acts (what is done), means (how it is done), and purposes (why it is done), which in combination constitute trafficking. Specifically article 3(a) of the *U.N. Protocol* states that the term “trafficking in persons” covers:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁴

International Labor Organization Conventions on Forced and Child Labor

The International Labor Organization (ILO) is a multilateral organization through which 189 international labor conventions have been drafted and variously ratified by its member states. Several of these conventions address forced labor, including the *1930 Forced Labour Convention* (No. 29), the *1957 Abolition of Forced Labour Convention* (No. 105), and the *1999 Worst Forms of Child Labour Convention* (No. 182).⁵ *Convention No. 29* defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” *Convention No. 105* prohibits forced or compulsory labour “(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; and (e) as a means of racial, social, national or religious discrimination.” *Convention No. 182* identifies forced or compulsory labour as one of the worst forms of child labor. All three of these conventions have been identified by the ILO’s Governing Body as among eight “fundamental” human rights conventions backing four ILO core labor principles.⁶ The *ILO Declaration on Fundamental Principles and Rights at Work* requires that all ILO members, including the United States, are expected to respect and promote the four core labor principles even if their governments have not ratified the relevant conventions.⁷

Trafficking Victims Protection Act of 2000

The centerpiece legislation for U.S. efforts to combat international human trafficking is the *Trafficking Victims Protection Act of 2000* (TVPA, Division A of P.L. 106-386), and its three reauthorizations. The TVPA emphasizes a three-pronged policy approach to anti-trafficking activities that focuses on *prevention* of human trafficking, *protection* of trafficking victims, and *prosecution* of traffickers. These three policy elements are also mirrored in the *U.N. Protocol*.

⁴ Article 3(c) of the *U.N. Protocol* further clarifies that the act of recruiting, transporting, transferring, harboring, or receiving a child, defined as under 18 years of age, for the purpose of exploitation is considered “trafficking in persons” even if there is no threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving of payments or benefits to achieve control.

⁵ Text of the conventions available at International Labor Organization (ILO), *Database of International Labour Standards*, <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁶ International Labor Organization (ILO), “Conventions and Recommendations,” <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

⁷ The majority of countries have ratified all eight conventions. Although the United States protects all of the conventions through domestic law, it has ratified only two. These two are *Conventions No. 105* and *182*. Congress has not ratified *Convention No. 29* and the five others because of concerns that they might conflict with certain state laws, raising enforcement issues.

Instead of defining “trafficking in persons,” as the *U.N. Protocol* does, the TVPA defines “severe forms of trafficking in persons.” This latter term is defined in Section 103(8) of the TVPA to mean:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Other terms defined by the TVPA include: coercion,⁸ commercial sex act,⁹ debt bondage,¹⁰ involuntary servitude,¹¹ sex trafficking,¹² and forced labor.¹³

Although the original TVPA does not include the terms “contractor” and “subcontractor” nor does it address foreign labor contracting specifically, subsequent reauthorizations of the TVPA have introduced new provisions and reporting requirements related U.S. government contracting practices and policies.

- **The Trafficking Victims Protection Reauthorization of 2003** (TVPRA of 2003, P.L. 108-193), amends section 106 of the TVPA to introduce a new provision that permits federal departments or agencies to terminate contracts, without penalty, if (1) the contractor or subcontractor engages in severe forms of trafficking in persons, (2) procures a commercial sex act during the period of time that the contract is in effect, or (3) uses forced labor in the performance of the contract.¹⁴ Although all three of these elements do

⁸ Pursuant to section 103(2) of the TVPA, *coercion* means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

⁹ Pursuant to section 103(3) of the TVPA, *commercial sex act* is defined as any sex act on account of which anything of value is given or received by any person.

¹⁰ Pursuant to section 103(4) of the TVPA, *debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

¹¹ Pursuant to section 103(5) of the TVPA, *involuntary servitude* includes a condition of servitude induced by means of—(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.

¹² Pursuant to section 103(9) of the TVPA, *sex trafficking* is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

¹³ Section 112 of the TVPA amends Title 18 of the United States Code to define *forced labor* as the knowing provision or obtaining of labor or services of a person by coercion, as defined in section 103(2) of the TVPA.

¹⁴ H.Rept. 108-264, Part I, September 5, 2003. The House Committee on International Relations’ report of the TVPRA of 2003 discusses the rationale behind introducing the contracting provision:

During an April 2002 hearing, the Committee heard testimony describing the involvement by some employees or agents of DynCorp International—a recipient of a U.S. Government contract for police work in Bosnia-Herzegovina—in prostitution, human trafficking, and sexual misconduct and of DynCorp’s retaliation against those who endeavored to bring such misconduct to light. The Committee intends for the Department of State and all other relevant government agencies to take necessary action to control the activities of such contractors who are essentially serving as representatives of the United States and often are perceived as such. It is the view of the Committee that contractors, their employees and agents, must be held accountable to a code of conduct with associated consequences for unethical or improper personal conduct while under U.S. Government contracts. This need is made all the more essential when such contractors are operating in areas where they are unlikely to be held accountable under local laws.

not constitute human trafficking as defined by either the *U.N. Protocol* or the TVPA, U.S. contracting policy has since included the procurement of commercial sex acts as part of its anti-human trafficking programming regime.

- **The Trafficking Victims Protection Reauthorization of 2005** (TVPRA of 2005, P.L. 109-164) states as one of its introductory findings that the involvement of employees and contractors of the U.S. government in trafficking in persons is “inconsistent” with U.S. laws and policies and “undermines the credibility and mission” of U.S. efforts in post-conflict settings. Section 2 of the TVPRA of 2005 further states that additional anti-trafficking measures are required to ensure that U.S. government personnel and contractors are “held accountable.”¹⁵ Additionally, Section 103(a) of the TVPRA of 2005 amends the U.S. Criminal Code to expand extraterritorial jurisdiction of certain trafficking in persons offenses to encompass persons employed by the federal government outside the United States, including federal contractors and employees of federal contractors, as well as subcontractors.
- **The William Wilberforce Trafficking Victims Protection Reauthorization of 2008** (TVPRA of 2008, P.L. 110-457) mandates two additional reporting requirements. The first requirement amends Section 105(d)(7) of the TVPA to require the U.S. Department of Justice (DOJ) to report to Congress on activities conducted by the U.S. Department of Defense (DOD) to combat human trafficking, including efforts to ensure that U.S. government contractors and their employees, including subcontractors, do not engage in trafficking in persons. The second requirement mandates the inspector generals for DOD, the U.S. Department of State, and U.S. Agency for International Development (USAID), to investigate in each of the fiscal years 2010 through 2012 a sample of contracts for evidence of severe forms of human trafficking, procurement of commercial sex acts, and use of forced labor in the contracts’ performance. Section 232 of the TVPRA of 2008 further mandates that the inspector generals investigate activities that may heighten the risk of a contractor engaging, knowingly or unknowingly, in acts related to trafficking in persons, such as confiscation of an employee’s passport, restriction on an employee’s mobility, abrupt or evasive repatriation of an employee, or deception of an employee regarding the work destination.

¹⁵ The House Committee on International Relations’ report on the TVPRA of 2005 (H.Rept. 109-317, Part I) further elaborates on the rationale for inclusion of this provision. Specifically it states:

The Committee has long been concerned about the involvement of Federal contractors in human trafficking and other misconduct. At an April 2002 hearing, the Committee received testimony regarding the involvement by some employees or agents of a Federal contractor operating in Bosnia-Herzegovina in prostitution, human trafficking, and sexual misconduct. Both Department of Defense and non-Department of Defense contractors were involved, however, under U.S. law at that time, only Department of Defense contractors could be prosecuted in U.S. courts. Based on consultations with the Committee on the Judiciary, which has subject matter jurisdiction over the courts, that Committee’s view is that contractors, and their employees and agents, must be held to the same standards of conduct required under United States laws while under U.S. Government contracts abroad. This need is made all the more essential when such contractors are operating in areas where they are unlikely to be held accountable under local laws.

Additionally, the TVPRA of 2005 amends Section 110 of the TVPA to require the U.S. Department of State to discuss, in its annual report to Congress on *Trafficking in Persons*, measures taken by the United Nations and other multilateral organizations in which the United States participates to prevent the involvement of its employees, contractor personnel, and peacekeeping forces in trafficking in persons. The TVPRA of 2005 also mandates that, prior to voting for a new or reauthorized multilateral peacekeeping mission, the Secretary of State submit to specified congressional committees a report that describes and evaluates measures taken to prevent its employees, contractor personnel, and peacekeeping forces from engaging in acts of human trafficking.

National Security Presidential Directive 22

On December 16, 2002, the White House issued National Security Presidential Directive 22 (NSPD-22), which established as a policy goal the abolition of trafficking in persons.¹⁶ It states that it is the “policy of the United States to attack vigorously the worldwide problem of trafficking in persons, using law enforcement efforts, diplomacy, and all other appropriate tools.” Prostitution and any related activity, including pimping, pandering, or maintaining brothels, is viewed as “contributing to the phenomenon of trafficking in persons” and thus should be opposed as a matter of U.S. government policy pursuant to NSPD-22. The *Presidential Directive* also establishes a “zero tolerance” policy toward all U.S. government and contractor personnel overseas who engage in human trafficking violations. Specifically, it states:

The United States hereby adopts a “zero tolerance” policy regarding United States Government employees and contractor personnel representing the United States abroad who engage in trafficking in persons. Departments and agencies shall adopt policies and procedures to educate, as appropriate, personnel and contract employees on assignment of official travel abroad about trafficking in persons, to investigate, as appropriate, any allegations of involvement in trafficking by such personnel, and to punish, as appropriate, those personnel who engage in trafficking in persons. To the extent permitted by law, punishment may include disciplinary actions for United States Government personnel, and civil remedies such as debarment and suspension procedures for United States Government contractors engaged in trafficking.

Selected Anti-Human Trafficking Provisions in Federal Contract Regulations and Related Guidance

U.S. policy on combating human trafficking has sought to respond to such allegations and strengthen efforts to monitor and enforce a “zero tolerance” policy against human trafficking that prohibits government employees and contracted personnel from engaging in severe forms of human trafficking, forced labor, and the procurement of commercial sex acts. The following section outlines several key regulations and policies related to contractors and contracting that implement the underlying U.S. legal framework to combat human trafficking.

Federal Acquisition Regulation

The Federal Acquisition Regulation (FAR) regulates how agencies use appropriated funds to buy goods and services. FAR Subpart 22.17, *Combating Trafficking in Persons*, implements Sec. 106 of the TVPA, as amended, on the prevention of human trafficking.¹⁷ FAR Subpart 22.17 mandates that this subpart

¹⁶ The White House, President George W. Bush, National Security Presidential Directive 22 (NSPD-22), *Combating Trafficking in Persons*, December 16, 2002, partially declassified for publication as “Appendix C” in U.S. Department of Defense (DOD), Office of the Inspector General (OIG), *Inspections and Evaluations: Evaluation of DOD Efforts to Combat Trafficking in Persons*, Report No. IE-2007-002, November 21, 2006.

¹⁷ FAR Subpart 22.17 is available at https://www.acquisition.gov/far/html/Subpart%2022_17.html. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agreed in January 2009 on a final rule on combating trafficking in persons, amending the Federal Acquisition Regulation (FAR) at Subpart 22.17 with an associated FAR Clause at 52.222-50. This final rule became effective on February 17, 2009. The FAR final rule notice is available in the Federal Register at 74 FR 2741. FAR Subpart 22.17 and FAR Clause 52.222-50 had already been previously incorporated into Federal contracts since April 2006, when the Councils agreed upon an interim rule on combating trafficking in persons (see 71 FR (continued...))

apply to all acquisitions subject to the FAR, defines terms related to human trafficking pursuant to the TVPA, and reiterates the U.S. government's zero tolerance policy regarding trafficking in persons. FAR Subpart 22.17 further requires that government contractors and subcontractors notify employees of the prohibited activities and the actions that may be taken against them for trafficking violations, and impose suitable remedies, including termination and up to suspension and debarment. FAR Subpart 22.17 also requires that FAR Clause 52.222-50, *Combating Trafficking in Persons*, be inserted into all solicitations and contracts.¹⁸ In addition to the provisions outlined in FAR Subpart 22.17, FAR Clause 52.222-50 requires that the contractor inform the Contracting Officer (CO) immediately of any information it receives from any source that alleges misconduct in violation of U.S. anti-human trafficking policy and any actions taken by the contractor against its employees and subcontractors.

U.S. Department of State

The U.S. Department of State's guidance for administering contracts is based on the FAR, the Department of State Acquisition Regulations (DOSAR), the Foreign Affairs Manual (FAM), the Foreign Affairs Handbook (FAM), periodic Procurement Information Bulletins (PIBs), cables, and other notices.¹⁹ On March 24, 2011, the U.S. Department of State's Office of the Procurement Executive issued PIB No. 2011-09 on *Combating Trafficking in Persons*. PIB No. 2011-09 provides guidance for Contracting Officers (COs) and Contracting Officer's Representatives (CORs) on how to monitor domestic and overseas contracts and contracting activities for compliance with U.S. policy on combating human trafficking.

Key stated CO and COR responsibilities include ensuring that all solicitations and contracts over the micro-purchase threshold, currently \$3,000, and including all contract options contain the FAR clause on *Combating Trafficking in Persons*. In cases where there is potential for employer-provided housing, including in cases of employer-provided housing for third country nationals, the PIB requires that COs include in the solicitation a requirement for a housing plan as part of the contractor's quote or proposal. The PIB also provides guidance on how COs and CORs should structure a monitoring program to ensure anti-human trafficking policy compliance in contracts.

To this end, the State Department's March 2011 PIB includes an annex with "suggested actions" that COs and CORs can take to minimize the risk of human trafficking violations in the performance of their contracts. PIB No. 2011-09 directs COs and CORs to structure a contract monitoring program "using as many of these suggestions as feasible." At the pre-solicitation phase, the PIB recommends conducting a trafficking in persons risk assessment, a local labor law assessment, and an evaluation of plans for contractor-provided housing. At the post-award orientation phase, the PIB recommends discussing with the contractor the importance of preventing human trafficking and the U.S. zero tolerance policy. The PIB also recommends discussing with the contractor the importance of briefing its employees and subcontractors on U.S. trafficking policy, including prohibitions on procuring commercial sex while on

(...continued)

20301). In August 2007, the Councils agreed upon a revised interim rule on combating trafficking in persons, which resulted in a revised FAR Subpart 22.17 and FAR Clause 52.222-50 (see 72 FR 46337).

¹⁸ In cases when the contract is performed outside the United States and where the contracting officer has been notified of specific U.S. anti-trafficking directives or notices that apply to contractor employees at the contract place of performance, FAR Subpart 22.17 stipulates that the basic FAR Clause 52.222-50 is to be used with its Alternate I.

¹⁹ From U.S. Department of State and the Board of Broadcasting Governors (BBG), Office of Inspector General (OIG), Memorandum Report, *Performance Evaluation of Department of State Contracts to Monitor Vulnerability to Trafficking in Persons Violations in the Levant*, Report No. MERO-I-11-07, March 2011.

contract and withholding employee passports or visas, and the need to observe local labor laws and to provide clear explanations for salary deductions from employee wages. At the contractor monitoring stage, the PIB recommends key activities to verify during the course of the contract's performance to determine whether trafficking violations are taking place.

U.S. Department of Defense

Originally issued on February 16, 2007 and subsequently re-issued on September 15, 2010, DOD Instruction 2200.01 (DODI 2200.01), *Combating Trafficking in Persons (CTIP)*, establishes as DOD policy the goal of opposing "prostitution, forced labor, and any related activities... that may contribute to the phenomenon of TIP as inherently harmful and dehumanizing." Further DODI 2200.01 requires that any activities by "DOD Service members, civilian members, indirect hires, contract personnel, and command-sponsored dependents that would facilitate or support TIP, domestically and overseas," be deterred.²⁰

Subpart 222.17 of the Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information (PGI) on *Combating Trafficking in Persons* summarizes DOD's zero tolerance policy on human trafficking committed by DOD contractors and subcontractors in support of DOD operations.²¹ Subpart 222.17 also requires that contracting officers (COs) immediately notify the regionally relevant Combatant Commander with information indicating that a contractor or subcontractor has failed to comply with U.S. anti-trafficking policies.

DOD published in June 2010 a *Defense Contingency Contracting Handbook* that provides further guidance to DOD Contingency Contracting Officers (CCOs) on challenges they may face, including situations of alleged trafficking in persons and related violations.²² The Handbook references U.S. policies on anti-trafficking and CCO responsibilities under the FAR and the DFARS/PGI.

In August 2011, DOD also released a "Worker Bill of Rights" for employees supporting U.S. installations abroad, which specifies that workers "have a right to hold their own passport, receive agreed upon wages on time, take lunch- and work-breaks, leave the place of employment at any time, identify grievances without fear of reprisal, have a copy of their employment contract, be paid wages not below legal in-country minimum wage, [and] if housing is provided, live in habitable space that is comparable to others on the U.S. base."²³

²⁰ The policy guidance issued by DODI 2200.01 applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the DOD Office of the Inspector General, the Defense Agencies, the DOD Field Activities, and all other DOD organizational entities. "Enclosure 2" of DODI 2200.01 further states that heads of DOD components are mandated with the responsibility to conduct annual awareness training on human trafficking for all component members, place offending establishments involved in TIP "off-limits" to DOD personnel, and support host country authorities to combat human trafficking. "Enclosure 3" of DODI 2200.01 specifies, however, that contractors "are not required to train their personnel" on anti-human trafficking.

²¹ DFARS, in conjunction with the FAR, regulates DOD-specific purchases and contracts. See DFARS Subpart 201.104, revised, September 20, 2011.

²² DOD, "Combat Trafficking in Persons (CTIP)," *Contingency Contracting Handbook*, June 2010, http://www.acq.osd.mil/dpap/ccap/cc/jcchb/Files/DVD/ch_1.pdf.

²³ DOD, "Trafficking in Persons," *Fair Treatment for all Workers: Supporting U.S. Installations Abroad*, version 1.1, August 2011. Note that this DOD "Worker Bill of Rights" for employees supporting U.S. installations abroad was based in large part on the one initially developed by the Army and Air Force Exchange Service (AAFES) in March 2009, discussed below.

U.S. Central Command

Subpart 22.17, *Combating Trafficking in Persons*, of the U.S. Central Command (CENTCOM) Joint Theater Support Contracting Command's (C-JTSCC) Acquisition Instruction (AI) requires that all services or construction contracts requiring performance in Iraq or Afghanistan include C-JTSCC/AI Clause 952.222-0001, *Prohibition Against Human Trafficking, Inhumane Living Conditions, and Withholding of Employee Passports*, as well as FAR Clause 52.222-50, *Combating Trafficking in Persons*, with its Alternate I, as applicable.²⁴

C-JTSCC/AI Clause 952.222-0001 requires that contractors (1) only hold passports and other identifying documents for the shortest period of time reasonable for administrative processing purposes; (2) provide all employees with a signed copy of their employment contract, in English as well as in the employees' native language, that defines the terms of their employment and compensation; (3) not utilize recruiting firms or firms that charge illegal recruiting fees; (4) provide adequate living conditions (sanitation, health, safety, living space) for their employees;²⁵ (5) incorporate checks of life support areas into their Quality Control program to ensure compliance with U.S. policies on anti-trafficking; and (6) comply with international and host nation laws regarding transit/exit/entry procedures and the requirements for visas and work permits.

Army and Air Force Exchange Service

The Army and Air Force Exchange Service (AAFES) is a joint military activity that provides merchandise and services at more than 3,100 facilities worldwide in more than 30 countries, including in Afghanistan and Iraq. As a DOD non-appropriated fund instrumentality (NAFI) activity, the FAR does not govern AAFES contracts. The lack of FAR applicability to AAFES contracts has been raised a potential loophole to the existing anti-trafficking regulatory framework. Nevertheless, AAFES has voluntarily aligned several of its contractor clauses with FAR provisions related to human trafficking. AAFES includes human trafficking clauses modeled on FAR Clause 52.222-50 in all their Manpower Agency employee and concessionaire contracts. For contracts involving Iraq and Afghanistan, AAFES additionally includes anti-human trafficking provisions modeled on the C-JTSCC/AI Clause 952.222-0001.

In addition, AAFES developed and implemented in March 2009 a Manpower Agency employee basic rights document, or "Bill of Rights." AAFES also developed the concessionaire basic rights document and third country national (TCN) repatriation clause in October 2010. Further, the Commander of AAFES Europe also implemented in November 2009 an employee passport possession policy to ensure that contractors do not withhold the passports of TCNs and to require supervisors at all levels to conduct monthly physical passport inspections of contract employees.

²⁴ C-JTSCC is DOD's Executive Agent (EA) for contracting in Afghanistan and Iraq.

²⁵ Pursuant to C-JTSCC Clause 952.222-0001, the minimum acceptable square footage of living space per employee is 50 square feet. Contracting Officers (COs) may grant a waiver in writing in cases where the living space is within 20% of the minimum square footage and where overall living conditions are determined by the COs to be acceptable.

Human Trafficking and Contractor Misconduct: A Review of Recent Allegations

Despite ongoing efforts to combat human trafficking associated with government contractors, recent annual reports on trafficking in persons by the U.S. Department of State acknowledge that government contractors and subcontractors continue to be implicated in allegations of forced labor and sex trafficking.²⁶ The U.S. Department of State's 2010 *Trafficking in Persons Report*, for example, states that "too often it is reported that workers—particularly in combat zones—have been misinformed about their contracts, are poorly housed, have their passports confiscated, and are required to pay back large recruitment fees."²⁷ The 2011 *Trafficking in Persons Report* emphasizes the heightened vulnerability of TCNs to human trafficking, describing such workers as "more susceptible to exploitation due to distance and isolation, language barriers, and dependence on the employer for visas or work permits, among other factors."²⁸

On June 6, 2011, *The New Yorker* published an investigative story by journalist Sarah Stillman on TCN workers, mainly hired by subcontractors to U.S. military contractors, in Iraq and Afghanistan.²⁹ Stillman's article focused in particular on a case from 2007-2008 involving beauticians from Fiji who worked in Iraq at a beauty salon located on a U.S. military base and operated by the Army and Air Force Exchange Service (AAFES). Although an inquiry conducted by the AAFES inspector general in March 2008 ultimately did not substantiate the human trafficking allegations, *The New Yorker* article alleges that the Fijian beauticians were misled in the recruitment process—believing that they would be working in the United Arab Emirates (UAE) for a hotel in Dubai rather than in Iraq for the U.S. military—and underpaid. The article also alleges that one of the Fijian beauticians was sexually assaulted by a supervisor while in Iraq and that the beauticians' passports were withheld for more than a month in 2008 before they could return home to Fiji, a possible indicator of bonded labor.

The August 2011 final report to Congress by U.S. Commission on Wartime Contracting further highlighted possible incidents of recent human trafficking involving labor brokers, contractors, and subcontractors in U.S. contingency operations overseas. The report details observations made by the U.S. Commission on Wartime Contracting in trips to Iraq and Afghanistan in 2009 and 2010 and concludes that the continued high demand to fill low-skills jobs through contracts in support of U.S. contingency operations has resulted in situations of mistreatment and exploitation that are indicative of human trafficking. The August 2011 final report warns that such contractor practices "bring discredit to the United States and act as a barrier to building good diplomatic relations."³⁰

Pursuant to Section 232 of the TVPRA of 2008, the Offices of the Inspector General (OIGs) for the U.S. Department of State, DOD, and USAID have, since January 2010, published a series of reports that evaluate selected contracts and subcontracts for heightened vulnerability to human trafficking risks.

²⁶ U.S. Department of State, *Trafficking in Persons Report*, annually published, most recently in June 2011.

²⁷ U.S. Department of State, *Trafficking in Persons Report*, June 2010.

²⁸ The 2011 *Trafficking in Persons Report* also reports that allegations of defense contractor violations were investigated and ultimately resulted in the dismissal of one employee by a DOD contractor. See U.S. Department of State, *Trafficking in Persons Report*, country narrative for the United States, June 2011.

²⁹ Sarah Stillman, "The Invisible Army: For Foreign Workers on U.S. Bases in Iraq and Afghanistan, War Can Be Hell," *The New Yorker*, June 6, 2011.

³⁰ U.S. Commission on Wartime Contracting, Final Report to Congress, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks*, August 2011.

Although the OIG reports collectively documented few instances of likely contractor involvement in severe forms of human trafficking, solicitation of commercial sex acts, sex trafficking, or involuntary servitude,³¹ several of them identified contractor management practices that increased the risk of human trafficking and related violations. The State Department's OIG, for example, found instances of contractor coercion at recruitment and destination points and exploitative conditions at work, including frequent instances in which workers paid recruiters brokerage fees, regular confiscation of employee passports, withheld wages, confusing calculations of earnings, unsafe or unsanitary living conditions, and deceptive recruitment practices that exploit workers' lack of language, education, and information.³² The DOD's OIG evaluated selected contracts in the U.S. Pacific Command and U.S. Central Command areas of responsibility and revealed problems with ensuring that contracts had the appropriate anti-trafficking clauses.³³

For decades, U.S. contractors have been implicated in allegations of human trafficking violations at various locations overseas, including in Bosnia, South Korea, Iraq, Afghanistan, and other countries.

- **Bosnia and Herzegovina:** In the late-1990s through the early 2000s, multiple allegations surfaced regarding U.S. defense contractors engaged in trafficking of women and girls for sexual exploitation in Bosnia and Herzegovina. Employees of DynCorp Aerospace Technology U.K., Ltd. (DynCorp) were specifically implicated in sex slavery schemes involving the purchase and sale of underage girls for sex and domestic servitude. The DOD OIG concluded that the specific findings involving DynCorp employees were indicative of a broader problem of defense contractor involvement in human trafficking.³⁴

³¹ A State Department OIG inspection of U.S. Embassy Riyadh reportedly "yielded anecdotal evidence of some behavior that could be classified as labor trafficking (e.g., withholding passports, garnishing wages, and summary dismissal)." The State Department's OIG also identified one contract in its inspection of U.S. missions in the Levant region that involved exploitative conditions or work, including long work hours and payment issues. As reported by the OIG, the relevant U.S. embassy learned of the contractor's misconduct around the time when the contract was up for renewal; as a result, it disqualified the contractor from issuing a proposal for the new contract. Additionally, while the OIG team was conducting field work in Amman, Jordan, inspectors learned of another contract, one that was outside the scope of its 10 contract evaluation, that involved a trafficking violation. In that case, the existing contract was terminated and the contractor disqualified from subsequent contracts. See U.S. Department of State and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in the Levant*, Report No. MERO-I-11-07, March 2011; *Report to the House Committee on Foreign Relations*, January 15, 2010; and Report of Inspection, *Embassy Riyadh and Constituent Posts, Saudi Arabia*, Report No. ISP-I-10-19A, March 2010.

³² U.S. Department of State and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in Four States in the Cooperation Council for the Arab States of the Gulf*, Report No. MERO-I-11-06, January 2011; *Report to the House Committee on Foreign Relations*, January 15, 2010; and Performance Audit, *The Bureau of Diplomatic Security Baghdad Embassy Security Force*, Report No. MERO-A-10-05, March 2010.

³³ In January 2010, for example, DOD's OIG reported on its evaluation of 99 selected construction and service contracts awarded in FY2009 in South Korea, Japan, and Guam. The OIG found that half of the contracts sampled either did not contain the requisite contracting clause on combating trafficking in persons or had been modified shortly before the inspectors visited. DOD's OIG report from January 2011 conducted an evaluation of 368 selected contracts in Iraq, Afghanistan, Kuwait, Qatar, and Bahrain, all of which were within U.S. Central Command's area of responsibility. The OIG found that although 79% of contracts reviewed contained some variant of the requisite anti-human trafficking contracting clauses, 47% of contracts were "missing, or included an outdated or incorrect version of the FAR Clause on combating trafficking in persons." See DOD, OIG, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons*, Report No. IE-2010-001, January 2010; and *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, Report No. IE-SPO-2011-002, January 18, 2011.

³⁴ DOD, OIG, *Assessment of DOD Efforts to Combat Trafficking in Persons: Phase II: Bosnia-Herzegovina and Kosovo*, Case Number H03L88433128, prepared by the Directorate for Investigations of Senior Officials, Office of the Deputy Inspector General for Investigations, December 8, 2003.

At the time, there were no requirements for contractors to report allegations against their employees regarding their involvement in human trafficking.

- **South Korea:** In March 2002, Fox News reported that U.S. military officials patronizing establishments near a U.S. military base in South Korea where the owners of the establishments apparently confiscated the passports of foreign female employees and required that they practice prostitution as a means to “earn their freedom” and “buy back” their passports. Further, the report implied U.S. military complicity with these establishments, since U.S. non-commissioned officers were officially assigned on “courtesy patrol” of these establishments.³⁵ In a DOD OIG report investigating the allegations, defense officials did not deny the allegations and responded by taking several actions to combat and prevent human trafficking in the future.³⁶ These included implementing education and training programs, identifying and placing offending establishments “off-limits” to military personnel, and enhancing cooperation with South Korean authorities on human trafficking issues.
- **Iraq:** Beginning in 2004, news reports by *The Washington Post*, *Chicago Tribune*, and others alleged that the DOD contractor Kellogg, Brown, and Root (KBR) and several of its subcontractors were engaged in deceptive recruitment practices and illegal confiscations of TCN passports.³⁷ TCNs were reportedly subject to excessive recruitment fees and substandard living conditions. One of KBR’s subcontractors, First Kuwaiti, has also been implicated in other allegations involving reported threats to leave TCNs in Kuwait City, without passports and financial means to return home, if they refused to travel to Iraq.³⁸ Allegations were further fueled by news of 12 Nepalese men who were kidnapped and murdered by insurgents in Iraq in August 2004.³⁹ Subsequent reports alleged that they were recruited by a KBR subcontractor, Daoud & Partners, and its affiliated recruiting and brokerage companies as part of a broader scheme of trafficking Nepalese laborers to work in Iraq.⁴⁰ Multiple investigations ensued. By May 2006, KBR project and operations managers had been officially reminded that all KBR personnel in-theater were required to complete human trafficking awareness training.⁴¹ Also by May 2006, the Defense Department required that certain defense contracts be modified to

³⁵ According to the DOD OIG, “courtesy patrols” in the context of U.S. Forces Korea (USFK) consisted of “noncommissioned officers from individual company-sized units detailed to patrol off-post locations to ensure the safety and proper comportment of soldiers assigned to their units while off-duty.” See DOD, OIG, *Assessment of DOD Efforts to Combat Trafficking in Persons: Phase I: United States Forces Korea*, Case Number H03L88433128, prepared by the Program Integrity Directorate, Office of the Deputy Inspector General for Investigations, July 10, 2003.

³⁶ DOD, OIG, *Assessment of DOD Efforts to Combat Trafficking in Persons: Phase I: United States Forces Korea*, Case Number H03L88433128, prepared by the Program Integrity Directorate, Office of the Deputy Inspector General for Investigations, July 10, 2003.

³⁷ See for example Ariana Eunjung Cha, “Iraq: Many Foreign Laborers Receive Inferior Pay, Food and Shelter,” *The Washington Post*, July 1, 2004.

³⁸ See U.S. Commission on Wartime Contracting, hearing on “Subcontracting: Who’s Minding the Store?” July 26, 2010.

³⁹ “12 Nepalese Hostages ‘Executed in Iraq,’” *Associated Press*, August 31, 2004.

⁴⁰ Cam Simpson, “Desperate for Work, Lured into Danger,” *Chicago Tribune*, October 9, 2005 (first in a series of articles on the subject); Dana Hedgpeth, “KBR, Partner in Iraq Contract Sued in Human Trafficking Case,” *Washington Post*, August 28, 2008. See also Complaint Ramchandra Adhikari et al v. Daoud & Partners et al, U.S. District Court, Central District of California, August 27, 2008, http://www.contractormisconduct.org/ass/contractors/29/cases/1008/1369/halliburton-human-trafficking_complaint.pdf.

⁴¹ DOD, Memorandum from Paul Wilkinson, Training Center Manager, Theater Training Center, to KBR Project Managers, Deputy Project Managers, and Operations Managers ME/CA, “Trafficking in Persons Awareness Training,” April 13, 2006.

incorporate new contract clause language that specifically prohibited human trafficking and mandated reporting and remedies in cases of violations.⁴²

- **Afghanistan:** According to news articles, employees of Armor Group North America Inc. (AGNA), hired in 2007 by the U.S. State Department's embassy in Kabul, Afghanistan, to provide armed guard services were reportedly patronizing brothels disguised as Chinese restaurants with possible sex trafficking victims.⁴³ In July 2011, The U.S. Department of Justice (DOJ) announced that AGNA and its affiliates paid the U.S. government \$7.5 million to resolve claims that its employees visited brothels in Kabul in violation of the TVPA, among others.⁴⁴

Conclusion: Remaining Questions

Current U.S. efforts to prevent human trafficking among contractors representing the United States overseas fit into a multi-tiered framework composed of international treaties, federal statutes, a national security directive, implementing regulations, agency-specific policy guidance, and voluntary best practices. This anti-trafficking policy framework has evolved and been informed by whistleblowers, non-governmental investigative reporting, congressional oversight, and inspector general evaluations. In its current form, anti-trafficking policies provide for a common definition of severe forms of human trafficking and related offenses, and a government-wide zero tolerance policy on such trafficking, including among contractors.

Specifically intended to prevent human trafficking violations in federal contracts, the TVPA, as amended, authorizes such contracts to be terminated without penalty if a contractor is found to be engaging in severe forms of human trafficking, procuring a commercial sex act during the contract period, or using forced labor in the performance of the contract. Implementing acquisition regulations require that contractors and subcontractors notify their employees of prohibited trafficking activities as well as notify the Contracting Officer (CO) immediately of any information received that alleges trafficking-related misconduct. Pursuant to congressional mandate, the OIGs for the State Department, DOD, and USAID have conducted several recent investigations and have begun to incorporate human trafficking objectives into their auditing practices. Additionally, numerous examples show that specific agencies and offices have sought to proactively implement a range of supplemental guidance and additional best practices.

For instance, recent OIG reports have highlighted several best practices in place to detect and deter trafficking in persons. The State Department OIG, for example, commended U.S. missions abroad where

⁴² In November 2006, the DOD OIG released a report summarizing its evaluation of DOD's efforts to combat human trafficking. See DOD, OIG, *Inspections and Evaluations: Evaluation of DOD Efforts to Combat Trafficking in Persons*, Report No. IE-2007-002, November 21, 2006.

⁴³ Nick Schwellenbach and Carol Leonnig, "U.S. Policy A Paper Tiger Against Sex Trade in War Zones," *The Washington Post*, July 18, 2010. The country narrative for Afghanistan in the State Department's 2010 *Trafficking in Persons Report* stated that women and girls from China and other countries may be forced into prostitution in Afghanistan and that "some international security contractors may have been involved in the sex trafficking of these women."

⁴⁴ U.S. Department of Justice (DOJ), Office of Public Affairs, "Armor Group North America and Its Affiliates Pay \$7.5 Million to Resolve False Claims Act Allegations," July 7, 2011. In a Wackenhut Services, Inc., press release about the \$7.5 million settlement, the company argues that AGNA, as a matter of company policy, "at all times... prohibited any form of human trafficking, and did not tolerate violations." The press release further states that the one AGNA employee confirmed to have frequented prostitutes was fired by AGNA "in normal course when his conduct became known." See Wackenhut Services, Inc., "Armor Group North America Reaches Settlement with Dept. of Justice Resolving Former Employee's Allegations," July 7, 2011.

Contracting Officer Representatives (CORs) ensured that contract workers either kept their passports on hand or signed a release that allowed their employers to hold them in a secure location; U.S. Embassy management and political section staffs collaborated to ensure that CORs were familiar with local labor laws; locally employed staff and bilingual staff regularly engaged TCNs to informally monitor contractor compliance with anti-trafficking policies; and the embassy required that contractors present proof of labor law compliance.⁴⁵ Additionally, it appears that, in the wake of recent allegations of human trafficking violations in AAFES contracts, AAFES has reformed its internal policies to become, what some are describing as, a model to replicate in other parts of DOD. Praising AAFES, the DOD OIG stated in a January 2011 report that investigators “observed several excellent examples” of anti-trafficking awareness and contract quality assurance among AAFES contracting practices that “merit being considered for replication.”⁴⁶

Despite the existence of this multi-tiered policy and implementation framework, which has been incrementally amended and improved upon for more than a decade, allegations of trafficking violations and contracting practices that heighten the risk of trafficking continue to surface in investigative media reports, congressional hearings, and inspector general reports. There is a risk that such allegations could tarnish perceptions abroad of U.S. anti-trafficking and human rights principles, as well as undermine U.S. diplomatic efforts to galvanize international support to combat human trafficking. An area that may warrant further exploration may include whether there is a disconnect between existing policies and their implementation among contractors overseas.

If there is such a disconnect, several questions arise. Is the existing legal or regulatory framework too weak or fragmented and does it need to be enhanced or streamlined? Do competing implementing regulations, agency-specific policy guidance, and voluntary best practices permit for a nuanced, tailored approach to preventing trafficking violations in contracts? Does such a varied policy environment sow confusion among contractors and subcontractors, as well as among those responsible for monitoring contractors, with regard to what actions are prohibited and how contracts should be monitored? To what extent are there gaps in the oversight and enforcement of existing laws and regulations among overseas contractors and what is required to overcome such challenges? Are the inspector general offices, COs, and CORs adequately authorized and trained to monitor and detect human trafficking violations? To what extent are continued trafficking violations in contracts overseas a manifestation of broader challenges associated with managing and relying upon a large contractor force in overseas contingency operations?⁴⁷ Do our overseas contracting policies create an environment that serves as a catalyst for fraud, trafficking in persons, and other criminal and unethical behavior by bad actors?

Thank you again for the opportunity to testify today. I look forward to your questions.

⁴⁵ U.S. Department of State and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in Four States in the Cooperation Council for the Arab States of the Gulf*, Report No. MERO-I-11-06, January 2011.

⁴⁶ DOD, OIG, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, Report No. IE-SPO-2011-002, January 18, 2011. Specifically, the report highlights AAFES’ issuance of the worker “Bill of Rights” document—available in English and eight other languages and posted visibly in employee common areas—that summarizes employee rights. The OIG report also lauded the Commander of AAFES Europe for implementing in November 2009 an employee passport possession policy that sought to ensure that contractors do not withhold the passports of TCNs and that requires supervisors at all levels to conduct monthly physical passport inspections of contract employees.

⁴⁷ From September 2007 to December 2010, a period of more than three years, there were more than 170,000 contractors working for the U.S. government in Iraq and Afghanistan. The number of government contractors exceeded 200,000 in 2008.

Liana Wyler is an analyst in international crime and narcotics in the Foreign Affairs, Defense, and Trade Division at the Congressional Research Service (CRS). She has written on a range of issues centered on transnational illicit activities and related foreign policy responses, including human trafficking. Ms. Wyler joined CRS as a Presidential Management Fellow in 2007. As part of the fellowship she also worked at the U.S. Department of State's Bureau for International Narcotics and Law Enforcement Affairs. Before joining CRS, Ms. Wyler supported research at the Brookings Institution on transnational security threat issues. Ms. Wyler received an AB from Duke University and an MA from Georgetown University.
