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March 27, 2007

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IJM's BURKHALTER TESTIFIES BEFORE SENATE ON HUMAN TRAFFICKING

Legal tools are in our grasp: Burkhalter stresses need for enforcement of global anti-slavery laws already in existence

WASHINGTON, DC – March 27, 2007 – Expert witnesses testified before Chairman Dick Durbin (D-IL) on Monday, March 26, 2007, at the first U.S. Senate Judiciary Subcommittee Hearing on Human Rights and Law, entitled “Legal Options to Stop Human Trafficking.” Holly Burkhalter, vice president of government relations, testified on behalf of International Justice Mission along with a panel of expert witnesses including Grace Chung Becker, Deputy Assistant Attorney General at the Department of Justice, Katherine Kaufka of National Immigrant Justice Center and Martina Vandenberg of the law firm Jenner & Block.

In her opening remarks, Burkhalter highlighted the 200th anniversary of the abolition of the British slave trade, which fell exactly 200 years ago Sunday. Burkhalter emphasized that the “legal tools are already in our grasp” to stop human rights violations. She emphasized key laws that spoke directly to the crimes of human trafficking and slavery in the United States: the Trafficking Victims Protection Act, the Trade Act and the Millennium Challenge Act. **Read her testimony below.**

In response to statements from Chairman Durbin and the panel, Burkhalter presented three recommendations:

- Congress should closely oversee the implementation of the Trafficking Victims Protection Act (TVPA) with respect to sanctions against recipients of U.S. foreign assistance that fail to meet the legal standards of TVPA.
- Governments should provide statistics and documentation of investigations and prosecutions to quantify crimes of forced labor slavery, child labor and sex trafficking.
- The United States Trade Representative should hold mandatory hearings on countries found to be in violation of the minimum standards of the Trafficking Victims Protection Act. In turn, the TVPA should be amended to include eligibility for duty-free treatment under the Generalized System of Preferences in the forms of American assistance that are conditioned on countries' meeting minimum anti-trafficking standards.

Burkhalter, who prior to joining IJM worked at Human Rights Watch and Physicians for Human Rights, said “TVPA is the most effective human rights law that conditions U.S. foreign assistance because it doesn’t put forth unattainable standards. ...The most difficult and significant work for this Congress is to insist on the execution of the existing law that we have in our hands.”

ENTIRE TESTIMONY BELOW:



Testimony of Holly J. Burkhalter
Vice President, Government Relations
International Justice Mission

On “Legal Options to Stop Human Trafficking”
Senate Judiciary Subcommittee on Human Rights and the Law

March 26, 2007

Thank you for holding this hearing, Chairman Durbin and Senator Coburn, and for inviting me to testify on behalf of International Justice Mission. It is a significant time to be holding a hearing on trafficking and slavery.¹ This year marks the 200th anniversary of the abolition of the British slave trade. On March 25, 1807 – two hundred years ago yesterday – a bill, the *The Slave Trade Act*, received Royal Assent – comparable to being signed into law by the executive branch – in Great Britain. The Act prohibited the traffic in slaves, so that no ship could clear out from any British port after May 1st, 1807, with slaves on board and that no slave should be landed in the Colonies after March 1, 1808.

The enactment culminated the life’s work of British parliamentarian William Wilberforce, who introduced the measure every year for sixteen years. To accomplish this goal Wilberforce and his colleagues had to take on England’s most powerful economic and political interests and abolish an industry that generated extensive private and public revenue and supported tens of thousands of jobs. Wilberforce describes his commitment to the issue: “So enormous, so dreadful, so irremediable did the Trade’s wickedness appear that my own mind was completely made up for Abolition. Let the consequences be what they would, I from this time determined that I would never rest until I had effected its abolition.” It is hard for a modern day human rights activist to imagine a challenge more difficult.

Today, slavery is illegal virtually everywhere. Yet this most durable of crimes against humanity continues. Millions of women, men and children suffer a daily physical reality of forced labor and lives of the bleakest misery. Wilberforce’s work will not be done until, in his words, “we extinguish every trace of this bloody traffic....”

Members of the United States Senate and the House of Representatives in our day have already risen to the challenge of abolishing in fact as well as law the violent, degrading, injurious, unpaid, forced, and coerced conditions of labor at home and abroad. Thanks to the great and good work of Senator Paul Wellstone, Senator Sam Brownback, Representative Chris Smith and others, we have the Trafficking Victims Protection Act. More than a decade earlier, Representative Don Pease and Senator Tom Harkin led a successful effort to explicitly link U.S. trade benefits to beneficiary countries’ abolition of slavery and child labor. The authors of the Millennium Challenge Act, including Senators Lugar and Biden and Representative Tom Lantos conditioned access to large amounts of foreign assistance to meeting a standard of good governance that included an end to corruption – a key factor in the existence of slavery today.

While these and other statutes might be improved by various amendments and excisions, the most difficult and significant work for this Congress is to insist on the execution of existing law that we have in our hands. The statutes named above speak directly to the enduring, contemporary crime of human trafficking and slavery. If supported and enforced, these laws could contribute substantially towards the abolition of these crimes in our lifetime.

¹ In this testimony, IJM uses the words slavery and trafficking to encompass debt bondage, involuntary servitude, commercial sexual exploitation of children, hazardous child labor, as they are defined in the TVPA, PL106-386, Section 103. Additionally, IJM relies upon the Trade Act, 19 U.S.C. Section 2462(b)(2)(G) for its definition of internationally recognized worker rights, including “A prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and a prohibition on the worst forms of child labor.”

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In my testimony today I will focus on three laws, the Trafficking Victims Protection Act, the Trade Act, and the Millennium Challenge Act, and look as well at a non-legislative initiative in the area of child labor.

Trafficking Victims Protection Act: As you know, the TVPA, enacted in 2000 and reauthorized in 2003 and 2005, includes the requirement that the U.S. Government evaluate the performance of governments in the area of trafficking and slavery. Over the past six years, this law has led to the freeing of unknown thousands of women, men, and children from forced prostitution or forced labor slavery. Over the years, U.S. State Department representatives (including officials from the State Department Trafficking in Persons office as well as diplomats serving in our Embassies abroad) have taken up specific issues of prevention, prosecution, and victim relief with many governments. Their good work and the oversight of the Congress has made the TVPA one of the most useful human rights tools the Congress has ever enacted.

An important piece of the law is the annual report requirement. With every passing year the annual report generated by the State Department Trafficking in Persons Office, as well as the State Department Human Rights Report, becomes more sophisticated and credible. We note with satisfaction, for example, that the 2006 report that was released in June, included much more information about forced labor slavery, enhancing a report that was already known for its excellence in reporting on trafficking for commercial sexual exploitation.

We would urge close Congressional oversight about the way in which the law has been implemented with respect to sanctions against recipients of U.S. foreign assistance that fail to meet the legal standard for eliminating trafficking/slavery. The anti-trafficking/anti-slavery conditions contained in the Act are quite precise about what governments must actually do to merit certain forms of U.S. foreign assistance.

I am sure that the Senators and staff are familiar with the Minimum Standards for the Elimination of Trafficking, but it is worth including them here for the written record of this hearing:

Sec. 108 Minimum Standards for the Elimination of Trafficking:

(b) Criteria. In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the

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extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

Despite the fact that the TIP report itself describes conditions among certain countries that clearly do not meet the minimum standard, several among them have not been threatened with Tier III and the loss of foreign assistance that accompanies that status. Countries that the United States does not wish to offend remain on Tier II, despite their visible failure to have met the conditions required to obtain that status.

In IJM's view, governments' provision of data on prosecutions and convictions are the single most important indicator of governments' alacrity in addressing slavery and trafficking. Every effort should be made to encourage governments to provide such data, including by providing them with technical assistance.

Amendments to the TVPA have created a Tier II Watch list, as you know. Governments may be unclear what the status means and what is required for them to do to meet the minimum standards. Indeed, we're confused ourselves. Clarity about what constitutes measurable progress with respect to Tier II Watch status will strengthen local anti-trafficking efforts as well as American diplomatic discourse on the subject.

Trafficking Victims Protection Act and U.S. Contractors: As you know, Mr. Chairman, there were troubling media accounts of forced labor slavery of workers from Nepal and the Philippines who were brought to Iraq by American contractors/subcontractors under false pretenses. These reports describe physical violence, passport theft, and grossly substandard working conditions by actors associated with one of the United States principal contractors in Iraq.

The Department of Defense and the Trafficking Inter-Agency Working Group have issued a number of "zero tolerance" regulations relating to the abuses described above and the TVPA has twice been amended to address the problem. IJM yields to the expertise of others on the panel with regard to the need for additional clarification in law. We would, however, like to associate ourselves with appeals by others in the human rights community for assistance to victims of forced

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labor slavery by American contractors/subcontractors abroad, and for resources to be made available for independent investigation of these crimes that would make possible the criminal prosecution of those responsible in American courts.

I am sure that there is no disagreement on this Committee that the United States' ability to encourage foreign governments' compliance with their own countries' domestic laws against trafficking and slavery is not enhanced by reports of our own inability to prevent abuses by those working abroad under U.S. Government auspices.

U.S. Trade Act: In 1988, Congress enacted labor rights and anti-slavery provisions in the Generalized System of Preferences (GSP) program.² GSP offers duty-free access to American markets for developing countries. This benefit is for many countries of much greater significance than foreign assistance. Accordingly, it can be an especially useful diplomatic tool with countries that are not dependent on foreign aid, and where the threat of sanctions under the TVPA does not offer significant leverage.

Country eligibility for GSP trade benefits is conditioned upon a country's meeting a standard of internationally-recognized worker rights. A country is legally disqualified for this benefit if they do not meet a clearly articulated labor rights standard. Interestingly, the disqualification provision contains many of the same crimes that are articulated in the TVPA's Minimum Standards. Abuses that are addressed in both statutes include child sexual exploitation and forced and bonded labor.

Over the years, human rights and labor rights activists have filed dozens of petitions to the U.S. Trade Representative under this Act, requesting official review of GSP beneficiary countries' worker rights/anti-slavery records. Those of us in the human rights community who filed these petitions could see very clear advances that took place when the USTR took up the petitions for review and held foreign governments to account on specific failings and violations. For example, a petition generated by Human Rights Watch and the International Labor Rights Fund on slavery in the Dominican sugar cane industry resulted in official hearings by the Reagan Administration and serious conversation between U.S. and Dominican officials on such specific matters as the lack of Creole-language labor contracts, and failure to inspect particularly abusive sugar plantations and production facilities. Tangible changes occurred as a result.

To my knowledge, the provision has largely fallen into disuse. I am not aware of outside groups submitting new petitions in recent years, nor am I aware of the USTR itself engaging in investigations or inquiries in the context of its annual GSP review. It is unfortunate that this potentially powerful legal tool to encourage and reward alacrity and accomplishment in eliminating forced labor slavery, child labor, and forced prostitution is seldom invoked.

Recommendation: The worker rights provisions of the GSP and the anti-slavery, anti-trafficking provisions of the TVPA should be invoked simultaneously, so as to increase the effectiveness of each. TVPA could be amended to include in its sanctions regimen eligibility for beneficiary developing country designation under the auspices of the GSP program of the Trade Act. Reciprocally, the Trade Act might be amended to link designation of beneficiary developing countries to actions taken by the TIP office. The USTR and State Department TIP office should collaborate on data collection and diplomatic dialogue.

Millennium Challenge Act: As you know, President Bush announced four years ago an unprecedented program of un-tied budgetary support for countries meeting certain economic and governance standards. Congress has generously supported the act, appropriating billions of dollars over the past several years. The purpose of the MCA is to provide significant assistance to countries that are enacting policies that are thought to be particularly conducive to development. Eligibility criteria include the requirement that beneficiary countries demonstrate a commitment to combat corruption.³ We welcome the inclusion of anti-corruption criteria in the MCA because there is no quality of good governance that has more significance for the abolition of modern day slavery than ending official corruption.

² 19 U.S.C. Section 2462.

³ Millennium Challenge Act of 2003 Section 607(b)(1)(E)

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IJM works with police of competence and good will in each of the thirteen offices where we are located. Indeed, our local staff lawyers, investigators, and social workers have no legal authority to engage in law enforcement, and we do not do so. Our local staff people are only able to assist in establishing perpetrator accountability because local authorities, including police, are eager for justice to be served.

In countries with a significance trafficking problem, however, official complicity is almost invariably a factor in the enslavement of human beings. The malfeasance of local officials undermines local authorities of integrity and purpose, and erodes the achievements that their countrymen and women have secured at high cost.

Official corruption is especially visible in the commercial sex industry. Brothel owners, traffickers, and pimps offer adults and children to the public on a daily, hourly basis. To obtain maximum profits, the product must be visible enough to the public so that it can be purchased repeatedly. If customers can find minors and trafficked, non-consenting adults, then clearly local police can find them, as well. Indeed, local police often have the advantage because they were involved in the trafficking in the first place. In case after case, IJM clients describe how a policeman was involved in some aspect of coercion, transport, or violence against her. In one case in Southeast Asia, for example, a girl who escaped from a brothel told IJM that she saw a large number of minor girls. Her testimony included her description of other minor girls who ran away from the brothel and were brought back by people she said were local police in their car. Thereafter, she reported hearing gunshots, and later saw two bodies wrapped in a carpet when she was ordered to clean up the blood.

It is important to note that police in many countries around the world engage in physical violence, theft, shake-downs, bribes, and protection rackets that not only facilitate the trafficking in children and forced adults, but are a source of constant misery and fear for poor and vulnerable adult women in the commercial sex industry, whether or not they have been trafficked. In some large cities with a thriving sex industry, aspiring local police will pay tens of thousands of dollars to be assigned to the Red Light District, where they will make vastly more money from brothel owners in protection money and pay-offs. Such individuals make a perversion of the rule of law, using it as they do, as a weapon against those who need its protection the most.

Without making excuses for them, one reason why police officers in many places throughout the world are corrupt or engage in crimes is because they receive desperately low wages, and the temptation to accept bribes is especially great for them. Low wages are often the norm, even for those in relatively high level positions, in many police bureaucracies, ensuing that there are many places along the police chain-of-command where traffickers can attempt to exploit police officers' financial vulnerabilities.

International Justice Mission has investigated and assisted in the prosecution of corrupt and abusive local authorities in many of the thirteen countries in which we work. These are among the most difficult and dangerous cases we under-take, and we and the local prosecutors whom we support, are often unsuccessful. When local prosecutors are successful in convicting corrupt or abusive police or other officials, such actions can have a disproportionate impact on the conduct of others on the force.

In this context, I would note that Section 134 of the TVPA provides for assistance to help governments meet the anti-trafficking minimum standards in the law. We at IJM strongly endorse the provision and ask the Congress to do their utmost to enlarge funding in this area, even knowing that the proposed budget for the State Department TIP office has been cut significantly. In many of the cases we have worked on in Africa, Latin America, and Asia, law enforcement officials of good will have simply not received training, much less equipment and vehicles to investigate and apprehend perpetrators, and bring them to trial and conviction.

The good governance conditions of the Millennium Challenge Act (MCA) and dialogue under its auspices between the United States as a donor and potential beneficiary governments offers a rich opportunity to press them on corruption, trafficking, and forced labor slavery. These dialogues and the prospect of very significant foreign assistance should serve as a powerful incentive for governments to take action against trafficking, slavery, and inhumane working conditions. It is vitally important that determinations of progress or back-sliding be based on an objective measurement. This Congress did not

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mean for the program to be simply a reward for political friends. Accordingly, MCA administrators should collect specific data that indicate whether prospective beneficiaries are actually doing something about official participation in trafficking and slavery, as opposed to merely talking about it.

Recommendation: We urge that the MCA require, as a precondition for assistance, that governments provide statistics and documentation on the number, type, and location of investigations, prosecutions, and most especially convictions under local law for the specific crimes of forced labor slavery, child labor, abusive working conditions, and sex trafficking. These indicators are the most important, measurable, and tangible gauge of a government's seriousness about eliminating trafficking. The number of judicial and administrative actions taken against complicit authorities is a vital component of that data.

The Harkin-Engel Child Labor Initiative: In closing, Mr. Chairman and Members of the Committee, I would like to say a word about a non-legislative initiative undertaken by Senator Tom Harkin and Representative Eliot Engel of New York. These child labor abolitionists and their fine staff have invested nearly six years and hundreds of hours of time to create a credible, voluntary industry-wide standard of public certification for the chocolate industry. The protocol has been joined by the industry, nongovernmental organizations, and governments to eliminate child labor from the growing and processing of cocoa.

The effort is an inspiration not only because of the progress that has been made, but because of the progress continues to be made in this industry. It may well provide inspiration to other industries that have had a significant child labor problem. We would be very grateful if the Committee would include the attached document in the record of this hearing.

In closing, I wish to thank the Subcommittee for its attention to the important matter of modern day trafficking and slavery. I welcome your questions.

About International Justice Mission

International Justice Mission is a human rights organization that brings relief to victims of violence, sexual exploitation, slavery and oppression. A multi-national team of law enforcement professionals and legal staff conduct criminal investigations and collect evidence to rescue victims and bring perpetrators to justice. IJM was founded by Gary Haugen who was the Officer in Charge of the U.N. investigation into the Rwandan genocide.

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