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Accountability over Politics: Scrutinizing the Trafficking in Persons Report

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Thank you, Mr. Chairman and Ranking Member Bass, for convening this important hearing and the invitation to testify. You and Congresswoman Bass are critical leaders in the fight against human trafficking, forced labor, and modern slavery. Thanks to your tireless efforts, America remains a global leader in combatting these atrocious crimes.

It's my pleasure to be here today representing Humanity United Action and its partners around the world that combat modern slavery. Humanity United Action is a nonpartisan, nonprofit organization that, along with its affiliated organization Humanity United, is dedicated to bringing new approaches to global problems that have long been considered intractable. Humanity United Action is part of the Omidyar Group, which represents the philanthropic, personal, and professional interests of the Omidyar family.

Mr. Chairman, at any given time, more than 20 million workers are estimated to be trapped in modern slavery. The United States can and should play an important role in leading the global fight against this horrific crime that destroys lives, endangers public health, fuels violence, and weakens global stability.

A decade and a half after the Palermo Protocols and the original Trafficking Victims Protection Act of 2000, almost every country in the world has laws that address human trafficking to varying degrees. The State Department and, in particular, the Department's Office to Monitor and Combat Trafficking in Persons, are due much credit for U.S. government leadership in the fight against human trafficking and modern slavery. A strong TIP office with effective tools is a powerful catalyst for change and holds countries (including the U.S.) accountable for their actions or inaction against human trafficking. One of these tools is the annual Trafficking in Persons Report. The TIP report can be an effective diplomatic lever to pressure countries that are turning a blind eye to trafficking, and to spotlight and encourage best practices worldwide. But this tool is only effective if the State Department ranks countries honestly, according to the facts on the ground and credible evidence of a country's efforts taken during the reporting period, not merely promises to take action and unrelated political concerns.

Whether a foreign government denounces the TIP Report or rejoices in its ranking, the TIP Report can be a key driver for national change. The leverage and impact of the TIP Report is, and remains, that there are consequences of the tier rating system. By failing meet the minimum standards on modern slavery, and by not making concerted efforts to meet those standards, countries risk being labeled one of the world's worst human trafficking offenders, thereby subjecting the country to public shame and the possibility of targeted U.S. sanctions.

Last year, many of us in civil society expressed serious concern with some of the State Department's tier placement decisions, especially the upgrading of Malaysia and Uzbekistan. Because we, and others, believe that these decisions were influenced by foreign policy and economic factors unrelated to each country's performance in combatting human trafficking, we were paying close attention to the 2016 report. I would say the report is a mixed picture, with some real disappointments, although certainly better than last year.

First, the positive steps that we saw this year. By placing Burma and Uzbekistan on Tier 3, we believe that the State Department is starting to remedy some of last year's misguided decisions. As you know, the government of Uzbekistan operates a state-sponsored forced labor program. No state that maintains a government-orchestrated forced labor scheme should be on any tier but Tier 3.

Now is the time for Congress to step in to ensure that in the future all governments and officials at any level that direct trafficking in persons or support forced labor through government policy should automatically be placed on tier 3.

With respect to Burma, we are optimistic that demoting the country to Tier 3 will encourage the government to work harder to address the situation of the Rohingya population—a group particularly vulnerable to trafficking across the Mekong Delta region—take concrete action to end forced labor internally, and eliminate the use of child soldiers in the military.

I also note that the State Department's decision to keep Qatar on Tier 2 Watch List indicates commitment and leadership by the United States to hold Qatar accountable for its slow progress in addressing forced labor within the country. This year's TIP report again highlights that the current sponsorship system allows employers to exert significant control over their employees, who have unilateral power to cancel workers' residence permits, deny workers' ability to change employers or exit the country. Reforms to this system, which will be implemented in December 2016, could reduce migrant workers' vulnerability to forced labor. However, there is concern that these reforms still place significant power in the hands of employers over workers' mobility. The report also highlights that existing labor protections remain weak and favor the employer, and efforts to increase labor inspection have not gone far enough to address the challenge. Domestic workers, who are particularly vulnerable due to their isolation in private residences, remain outside the protection of the labor law. Qatar's position on Tier 2 Watch List for a third year in a row indicates the State Department's recognition that the Qatari government needs to take further steps to implement effective reforms and protections to address systematic failures contributing to migrant workers' vulnerabilities to forced labor, including broad reforms of the country's sponsorship system and extending legal protections to particularly vulnerable groups, such as domestic workers. This points to another effective way to use the TIP report to push for real change that will actually impact workers on the ground.

Unfortunately, this year's report was not without troubling flaws. Let me start with Malaysia.

The State Department's upgrade of that country to the Tier 2 Watch List in 2015 was completely unjustified and remains so today. More than a year after Malaysian police unearthed the remains of more than 130 human trafficking victims buried in mass graves, not a single Malaysian has been held accountable. This is particularly of concern given that the mass graves incident occurred fully within this year's reporting period. Moreover, recent news reports suggest that top government officials have been involved in a human trafficking scheme involving the country's immigration system. Similarly, no criminal charges have been brought. A country that has taken little to no meaningful steps to address the widespread use of forced labor in the agriculture,

construction, electronics, and textiles sectors deserves a Tier 3 placement. For example, even though convictions went up slightly from 4 last year to 7 this year, that number is still below the number of convictions in 2014, when Malaysia was downgraded to Tier 3. Moreover, the report itself acknowledges that there were fewer trafficking investigations and prosecutions than last year, and its pilot program on allowing victims to move more freely and work inside Malaysia seems to be sputtering to a halt. To the extent that the State Department believed that an upgrade to Tier 2 Watch List would encourage Malaysia to increase concrete actions, this was a severe disappointment.

Upgrading Thailand to the Tier 2 Watch List was also unwarranted, and points to the perils that the Malaysia upgrade created. Though the Thai government has taken steps to improve some of its laws to address international concerns around human trafficking and forced labor, those reforms, while a step in the right direction, have not resulted in any meaningful improvement on the ground. Implementation and enforcement of these new laws remains a major weakness. We continue to see reports of egregious labor abuse in the seafood industry and understand that the new system of inspections put in place by the government, which appear designed to address Illegal, Unreported and Unregulated fishing practices, are failing to uncover forced labor and human trafficking. As a recent report by Humanity United and the Freedom Fund regarding the new legislation indicated:

[I]mplementation has been inconsistent, both in ports and at sea. Inspection systems are underfunded, plagued by corruption, and constrained by inadequate vessel monitoring capabilities. More importantly, inspectors have failed to identify victims of forced labour, as they lack the resources and incentives to check crews and interview workers.

Identifying lower level labor violations is not enough to justify this year's upgrade.

What's more, we have seen very troubling developments in the investigation into the discovery of mass graves of forced laborers in Thailand. The head of the investigation had to flee for his life and seek asylum in Australia after receiving threats from Thai police and military officials complicit in forced labor in the country. This suggests that high level Thai government officials were involved. The prosecution of certain corrupt Thai officials, while welcome, may be more about masking senior culprits as opposed to making real efforts to find out what happened in this critical and horrendous case.

Mr. Chairman, I think we need to consider that the upgrade of Malaysia last year led directly to the upgrade of Thailand this year. It may be that it was simply impossible to upgrade Malaysia and keep it on the Tier 2 Watch List this year, and at the same time not upgrade Thailand. Thailand's efforts were plainly insufficient, but they were greater than Malaysia's. Having decided to upgrade Malaysia and keep it on the Tier 2 Watch List may have made it much more difficult to keep Thailand on Tier 3.

Unfortunately, the decision to upgrade Thailand and maintain Malaysia on the Watch List may deepen the perception that the Department applies the TIP Report's standards unevenly and will likely further weaken the usefulness of the TIP Report as a diplomatic tool to impact efforts to combat modern slavery globally. I believe the State Department, particularly the US embassies in Bangkok and Kuala Lumpur and the Department's East Asia and Pacific Bureau, must increase its efforts to see real implementation of Thailand and Malaysia's legal framework.

The Department's lack of focus on actual impact on the ground in sensitive countries has reached the point where Congress should step in. One way Congress can address this is to require that any

country that receives an upgrade shows concrete actions towards the implementation of their laws, and demonstrate impact of these actions on the ground. Developing a program to help survivors that does not work, or establishing labor inspections that do not identify trafficking victims, is simply not the impact the United States should expect. Similarly, commitments to take action should not be a basis for having a country remain on Tier 2 Watch List. Countries have had 16 years since the creation of the first TIP Report to pass the laws required to meet the minimum standards for trafficking in persons. It is time to start showing how they are delivering on those promises and actually implementing laws that prevent the crime, protect survivors, and hold perpetrators to account. We have taken vague commitments and the promises to implement new laws in good faith too often... and it is the victims of trafficking who pay the price for such misplaced trust.

Mr. Chairman, Ranking Member Bass, the TIP Report remains a critical element of the global fight against human trafficking. But we still have work to do. Congress has given the Administration good tools. It is critical that we work together so these tools are not left to rust in the toolbox, especially after last year's report. We in civil society stand ready to deepen the conversation and work with you to ensure that together as partners, we are on the path toward eradicating human trafficking and modern-day slavery and advancing the cause of human freedom.

Thank you, Mr. Chairman, and Ranking Member Bass for all the work you have done on this critical issue and I look forward to your questions.