

REFUGEE LAW AND COMPARATIVE ASPECTS OF SOCIAL JUSTICE  
TABLE OF CONTENTS FOR COURSE MATERIALS

Unit 14: Relief for victims of trafficking in persons

Victims Stories.....	1
The Fact of Modern Slavery.....	6
Labor Recruitment in Global Markets.....	8
Modern Slavery as a Tactic in Armed Conflict.....	11
A Guide to the Tiers.....	13
California Supply Chain Transparency Act.....	15
Excerpt from General Electric Sustainability webpage.....	19
Selected List of websites related to trafficking in persons.....	21
Powerpoint on relief for victims of human trafficking .....	22



# U.S. DEPARTMENT OF STATE

DIPLOMACY IN ACTION

## Victims' Stories

### OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS

#### Trafficking in Persons Report 2013 Report

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The victims' testimonies included in this Report are meant to be illustrative only and do not reflect all forms of trafficking that occur. These stories could take place anywhere in the world. They illustrate the many forms of trafficking and the wide variety of places in which they occur. Many of the victims' names have been changed in this Report. Most uncaptioned photographs are not images of confirmed trafficking victims. Still, they illustrate the myriad forms of exploitation that comprise trafficking and the variety of situations in which trafficking victims are found.

#### **United States**

Mauri was only 16 years old when she was prostituted on the streets of Honolulu, Hawaii. For her, there was no escape; her pimp threatened to kill her family if she did not go out on the street night after night to make him money. If Mauri tried to use some of the money to buy food, she was severely beaten. Mauri finally escaped when she was picked up by law enforcement. She is now in a rehabilitation program and has reunited with her parents, but her road to recovery has been long and difficult. She suffers from terrible flashbacks and severe depression, and has even attempted suicide. Mauri says she was lucky to get out alive: "The longer you stay the less hope you have."

#### **El Salvador – Mexico**

Liliana was unemployed and unable to find a job in El Salvador when she decided to leave El Salvador in search of work. A family friend promised to take Liliana to the United States, but instead took her to Mexico. When Liliana discovered that she had been tricked, she ran away and ended up in an area where other migrants like herself waited to go back to El Salvador. One day a group of men invited her and the others to join their organization, the Zetas, a notorious drug cartel. They said they would give her work and feed her. When she joined them, she was forced into prostitution, tricked for the second time. Liliana was drugged the first day and woke up with a "Z" tattoo, branded for life. She was forced to ingest drugs and was never allowed to travel unaccompanied. After three months, her aunt in El Salvador paid for her freedom and she was freed. With Liliana's help, her traffickers were brought to court but were acquitted. Liliana will not testify again.

## **Burma – Thailand**

Kyi and Mya, both 16 years old, were promised work as domestic helpers in Thailand. With the help of five different local brokers, they traveled from Burma walking all day and night through a forest, crossing a river in a small boat, and spending a few nights in various homes along the way. Once they arrived, they were placed in a meat-processing factory and forced to work from 4 a.m. to 11 p.m. Kyi and Maya complained to the factory manager of the hard work and long working hours, and told him this was not what they were told they would be doing in Thailand. The factory manager told the girls they owed him for their “traveling expenses” from Burma to Thailand and could not leave until it was paid off. He continued to subtract their “debt” from what little income they received. Eventually the girls were able to contact one of their relatives in Burma who then contacted an NGO; the organization arranged their safe removal from the factory. They are now in a Thai government shelter in Bangkok, receiving counseling while waiting for repatriation.

## **Uganda – Kenya**

Latulo was desperate to find a job to pay for his university school tuition. While in town one day, Latulo met a man who said he needed people to work for him at a factory in Kenya. Hoping this job would help pay for his tuition, Latulo agreed to accompany the man to Kenya and met with him the very next day to travel. Other men and women also met them to travel to Kenya. Eventually they arrived at their final destination in Kenya at a huge house. The man, who had earlier been kind to them all, suddenly became rude and ordered them to give him their identification and phones. They were shown a video of a man who had been suffocated with a bag because he attempted to escape. They were all told that they would not be working at a factory, but rather would be working as sex slaves. Every room had a camera and they were recorded while they were forced to have sex with strangers. After a month and half of captivity, Latulo was allowed to accompany his captors into town. When they stopped to have lunch, he ran away. Law enforcement officials in Kenya opened an investigation and Latulo was able to return to Uganda and received medical attention.

## **Thailand**

Tola was seven years old when she was lured away from her parents by a couple who owned the field her family worked. While enslaved, she was forced to take care of cats and dogs for the couple’s pet grooming shop. For five years, Tola’s parents hoped to see her again, never knowing how she disappeared or where she might be. They never imagined that Tola was close, enduring torture and abuse. If Tola did not do her job properly, she was kicked, slapped, and beaten with a broom. Sometimes the couple locked her in a cage and poured boiling hot water over her. On one occasion, the traffickers cut off her ear lobe with a pair of scissors. One day, she climbed a concrete fence of the house while chasing a cat and realized she was free. A neighbor called the police and she was taken to a nearby shelter where her mother identified her. The couple was arrested and charged with various charges, including torture, detaining a person against their will, enslavement, and kidnapping. The couple posted bail and escaped. As for Tola, injuries on her arms affected her muscles; she can no longer move her left arm. For now, she is safe with her family and is beginning her mental, emotional, and physical journey to recovery.

## **Zambia – South Africa**

Chewazi was offered a better life in South Africa working for an organization that ran a Boy Scouts group. Excited about the job, he left Zimbabwe for South Africa. Instead of receiving the job he was promised, he was forced to work every day on a farm for a piece of bread and some water. For six months, Chewazi was transported between farms in Zambia and South Africa, enduring physical and other abuses, dreaming of the day he would escape. When Chewazi and a friend finally did escape, they made their way to Cape Town; a security guard on the street found them and helped them to safety. Through the Department of Social Development, they were taken to an NGO, which helped provide support and services to them both. Chewazi suffers from post-traumatic stress, but decided to stay in South Africa, hopeful that he will still find that better life that led him away from home.

## **Philippines – Qatar**

Dalisay signed a contract with an employment agency in the Philippines to work as a housemaid in Qatar for \$400 a month, plus room and board. But when she arrived, her employer said he would pay her only \$250 a month. She knew her family back in the Philippines depended on her earnings and felt she had no choice but to stay to help her family. She quickly realized that her low pay was not the only unexpected condition of her work situation. She was fed one meal a day, leftovers from the family's lunch: "If no leftovers, I didn't eat." She worked seven days a week. When she was finished working in her employers' house, she was forced to clean his mother-in-law's house, and then his sister's without any additional pay. After eight months, Dalisay tried to leave but her boss just laughed and said "You can't quit." As a domestic worker not covered under the labor law, Dalisay was subject only to the restrictive *kafala*, or sponsorship system, meaning that she could not resign without her employer's permission, change jobs, leave the country, get a driver's license, or open a checking account without the permission of her employer. She also learned that her employer could withdraw sponsorship at any time and send her back home, so she fled and joined 56 other women who sought shelter at the Philippines Overseas Labor Office.

## **India**

Naveen was 14 years old when a placement agency found him a job as a domestic worker for a couple with two children. For the two years he served the family, Naveen was confined to the house, never allowed to leave. He was beaten regularly for trivial matters and, on several occasions, branded with hot tongs. Unable to endure his situation anymore, he ran away. Naveen is living in a children's home and receiving counseling. The couple, meanwhile, have been charged and are out on bail awaiting a court date.

## **United States**

For over 20 years, the owners and staff of a turkey-processing plant subjected 32 men with intellectual disabilities to severe verbal and physical abuse. The company housed the workers in a "bunkhouse" with inadequate heating, dirty mattresses, and a roof in such disrepair that buckets were put out to catch rainwater; the infestation of insects was so serious the men swatted

cockroaches away as they ate. Although the men were as productive as other workers, the company paid them only \$15 a week (41 cents an hour) for labor that legally should have been compensated at \$11-12 an hour. The employers hit, kicked, and generally subjected the men to abuse, forcing some of the men to carry heavy weights as punishment and in at least one case handcuffed a man to a bed. Supervisors dismissed complaints of injuries or pain, denied the men recreation, cellphones, and health care. The U.S. government filed an abuse and discrimination case against the company for damages under the Americans with Disabilities Act. During the trial, the attorney representing the men said: "The evidence is these men were treated like property...these men are people. They are individuals." A jury awarded the men a total of approximately \$3,000,000, the largest jury verdict in the history of U.S. Equal Employment Opportunity Commission.

### **West Africa – Egypt**

Sussan was only 10 when her father sold her to an Egyptian family to serve as a domestic worker. Despite her protests, Sussan accompanied the family back to Egypt. Once there, she was forced to work excessive hours, never received compensation, and her passport was confiscated. She was locked in the house where she was physically and emotionally abused daily. During her six years of enslavement, she was not allowed to speak to her family; when her relatives tried to reach her by phone, Sussan's employer would hang up the phone. One day, she summoned the courage to escape. She was arrested shortly after her escape for immigration violations, but with the cooperation of an international NGO and Egyptian authorities, she was released from detention and recognized as a trafficking victim. While staying at a government shelter in Egypt, the international NGO arranged for Sussan's return to her country in West Africa. Once there, UNICEF and the child protection police arranged for her to stay in a designated shelter for trafficking victims while her family was located. After three weeks, she was reunited with her family and given the chance to enroll in vocational training as part of her reintegration process. Sussan looks to brighter days now and hopes to open an Egyptian restaurant in her town.

### **Uzbekistan – Russia**

Ayaully and Bibihul were among 12 migrants from Kazakhstan and Uzbekistan, including three children, who were held captive for 10 years in a supermarket after being promised employment in Russia. In Russia, they were beaten and forced to work without pay by the couple who owned the supermarket. Their passports were confiscated by their traffickers who said they needed the documents to officially register them as workers with authorities. The passports were never returned. Side by side with 10 others, Ayaully and Bibihul lifted heavy goods in and out of the shop every day. The couple used threats of violence, beatings, and sexual violence to demand subservience. Based on a tip from Ayaully's mother, two Russian civic activists rescued Ayaully and Bibihul as well the other workers found at the supermarket. While a criminal investigation was opened it was closed shortly thereafter. Prosecutors claimed there was no evidence of a crime. Ayaully and Bibihul are now facing deportation for residing in Russia illegally.

## **Nigeria – France**

Since her parents passed away, Ogochukwu had been struggling to care for her younger brothers. An acquaintance offered to take her abroad and find her a job. Ogochukwu was ecstatic; she accepted his offer, believing that she would now be able to help her family in Nigeria. Before setting off to Europe, she was taken to a juju priest to seal the deal with local magic. During the ceremony, she vowed she would obey her boss in Europe and pay back her travel expenses. The "spell" called for death if she failed to fulfill her oath. It was not too long before she realized that something was wrong, she had joined about 30 other women in an open-back truck headed toward the Sahara Desert. They finally reached their destination and were met by a "madam" in France who told her she owed travel expenses for her passage to Europe and would be forced to pay it back by selling her body. She worked the streets as many as 20 hours a day and was forced to pay for her own food and clothes as well as for rent. Despite the juju oath, she was encouraged by a man she befriended to go to the police. Once at the police station, she explained her situation. Her traffickers were arrested but so was she, for being in France illegally. Before her deportation, workers at the detention center gave her money out of good will for her safe return to Nigeria. She is now building her life again and says, "I am very much stronger than juju."

# THE FACE OF MODERN SLAVERY

## *Sex Trafficking*

When an adult engages in a commercial sex act, such as prostitution, as the result of force, threats of force, fraud, coercion or any combination of such means, that person is a victim of trafficking. Under such circumstances, perpetrators involved in recruiting, harboring, enticing, transporting, providing, obtaining, patronizing, soliciting, or maintaining a person for that purpose are guilty of sex trafficking of an adult. Sex trafficking also may occur through a specific form of coercion whereby individuals are compelled to continue in prostitution through the use of unlawful "debt," purportedly incurred through their transportation, recruitment, or even their "sale"—which exploiters insist they must pay off before they can be free. Even if an adult initially consents to participate in prostitution it is irrelevant: if an adult, after consenting, is subsequently held in service through psychological manipulation or physical force, he or she is a trafficking victim and should receive benefits outlined in the Palermo Protocol and applicable domestic laws.

## *Child Sex Trafficking*

When a child (under 18 years of age) is recruited, enticed, harbored, transported, provided, obtained, patronized, solicited, or maintained to perform a commercial sex act, proving force, fraud, or coercion is not necessary for the offense to be prosecuted as human trafficking. There are no exceptions to this rule: no cultural or socioeconomic rationalizations alter the fact that children who are exploited in prostitution are trafficking victims. The use of children in commercial sex is prohibited under U.S. law and by statute in most countries around the world. Sex trafficking has devastating consequences for children, including long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and even death.

## *Forced Labor*

Forced labor, sometimes also referred to as labor trafficking, encompasses the range of activities—recruiting, harboring, transporting, providing, or obtaining—involved when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel someone to work. Once a person's labor is exploited by such means, the person's prior consent to work for an employer is legally irrelevant: the employer is a trafficker and the employee a trafficking victim. Migrants are particularly vulnerable to this form of human trafficking, but individuals also may be forced into labor in their own countries. Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually abused or exploited as well.

## *Bonded Labor or Debt Bondage*

One form of coercion used by traffickers in both sex trafficking and forced labor is the imposition of a bond or debt. Some workers inherit debt; for example, in South Asia it is estimated that there are millions of trafficking victims working to pay off their ancestors' debts. Others fall victim to traffickers or recruiters who unlawfully exploit an initial debt assumed, wittingly or unwittingly, as a term of employment. Traffickers, labor agencies, recruiters, and employers in both the country of origin and the destination country can contribute

to debt bondage by charging workers recruitment fees and exorbitant interest rates, making it difficult, if not impossible, to pay off the debt. Such circumstances may occur in the context of employment-based temporary work programs in which a worker's legal status in the destination country is tied to the employer so workers fear seeking redress.

## *Domestic Servitude*

Involuntary domestic servitude is a form of human trafficking found in distinct circumstances—work in a private residence—that create unique vulnerabilities for victims. It is a crime in which a domestic worker is not free to leave his or her employment and is abused and underpaid, if paid at all. Many domestic workers do not receive the basic benefits and protections commonly extended to other groups of workers—things as simple as a day off. Moreover, their ability to move freely is often limited, and employment in private homes increases their isolation and vulnerability. Labor officials generally do not have the authority to inspect employment conditions in private homes. Domestic workers, especially women, confront various forms of abuse, harassment, and exploitation, including sexual and gender-based violence. These issues, taken together, may be symptoms of a situation of domestic servitude. When the employer of a domestic worker has diplomatic status and enjoys immunity from civil and/or criminal jurisdiction, the vulnerability to domestic servitude is enhanced.

## *Forced Child Labor*

Although children may legally engage in certain forms of work, children can also be found in slavery or slavery-like situations. Some indicators of forced labor of a child include situations in which the child appears to be in the custody of a non-family member who requires the child to perform work that financially benefits someone outside the child's family and does not offer the child the option of leaving, such as forced begging. Anti-trafficking responses should supplement, not replace, traditional actions against child labor, such as remediation and education. When children are enslaved, their exploiters should not escape criminal punishment—something that occurs when governments use administrative responses to address cases of forced child labor.

## *Unlawful Recruitment and Use of Child Soldiers*

Child soldiering is a manifestation of human trafficking when it involves the unlawful recruitment or use of children—through force, fraud, or coercion—by armed forces as combatants or other forms of labor. Perpetrators may be government armed forces, paramilitary organizations, or rebel groups. Many children are forcibly abducted to be used as combatants. Others are made to work as porters, cooks, guards, servants, messengers, or spies. Young girls may be forced to "marry" or be raped by commanders and male combatants. Both male and female child soldiers are often sexually abused or exploited by armed groups and such children are subject to the same types of devastating physical and psychological consequences associated with child sex trafficking.



## LABOR RECRUITMENT IN GLOBAL MARKETS

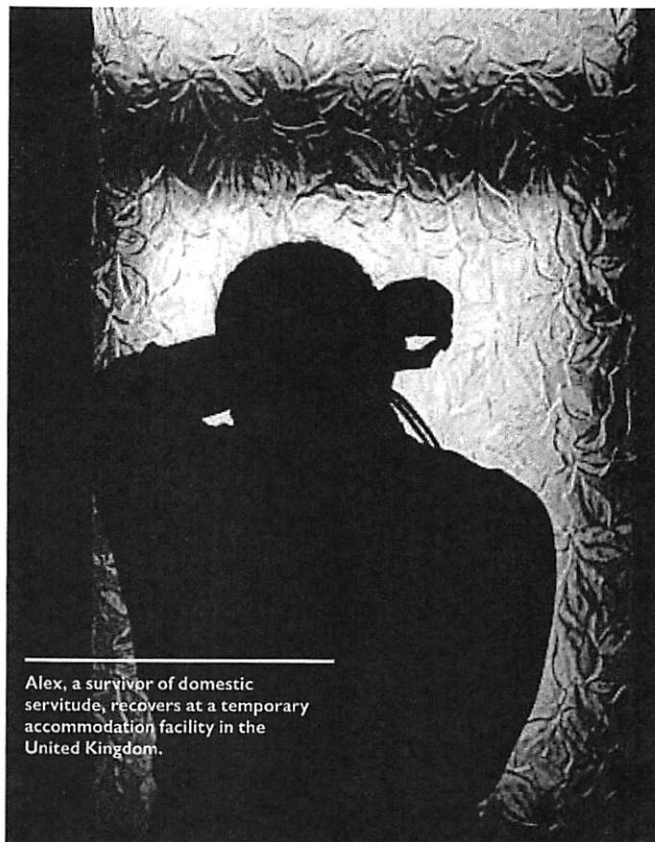
Practices that lead to human trafficking often occur in the recruitment process before employment begins, whether through misrepresentation of contract terms, the imposition of recruitment fees, the confiscation of identity documents, or a combination of these. The involvement of intermediaries (for example, labor brokers, middlemen, employment agencies, or recruiters) creates additional layers in the supply chain and positions these individuals to either assist or exploit.

Labor brokers function as a bridge between worker and employer and can provide helpful guidance and assistance in matching workers with jobs and arranging visas and documentation, medical checkups, pre-departure orientation, training, and travel. In many cases, labor brokers are both legitimate and important to connect readily available laborers to employers in need of a workforce. A worker's dependence on intermediaries, however, can also increase their risk of being subjected to trafficking. Recruiters sometimes promise individuals a high-paying job, good benefits, and reasonable working conditions to induce them into taking employment. Thereafter, when the nature or location of the job is not as promised, workers may find themselves in situations they cannot leave, either because they are held against their will or because they are indebted to their recruiters.

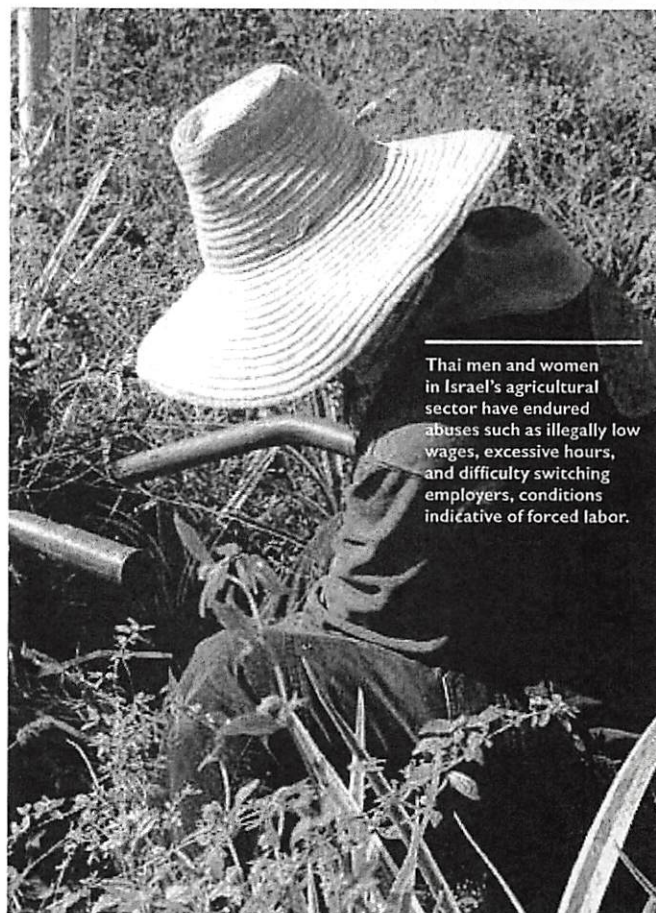
It is possible to identify areas of increased vulnerability in supply chains, including fraudulent practices in the recruitment process. Indicators of such recruitment typically include deception about job terms, living conditions, location, legal status, and wages, or more forceful methods such as document confiscation, debt bondage, isolation, or violence. Fraudulent recruitment practices can lead to exploitation at the place of employment, as an unsuspecting worker may endure excessive hours, poor living conditions, and wage theft. When workers are put or held in such situations through the use of force, fraud, or coercion, it constitutes human trafficking.

### DEBT

Debt manipulation is one of the main methods by which workers can be exploited. Workers often borrow large sums of money to cover the costs of recruitment or "job placement" fees that can run anywhere from several hundred to tens of thousands of dollars. Workers may borrow money from family and friends, or mortgage their homes or ancestral lands believing they can easily repay their debts upon employment. These costs, which may also be combined with excessive or arbitrary interest rates, mean workers spend a period of time—sometimes years—working for very little or no wages to repay what they owe. For example, one report tells

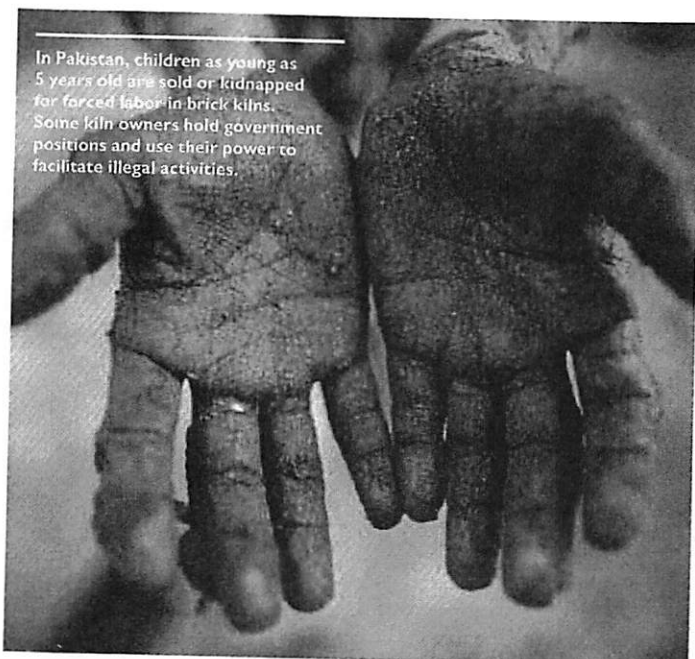


Alex, a survivor of domestic servitude, recovers at a temporary accommodation facility in the United Kingdom.

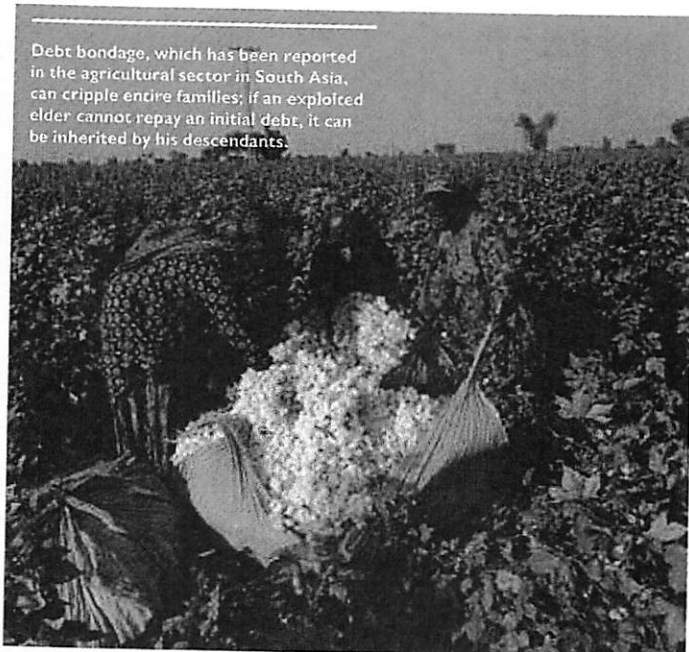


Thai men and women in Israel's agricultural sector have endured abuses such as illegally low wages, excessive hours, and difficulty switching employers, conditions indicative of forced labor.





In Pakistan, children as young as 5 years old are sold or kidnapped for forced labor in brick kilns. Some kiln owners hold government positions and use their power to facilitate illegal activities.



Debt bondage, which has been reported in the agricultural sector in South Asia, can cripple entire families; if an exploited elder cannot repay an initial debt, it can be inherited by his descendants.

Although human trafficking is found in many trades, the risk is more pronounced in industries that rely upon low-skilled or unskilled labor. This includes jobs that are dirty, dangerous, and difficult—those that are typically low-paying and undervalued by society and are often filled by socially marginalized groups including migrants, people with disabilities, or minorities.

Risks may also be higher in industries of a seasonal nature or where the turn-around time for production is extremely short. In these industries, the demand for labor increases drastically at the time of harvest or when a new product—be it a smartphone or a roadway—must be manufactured within a strict timeframe. For example, East and South Asian migrant workers in the garment sector are vulnerable to forced labor and labor exploitation, including long working hours and forced overtime, especially during periods of high consumer demand.

The urgency to hire employees can also result in a dependence on labor recruiters and their agents, which in turn creates layers of separation between the employer and the worker. This disconnect means that employers can be unaware of bad practices related to hiring within their operations, leaving workers exposed to exploitation.

Finally, in industries where fierce competition leads to constant downward pressure on prices, some employers respond by taking cost-cutting measures to survive commercially, from reducing wages or ignoring safety protocols, to holding workers in compelled service through debt bondage or the retention of identity documents.

**“A**s we grow, we have to do it responsibly, and stay true to our values and uphold basic standards and rule of law. We have to keep striving to protect the rights of our workers; to make sure that our supply chains are sourced responsibly.”

- President Barack Obama

## PAYING TO WORK: THE HIGH COST OF RECRUITMENT FEES

Each year, millions of workers turn to or are approached by labor intermediaries—recruiters, agents, or brokers—who facilitate the movement of labor to satisfy global demand. As globalization increasingly drives markets toward temporary or seasonal contract work that depends on labor mobility and flexibility, the importance of the recruitment industry grows.

Labor intermediaries function as a bridge between workers and employers and, at their best, can provide helpful guidance and assist in matching workers with jobs and in arranging visas and documentation, medical checkups, pre-departure orientation, training, and travel. These intermediaries can range from licensed and legitimate to informal and unregulated, and increasingly, to criminal.

The International Labor Organization recognizes the important function of recruitment in a globalized world, but cautions against its use in ways that harm workers:

*Recruitment should respond to established labor market needs, and not serve as a means to displace or diminish an existing workforce, to lower labor standards, wages, or working conditions, or to otherwise undermine decent work.*

Around the world, workers and advocates report that unscrupulous recruiters often use misleading and fraudulent practices to take advantage of workers, especially those who do not have access to information about job opportunities and their rights. In many cases, workers also lack access to remedies when they experience exploitation.

Dishonest recruiters employ a variety of practices that ultimately undermine decent working conditions: they mislead workers about the conditions and nature of a job, engage in contract switching, and confiscate or destroy workers' identity documents to prevent them from leaving. Another common practice—charging workers fees to access job opportunities or cover the costs of recruitment—is a dominant model of recruitment in much of the world that contributes to the facilitation of crimes such as corruption and bribery and puts workers at risk of exploitation, including human trafficking.

### WORKER-PAID RECRUITMENT FEES

In many cases, low-wage workers borrow large sums of money to cover the cost of recruitment fees, which can amount to anywhere from several hundreds to tens of thousands of dollars. Misled by promises of high wages, workers may borrow money from family or predatory lenders, or mortgage their homes or land, believing that they can easily repay their debts upon employment. These fees, which may also be combined with unfair and excessive interest rates, mean workers spend a period of time—sometimes years—working exclusively to repay what they owe.

When workers are charged recruitment fees, they become vulnerable to a variety of abuses, including debt bondage, a form of human trafficking in which individuals are forced to give up most or all of their salary until their debts are repaid. Individuals who carry debts that must be repaid with their wages are reluctant to complain to an employer or law enforcement, or leave the job. Workers may endure abusive conditions for fear of losing their job and defaulting on their debts. In many cases, unpaid debt results in threats to family members or loss of family property, adding further pressure for workers to stay in exploitative conditions.

### ENFORCING GOVERNMENT REGULATION AND PRIVATE SECTOR POLICIES

Currently, the loosely defined "recruitment industry" is ripe for creating conditions of exploitation. Existing laws often fail to assign any responsibility to recruitment agents to protect workers, and governments do not actively monitor recruiters or require remediation when recruiters use fraudulent practices to exploit workers. In those countries where recruitment fees are prohibited, governments often do not robustly enforce such prohibitions.

In many cases, it can be difficult to prove that recruiters or recruitment agencies were aware of the exploitative circumstances in which the worker eventually ended up—and, even if they do not knowingly contribute to a human trafficking scheme, their actions can significantly contribute to the vulnerability of the worker. Because holding recruiters criminally accountable is challenging, the enforcement of regulations on abusive recruitment practices is all the more important.

For many businesses, the use of recruiters is a necessity and therefore should be treated as any operating cost, but using recruitment methods that ultimately pass these costs on to workers is both unfair and unsustainable. All employers, including those who contract with governments, should bear the cost and responsibility of using recruiters and should support and work closely with licensed recruitment agents to prohibit unscrupulous recruitment practices. Employers should be willing to pay higher costs for agencies that effectively implement measures to prevent exploitation and governments should promote policies that protect workers, enforce labor regulations, and prosecute criminals who knowingly exploit the vulnerability of workers.



# MODERN SLAVERY AS A TACTIC IN ARMED CONFLICTS

Armed groups, violent extremists, and militias fuel conflicts that devastate communities and weaken social and governmental structures, leaving adults and children defenseless and vulnerable. Women and children in armed conflicts are particularly vulnerable to multiple abuses, including those involving human trafficking and sexual and gender-based violence.

The use of modern slavery as a tactic in the armed conflicts in Iraq and Syria is particularly alarming. The Islamic State of Iraq and the Levant (ISIL), as well as other armed groups and militias, continue to intimidate populations and devastate communities through unconscionable violence, fear, and oppression. ISIL has made the targeting of women and children, particularly from Yazidi and other minority groups, a hallmark of its campaign of atrocities. In the past year, ISIL has abducted, systematically raped, and abused thousands of women and children, some as young as 8 years of age. Many of the horrific human rights abuses that ISIL has engaged in also amount to human trafficking. Women and children are sold and enslaved, distributed to ISIL fighters as spoils of war, forced into marriage and domestic servitude, or subjected to horrific physical and sexual abuse. ISIL has established "markets" where women and children are sold with price tags attached and has published a list of rules on how to treat female slaves once captured.

In a recent UN report, women and girls who managed to escape from ISIL recounted how they were treated. A young woman shared how she was taken to a school and given to an ISIL emir as his slave, and in another case, 150 unmarried girls and women were reportedly transported to Syria from Iraq to be given to ISIL fighters as rewards. Some isolated reports indicate ISIL has begun transporting captive women and girls to buyers in the Gulf. Men and boys are also vulnerable to trafficking, as entire families are reportedly abducted and forced to work in agriculture, such as on sheep and poultry farms in Iraq. Additionally, there is growing concern that some ISIL recruits from Central Asian countries may be vulnerable to trafficking after arriving in Syria. Others, deceived by recruiters promising jobs in Turkey, are later taken to Syria and forced by extremist groups to fight, work, or endure sexual servitude.

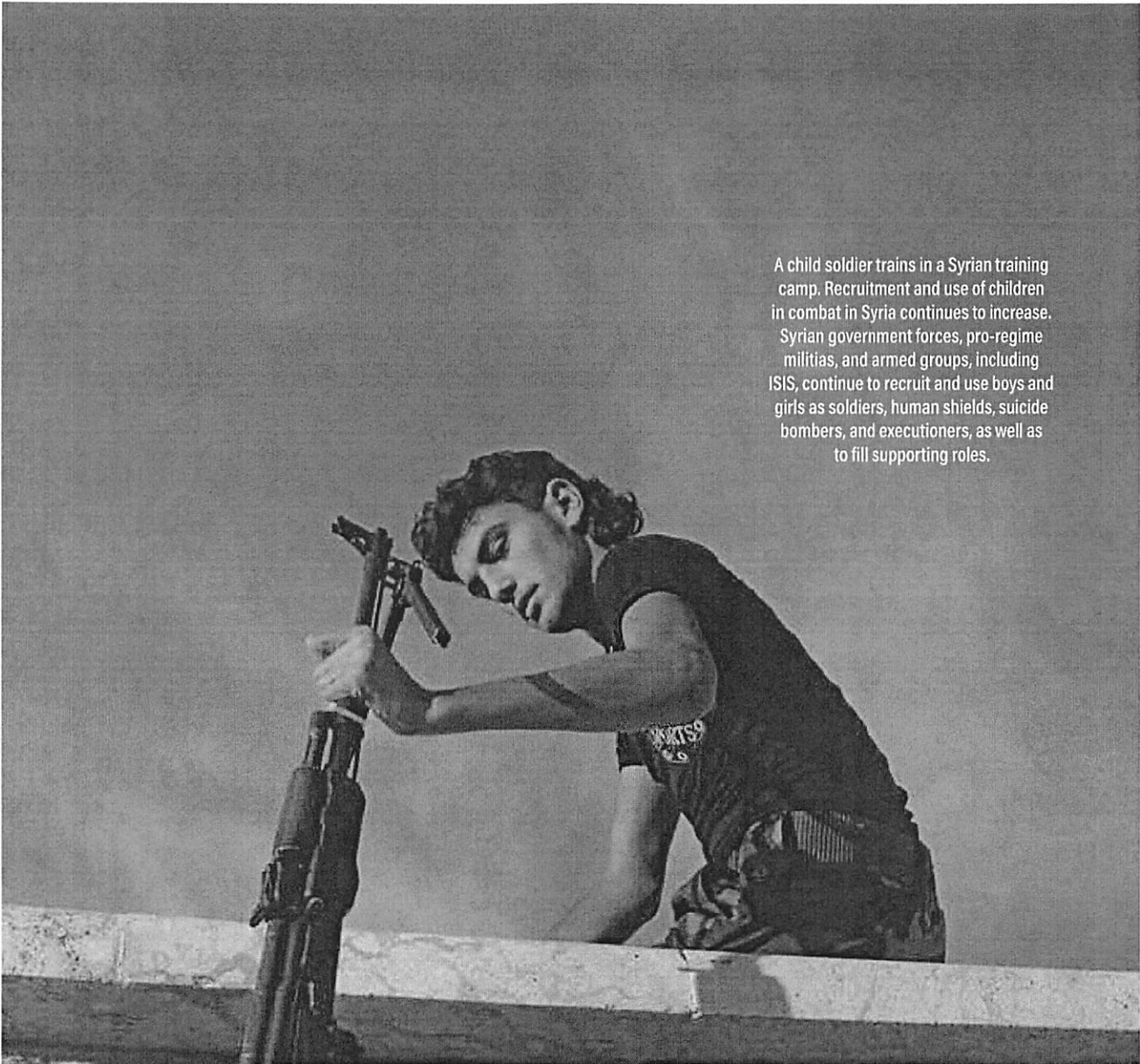
ISIL continues to actively and unlawfully recruit, including by abduction, train, and use children—some as young as 12 years old—as soldiers in Iraq and Syria. These children are forced to undergo military training to join the front lines of combat, while some are deployed as human shields or made to patrol ISIL checkpoints. In training camps, children nicknamed "Cubs of the Caliphate" are trained to use weapons, make bombs, and deploy as suicide bombers.

Whole communities in Iraq and Syria continue to be displaced internally and in neighboring countries, as increasing numbers of adults and children flee the horrors of war, including those perpetrated by ISIL and other armed groups. The UN estimates 2.8 million individuals in Iraq have been displaced and nearly four million Syrians have fled the country, mostly to Turkey, Jordan, Lebanon, and Iraq. This displacement is compounded by the use of human trafficking as a tactic by ISIL in the armed conflict.

The use of modern slavery in armed conflicts is not unique to ISIL, but is also evident in the case of other armed groups that are forcibly recruiting children and training them to be soldiers or otherwise exploiting them. Boko Haram has forcibly recruited and used child soldiers as young as 12 years old, and abducted women and girls in the northern region of Nigeria, some of whom it later subjected to domestic servitude, other forms of forced labor, and sexual servitude through forced marriages to its militants. In Somalia, al-Shabaab has recruited and used children in armed conflict. The Lord's Resistance Army, a Ugandan rebel group that operates in eastern regions of the Central African Republic, enslaves boys and girls for use as cooks, porters, concubines, and combatants. The use of human trafficking in the midst of armed conflicts further amplifies the unspeakable devastation communities and families experience and perpetuates intimidation and fear among oppressed communities.

## IRAQ

The Islamic State of Iraq and the Levant (ISIL) overran Tariq's town and kidnapped his daughter, along with the wives and daughters of many others. After a week of silence, Tariq finally received a phone call—his daughter had gained access to a phone shared by several of the girls imprisoned, and she had called to tell him she was going to be sold that day for \$10. In the past year, ISIL has abducted and exploited thousands of women and children, sold them in markets and sexually enslaved them, forced them into marriages, or subjected them to forced labor. Family members like Tariq are often left helpless, with knowledge of their daughters' or wives' whereabouts but unable to prevent the horrendous abuse of their loved ones.



A child soldier trains in a Syrian training camp. Recruitment and use of children in combat in Syria continues to increase. Syrian government forces, pro-regime militias, and armed groups, including ISIS, continue to recruit and use boys and girls as soldiers, human shields, suicide bombers, and executioners, as well as to fill supporting roles.

## NIGERIA

Boko Haram attacked Abdul's village and kidnapped him when he was 14 years old. They trained him to handle assault weapons such as machine guns, anti-aircraft guns, and rocket-propelled grenades. The group kept him and forced him to carry out various operations during which he was forced to kill 18 civilians. They also forced Abdul to gather intelligence on government forces, where he risked being recognized and prosecuted as a Boko Haram member. After being forced to fight for three years, Abdul decided to flee while on a spying mission, but was recognized as Boko Haram and arrested when he entered an internally displaced persons camp to look for his parents.

*"I was forced literally to kill my best friend as an initiation process into the army. That's something I will never forget, and I still fight with every single day."*

- Michel Chikwanine, former child soldier, DRC



# CHILD SOLDIERS PREVENTION ACT LIST

The Child Soldiers Prevention Act of 2008 (CSPA) was signed into law on December 23, 2008 (Title IV of Pub. L. 110-457), and took effect on June 21, 2009. The CSPA requires publication in the annual *Trafficking in Persons Report* of a list of foreign governments identified during the previous year as having governmental armed forces or government-supported armed groups that recruit and use child soldiers, as defined in the act. These determinations cover the reporting period beginning April 1, 2016, and ending March 31, 2017.

For the purpose of the CSPA, and generally consistent with the provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the term “child soldier” means:

- (i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces;
- (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces;
- (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or
- (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state.

The term “child soldier” includes any person described in clauses (ii), (iii), or (iv) who is serving in any capacity, including in a support role, such as a “cook, porter, messenger, medic, guard, or sex slave.”

Governments identified on the list are subject to restrictions, in the following fiscal year, on certain security assistance and commercial licensing of military equipment. The CSPA, as amended, prohibits assistance to governments that are identified in the list under the following authorities: International Military Education and Training, Foreign Military Financing, Excess Defense Articles, and Peacekeeping Operations, with exceptions for some programs undertaken pursuant to the Peacekeeping Operations authority. The CSPA also prohibits the issuance of licenses for direct commercial sales of military equipment to such governments. Beginning October 1, 2017, and effective throughout Fiscal Year 2018, these restrictions will apply to the listed countries, absent a presidential national interest waiver, applicable exception, or reinstatement of assistance pursuant to the terms of the CSPA. The determination to include a government in the CSPA list is informed by a range of sources, including first-hand observation by U.S. government personnel and research and credible reporting from various UN entities, international organizations, local and international NGOs, and international media outlets.

The 2017 CSPA List includes governments in the following countries:

1. Democratic Republic of Congo
2. Mali
3. Nigeria
4. Somalia
5. South Sudan
6. Sudan
7. Syria
8. Yemen

Former anti-Balaka child soldiers wait to be released as part of a UN-negotiated deal in the Central African Republic. Some governments and government-supported militias in African, Asian, and Middle Eastern countries force children to serve as front-line soldiers or servants, and to guard checkpoints.



## A Guide to the Tiers

### *Tier 1*

The governments of countries that fully meet the TVPA's minimum standards for the elimination of trafficking.

### *Tier 2*

The governments of countries that do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards.

### *Tier 2 Watch List*

The government of countries that do not fully meet the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards, and for which:

- a. the *absolute number* of victims of severe forms of trafficking is very significant or is significantly increasing;
- b. there is a failure to provide evidence of *increasing efforts* to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or
- c. the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take *additional steps over the next year*.

### *Tier 3*

The governments of countries that do not fully meet the TVPA's minimum standards and are not making significant efforts to do so.

The TVPA lists additional factors to determine whether a country should be on Tier 2 (or Tier 2 Watch List) versus Tier 3: first, the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking; second, the extent to which the country's government does not meet the TVPA's minimum standards and, in particular, the extent to which officials or government employees have been complicit in severe forms of trafficking; and third, reasonable measures that the government would need to undertake to be in compliance with the minimum standards in light of the government's resources and capabilities to address and eliminate severe forms of trafficking in persons.

A 2008 amendment to the TVPA provides that any country that has been ranked Tier 2 Watch List for two consecutive years and that would otherwise be ranked Tier 2 Watch List for the next year will instead be ranked Tier 3 in that third year. This automatic downgrade provision came into effect for the first time in the 2013 Report. The Secretary of State is authorized to waive the automatic



## UKRAINE | RUSSIA

Sofia traveled from her small town in central Ukraine to Moscow with a friend on the promise of a job working in a market. When they arrived, the man who had offered them the job confiscated their passports and drove them to an old factory surrounded by barbed wire outside the city. Guards carrying guns ensured they could not escape. For almost two months Sofia worked 18-hour days, bottling, packing, and loading vodka from the plant's illegal stills. Sofia was finally able to escape when police raided the factory.

# TIER PLACEMENTS

## TIER 1

ARMENIA	DENMARK	KOREA, SOUTH	ST. MAARTEN
AUSTRALIA	FINLAND	LITHUANIA	SLOVAKIA
AUSTRIA	FRANCE	LUXEMBOURG	SLOVENIA
THE BAHAMAS	GEORGIA	NETHERLANDS	SPAIN
BELGIUM	GERMANY	NEW ZEALAND	SWEDEN
CANADA	GUYANA	NORWAY	SWITZERLAND
CHILE	IRELAND	PHILIPPINES	TAIWAN
COLOMBIA	ISRAEL	POLAND	UNITED KINGDOM
CZECHIA	ITALY	PORTUGAL	UNITED STATES OF AMERICA

## TIER 2

AFGHANISTAN	ECUADOR	LESOTHO	ST. VINCENT & THE GRENADINES
ALBANIA	EGYPT	MACEDONIA	SEYCHELLES
ANGOLA	EL SALVADOR	MALAWI	SIERRA LEONE
ARGENTINA	ESTONIA	MALAYSIA	SINGAPORE
ARUBA	ETHIOPIA	MALDIVES	SOLOMON ISLANDS
AZERBAIJAN	FUJI	MALTA	SOUTH AFRICA
BAHRAIN	GREECE	MAURITIUS	SRI LANKA
BARBADOS	HONDURAS	MEXICO	TAJIKISTAN
BHUTAN	ICELAND	MICRONESIA	TANZANIA
BOSNIA & HERZEGOVINA	INDIA	MONGOLIA	TIMOR-LESTE
BOTSWANA	INDONESIA	MOROCCO	TOGO
BRAZIL	JAMAICA	NAMIBIA	TONGA
BRUNEI	JAPAN	NEPAL	TRINIDAD & TOBAGO
CAMBODIA	JORDAN	PALAU	TUNISIA
COSTA RICA	KAZAKHSTAN	PANAMA	TURKEY
COTE D'IVOIRE	KENYA	PARAGUAY	UGANDA
CROATIA	KOSOVO	PERU	UKRAINE
CURAÇAO	KYRGYZ REPUBLIC	QATAR	UNITED ARAB EMIRATES
CYPRUS	LATVIA	ROMANIA	URUGUAY
DOMINICAN REPUBLIC	LEBANON	ST. LUCIA	VIETNAM

## TIER 2 WATCH LIST

ALGERIA	DJIBOUTI	MACAU	RWANDA
ANTIGUA & BARBUDA	GABON	MADAGASCAR	SAUDI ARABIA
BANGLADESH	THE GAMBIA	MARSHALL ISLANDS	SENEGAL
BENIN	GHANA	MOLDOVA	SERBIA
BOLIVIA	GUATEMALA	MONTENEGRO	SURINAME
BULGARIA	HAITI	MOZAMBIQUE	SWAZILAND
BURKINA FASO	HONG KONG	NICARAGUA	THAILAND
BURMA	HUNGARY	NIGER	ZAMBIA
CABO VERDE	IRAQ	NIGERIA	ZIMBABWE
CAMEROON	KUWAIT	OMAN	
CHAD	LAOS	PAKISTAN	
CUBA	LIBERIA	PAPUA NEW GUINEA	

## TIER 3

BELARUS	CONGO, DEMOCRATIC REP. OF	IRAN	SUDAN
BELIZE	CONGO, REPUBLIC OF	KOREA, NORTH	SYRIA
BURUNDI	EQUATORIAL GUINEA	MALI	TURKMENISTAN
CENTRAL AFRICAN REPUBLIC	ERITREA	MAURITANIA	UZBEKISTAN
CHINA (PRC)	GUINEA	RUSSIA	VENEZUELA
COMOROS	GUINEA-BISSAU	SOUTH SUDAN	

## SPECIAL CASE

LIBYA	SOMALIA	YEMEN
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May 2011

## California Supply Chain Transparency Law May Affect Non-California Businesses

Thomas W. White  
Ayo Badejo<sup>1</sup>

On September 30, 2010, California Senate Bill 657, the California Transparency in Supply Chains Act of 2010 (the “Act”), was signed into law and codified in Section 1714.43 of the California Civil Code and Section 19547.5 of the California Revenue and Taxation Code. The Act requires retail and manufacturing companies to disclose what efforts they have taken to eliminate slavery and human trafficking from their supply chains. As explained in the policy statement in the beginning of the Act, the law aims to “provide consumers with information regarding [companies’] efforts to eradicate slavery and human trafficking from their supply chains” and to “educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains.”<sup>2</sup> The Act becomes effective on January 1, 2012.

While the law has garnered significant attention in California, it has been less noticed outside that state. However, the law’s expansive jurisdictional provisions will make it applicable to many companies that are based outside California. Companies that fall within the scope of the Act need to be aware of its requirements and consider how and to what extent they can provide the disclosures that it envisions.

### *Businesses Subject to the Act*

The Act will require any company that (1) is a retail seller or manufacturer; (2) does business in California; and (3) has annual worldwide gross receipts that exceed \$100,000,000, to disclose its efforts to eradicate slavery and human trafficking from the company’s direct supply chain for tangible goods offered for sale.<sup>3</sup> The Act, referencing the California Revenue and Taxation Code, defines the terms used in (1) - (3) as follows:

***Retail Seller*** – means a business entity with retail trade as its principal business activity code, as reported on the entity’s tax return.

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<sup>2</sup> California Senate Bill 657 Section 2(j).

<sup>3</sup> California Civil Code Section 1714.43.



Manufacturer – means a business entity with manufacturing as its principal business activity code, as reported on the entity's tax return.

Doing Business in California<sup>4</sup> – an entity is deemed to be doing business in California if:

1. it is organized or commercially domiciled in California;
2. sales in California for the applicable tax year exceed the lesser of \$500,000 or 25 percent of the company's total sales;
3. the real property and the tangible personal property of the company in California exceeds the lesser of \$50,000 or 25 percent of the company's total real property and tangible property; or
4. the amount paid in California by the company for compensation exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the company.

Gross Receipts<sup>5</sup> – means gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part.

All retail sellers and manufacturers that do business in California, as set forth in Section 23101 of the California Revenue and Taxation Code, and have annual worldwide gross receipts that exceed \$100,000,000 fall within the scope of the Act's disclosure requirements and should respond accordingly.

Many large retail sellers and manufacturers that are organized or domiciled outside of California are likely to be affected by the Act, even if the activities and operations that such retail sellers and manufacturers perform in California are relatively small. The Act was intended to only target the state's largest retailers and manufacturers who, based on information provided by California's tax authority to the Act's author, account for the majority of the income and cost of goods sold in California (over 87%).<sup>6</sup> Despite this intention, the Act does not provide an exemption for large companies with relatively few California contacts.

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<sup>4</sup> Section 23101 of the California Revenue and Taxation Code.

<sup>5</sup> Section 25120 of the California Revenue and Taxation Code.

<sup>6</sup> California State Assembly Committee on Judiciary, Analysis of Senate Bill No. 657, June 29, 2010, p. 10.

Companies that do business in California should note that annual gross receipts are measured globally, under the Act. The requirement that such receipts exceed \$100,000,000 is intended to serve as a “small business exemption” for those companies that lack the ability to exert substantial economic influence on their suppliers.<sup>7</sup> This exemption does not, and was not intended to, release larger companies from for the Act’s disclosure requirements based on economic activity in California.

#### *Disclosure Requirements of the Act*

Each Company that is required to comply with the Act must, at a minimum, disclose whether, and to what extent, the company:

1. engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery, and whether the verification was conducted by a third party;
2. conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains, and whether the audits were independent and unannounced;
3. requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
4. maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and
5. provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The required disclosures must be made available on the company’s website with a conspicuous link to the disclosure placed on the company’s homepage. Companies that do not have websites must provide written copies of the disclosure within 30 days of receiving a written request for the disclosures from a consumer. The California Attorney General is empowered to enforce compliance with the Act. The exclusive remedy available to the California Attorney

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<sup>7</sup> California State Assembly Committee on Judiciary, Analysis of Senate Bill No. 657, June 29, 2010, p. 9.

General for violations of the Act is an action for injunctive relief. The Act does not create a private right of action.<sup>8</sup>

### *Conclusion*

The Act is a disclosure law and does not impose any substantive regulation on supply chain activities. Nor, unlike the “conflict minerals” provisions of the Dodd-Frank regulatory reform law,<sup>9</sup> does it impose any affirmative obligations on companies to perform diligence regarding the existence of slavery or human trafficking in their supply chains. Nonetheless, as a matter of corporate social responsibility as well as public image, companies may wish to consider whether it is appropriate to adopt policies or procedures to mitigate the risk that slavery or human trafficking exist in their supply chains.

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<sup>8</sup> California Civil Code Section 1714.43.

<sup>9</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 1502 (2010). This provision requires U.S. public reporting companies to make disclosures regarding whether their products contain certain minerals the production of which is supporting groups engaged in human rights abuses in the Democratic Republic of Congo and surrounding regions.



GE Sustainability

# Supply Chain Supplier Expectations

GE's Supplier Expectations are incorporated into GE's *Supplier Integrity Guide* and our supplier contracts.

GE expects its suppliers to treat workers fairly, respect freedom of association, prohibit discrimination and harassment, provide a safe and healthy working environment, and protect environmental quality. More specifically, our suppliers must:

- Comply with laws and regulations protecting the environment, continuously improve their resource efficiency, and not adversely affect the local community
- Provide workers with a safe and healthy workplace
- Employ workers above the applicable minimum age requirement or the age of 16, whichever is higher
- Comply with laws and regulations governing wages, hours, days of service, and overtime payment for workers



- Not utilize forced, prison or indentured labor, or subject workers to any form of compulsion, coercion or human trafficking
- Allow their workers to choose freely whether or not to organize or join associations for the purpose of collective bargaining, as provided by local law
- Prohibit physical, sexual or psychological harassment or coercion
- Assure that workers are hired, paid and otherwise subject to terms and conditions of employment based on their ability to do the job, not on their personal characteristics such as race, national origin, sex, religion, ethnicity, disability, maternity, age and other characteristics protected by local law. (This does not bar compliance with affirmative preferences that may be required by local law.)
- Maintain and enforce a Company policy requiring adherence to ethical business practices, including a prohibition on bribery of government officials
- Respect the intellectual property of others
- Adopt policies and establish systems to procure tantalum, tin, tungsten and gold from sources that have been verified as conflict-free, and provide supporting data on their supply chains for tantalum, tin, tungsten and/or gold to GE when requested, on a platform to be designated by GE
- Maintain security measures consistent with international standards for the protection of their operations and facilities against exploitation by criminal or terrorist individuals and organizations
- Expect their suppliers to conform to similar standards

A supplier's failure to correct any assessment findings inconsistent with the policies above within designated time frames results in termination of business. Supplier employee concerns or supplier concerns with GE employees' conduct can be anonymously reported to GE's Ombudsperson lines or through other processes that result in investigations and follow-up.

View our supply chain-related performance goals and metrics.

20

### **Selected internet sites on trafficking in persons**

List of governmental, international, and non-governmental agencies working to combat trafficking in persons:

<http://www.ojp.usdoj.gov/ovc/publications/infores/pdftxt/TraffickingVideoResourceGuide.pdf>

Department of State's Office to Monitor and Combat trafficking in Persons  
<http://www.state.gov/g/tip/>

State Department's Annual Trafficking in Persons Reports  
<http://www.state.gov/g/tip/rls/tiprpt/index.htm>

Department of Labor's list of goods produced by child labor or forced labor  
<http://www.dol.gov/ilab/programs/ocft/PDF/2009TVPRA.pdf>

Department of Justice, Office of Overseas Prosecutorial Development's work to increase capacity for prosecuting trafficking in persons:  
<http://www.justice.gov/criminal/opdat/acheive/traffic-n-persons.html>

DHHS, Administration for Families and Children, Trafficking in Persons, the Campaign to Rescue and Restore Victims of Human Trafficking  
<http://www.acf.hhs.gov/trafficking/resources/index.html>

U.S. Department of Justice trafficking in persons page  
[http://www.justice.gov/archive/olp/human\\_trafficking.htm](http://www.justice.gov/archive/olp/human_trafficking.htm)

## Relief for victims of human trafficking

Refugee Law  
2018 Prof. Abriel

## What is Trafficking in Persons?

- The use of coercion, deception or force for the purpose of placing men, women, or children in slavery or in slavery-like conditions.
- E.g., forced labor, domestic servitude, debt bondage, and forced commercial sexual exploitation.

## Some statistics on human trafficking

- Exact figures are impossible to acquire, but educated estimates are:
- Between 600,000 – 800,000 people trafficked across international borders annually.
- Larger number of people trafficked w/in countries.
- Between 14,500 – 17,500 trafficked into the United States
- About 70% are female.
- About 50% are children.
- 3<sup>rd</sup> largest criminal enterprise worldwide.

## What are the causes of Human Trafficking?

- Poverty
- The attraction of a perceived higher standard of living elsewhere
- Weak social and economic structures
- A lack of employment opportunities
- Organized crime

## What are the causes of Human Trafficking?

- Vulnerability of women and children
- Political instability
- Armed conflict
- Environmental disasters
- Cultural traditions (e.g., traditional slavery).

## What are the causes of Human Trafficking?

- On the “demand” side:
- The sex industry (e.g., sex tourism and child pornography);
- Growing demand for exploitable labor for a global market (i.e., cheap, vulnerable, and illegal labor).

### Identifying trafficking victims – common industries

- sex workers
- migrant workers
- factory workers
- domestic workers
- household employees of diplomats.

### Culturally and linguistically appropriate services needed

- Protection against traffickers
- Assistance in certification by ORR
- Interpretation
- Basic needs – shelter, food, clothing
- Medical and dental care
- Mental health care and counseling

- Civil legal services
- Assistance in working with law enforcement
- Representation in immigration proceedings
- Life skills – language and job training
- Safety planning and protection from renewed victimization

### Human Trafficking vs. Human Smuggling

- Smuggling – procurement or transport for profit of a person for illegal entry into a country.
- But smuggling can become trafficking

### Human Trafficking vs. Human Smuggling

- Human Trafficking – unlike smuggling involves (1) fraud, force, or coercion AND (2) involuntary servitude, commercial sex act, etc.
- Trafficking victims either never consented or their consent was negated by the coercive, deceptive or abusive actions of the traffickers.
- Trafficking occurs regardless of whether person is moved internally or across a border.

### Key U.S. govt. agencies working to combat human trafficking

- Department of Justice – FBI and Criminal Section of Civil Rights Division
- Department of State – Office to Monitor and Combat Trafficking in Persons
- Department of Labor – Wage and Hour Division of Employment Standards Admin.
- Dept. of Health and Human Services – Office of Refugee Resettlement
- Dept. of Homeland Security – ICE, CIS, CBP
- Agency for Int'l. Devlmt.
- Interagency Task Force on Trafficking in Persons, Senior Policy Operating Group



### Sources of law – relief for trafficking victims

- Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, to the UN Convention on Transnational Organized Crime.
- Trafficking Victims Protection Act of 2000, amended and/or reauthorized in 2003, 2006, 2008, 2013.

### Relief for victims of trafficking in U.S. law

- Criminal prosecution
- Civil remedies – not an exhaustive list
  - Private cause of action against trafficker under TVPA, 22 U.S.C. § 7103
  - Implied right of action under Thirteenth Amdmt.
  - Alien Tort Claims Act
  - RICO
  - State intentional tort and negligence actions
  - Fair Labor Standards Act (wage and hour claims)
  - Migrant and Seasonal Agricultural Worker Protection Act
- Immigration relief

### Principal means of immigration relief for human trafficking victims

- Continued presence
- T nonimmigrant visas

### Continued Presence

- Temporary authorized stay in U.S.
  - Employment authorization
  - Same benefits available for refugees
- BUT**
- Does not lead to permanent status
  - Valid only as long as Attorney General determines necessary.
  - Does NOT preclude application for T visa.

### HOW IT WORKS

- Federal law enforcement agency (LEA) can request continuous presence.
- Requests must be submitted to Office of International Affairs/Parole/Humanitarian Affairs in Washington, D.C.
- State and local agencies may contact criminal section of civil rights division of U.S. Department of Justice.

### Benefits of the T visa for victims of human trafficking

- Nonimmigrant status in U.S.
- Employment authorization
- Family members may obtain nonimmigrant status as derivatives
- Possibility of adjusting status to LPR
- Same public benefits as refugees.

### T visa requirement 1

Applicant must be or have been a victim of a severe form of trafficking in persons, defined as:

- Trafficking in sex (commercial sex act induced by force, fraud, or coercion, or victim under 18 years old) OR
- Trafficking in labor (recruitment, harboring, transportation, provision, or obtaining of person through force, fraud or coercion, for purpose of subjecting to involuntary servitude, peonage, debt bondage, or slavery).

### Other T visa requirements

2. Applicant either is under 18 or has complied with any LEA reasonable request for assistance in the investigation or prosecution of acts of trafficking;
3. Applicant physically present in the U.S., Am. Samoa, N. Mariana Islands due to trafficking; &
4. Applicant would suffer extreme hardship involving unusual and severe harm if remove.

Plus:

- Applicant has not engaged in trafficking and
- Applicant must be admissible.

### Applicants under 18

- Need not establish compliance with LEA reasonable requests for assistance and
- Victims forced to perform commercial sex act while under 18 need not show force, fraud, or coercion.
- But must still demonstrate that s/he (1) is a victim of a severe form of trafficking in persons, and (2) faces extreme hardship involving unusual and severe harm if removed.

First reqmt: applicant victim of severe form of human trafficking

- LEA endorsement on Form I-914; OR
- DHS arranged for applicant's continued presence; OR
- Sufficient credible secondary evidence.

### Law enforcement endorsements

- Preamble to regs says CIS strongly encourages LEA, but other types of evidence ("secondary evidence") may be submitted instead, with explanation of attempts to obtain LEA.
- After Trafficking Victims Protection Reauthorization Act of 2004, LEA may be done by federal, state, or local law enforcement authority, thus overriding regs on this point.
- Until regs or further guidance on state/local LEA, treated as secondary evidence.
- If LEA endorsement used, done on Form I-914 Supp. B.

### Secondary evidence must include

- Original statement by applicant;
- Credible evidence of victimization *and* cooperation (describing what applicant has done to report crime to LEA);
- Statement indicating whether records of time and place of crime are available.
- The secondary evidence must include a statement or evidence describing good faith efforts to get LEA endorsement.

## 2d reqmt – complying with reasonable requests from LEA

- The reasonableness of a request for assistance depends on the totality of the circumstances, taking in account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (mental and/or physical), and age and maturity. CIS, not LEA, decides whether reasonable or not.

## VAWA 2005 amendments

- After VAWA 2005, offenses for which acts of trafficking are at least one central reason for commission of the offense will support a T visa.
- Where victim is unable to comply with requests for assistance because of psychological or physical trauma, request is deemed unreasonable.
- No requirement of prosecution. Responding and cooperating with requests for evidence and information satisfies requirement.

## Initiating the process

- For T visa, applicants over 18 must have had some contact with an LEA in order to receive any requests for assistance.
- Before contacting LEA, (1) analyze case to determine whether it is a trafficking case and (2) if it is a trafficking case, advise client fully re law enforcement involvement and requirement of cooperation. It is client's decision whether or not to proceed.

## Reqmt 3: physical presence on account of trafficking

- Applicant recently liberated from traffickers
- Applicant subjected to trafficking in past and continued presence in U.S. is directly related to the original trafficking.
- If victim escaped from traffickers before LEA became involved with case, then must demonstrate that applicant did not have a clear chance to leave U.S. in interim. Examples: traffickers took travel docs; trauma, injury, lack of resources, etc.

## Where victim departed U.S. after trafficking

- If applicant voluntarily departed U.S. or was removed from U.S. *after* the act of severe form of trafficking, then government will not deem applicant present on account of trafficking UNLESS applicant's re-entry into U.S. was a result of continued victimization or an incident of new victimization.

## Rqmt. 4: extreme hardship involving unusual and severe harm

- CIS will consider:
- Applicant's age and circumstances;
  - Applicant's serious physical or mental illness and availability of medical or psychological attention in foreign country;
  - The physical and psychological consequences of the trafficking activity;
  - The impact on applicant of loss of access to U.S. courts and criminal justice system, for ex., for protection of the applicant and criminal and civil redress for the acts of trafficking
  - The reasonable expectation that laws, social practices, or customs in the applicant's country would penalize the applicant severely for having been the victim of trafficking;
  - The likelihood of re-victimization and the ability and willingness of foreign authorities to protect the applicant;
  - The likelihood of harm to applicant by trafficker or others on trafficker's behalf; and
  - Civil unrest or armed conflict in applicant's country that are likely to affect applicant's safety.

### Waivers of inadmissibility grounds for T non-immigrants

- Public charge ground does not apply to T applicants.
- INA § 212(a)(9)(B) unlawful presence ground does not apply if demonstrate that trafficking was at least one central reason for the alien's unlawful presence (New in VAWA 2005).
- CIS may waive the medical grounds if in the national interest
- In unforeseen emergencies, CIS may waive the ground of lack of proper immigration documents.

### More on inadmissibility grounds

- Where inadmissibility caused by the victimization, CIS may also waive all other inadmissibility grounds, except for the security and related, international child abduction, and renunciation of citizenship to avoid taxation grounds
- Waiver filed on Form I-192. Fee is \$250 (may apply for fee waiver).
- INA § 212(d)(13).

### Evidentiary Standard

- Applicant for T visa can submit *any credible evidence relevant* to the essential elements of the T nonimmigrant status.
- But primary evidence (official documents) is strongest.

### What to expect after filing application for T visa

- Applicant receives notice for fingerprint appointment at Application Support Center
- CIS then determines whether application is bona fide and if so, sends bona fide notice.
- The bona fide determination:
  - Establishes eligibility for ORR certification for public benefits
  - Automatically stays execution of exclusion, deportation, or removal order.

### Application is bona-fide if:

- Complete and properly filed
- Contains LEA endorsement or credible secondary evidence
- Includes completed fingerprint and background checks
- Presents prima facie evidence to show eligibility for T nonimmigrant status, including admissibility
- Does not indicate fraud.

### Next events:

- VSC may issue Request for Evidence (RFE) or Notice of Intent to Deny (NOID). Very important to respond to these; otherwise application may be denied. Send responses by certified mail.
- VSC may issue notice of need for application to waive inadmissibility grounds
- Grant or denial.
  - Notice of denial to Applicant, LEA, ORR
  - Upon final denial, benefits granted as a result of a bona fide application will be revoked.
- Denial may be appealed to CIS Administrative Appeals Unit.



### Applicants in removal proceedings or with final order

- Inform ICE that applicant intends to apply for T nonimmigrant status.
- Upon ICE agreement or IJ or BIA's initiative, proceedings may be administratively closed to allow person to pursue T nonimmigrant status with CIS.
- If T status denied, ICE may move to reopen removal proceedings.
- Source: 8 CFR § 214.11(d)(8)

### FILING DEADLINE

- If victimization occurred prior to 10/28/00
- Must file within one year of 1/31/2002
- Unless child, who can apply within later of one year after 21<sup>st</sup> birthday or 1/31/02
- Imposed by regs, advocates say no statutory basis.
- No filing deadline if victimization occurred on or after 10/28/00.

### Annual Limit

- Annual limit: 5,000 T visas.
- Limit applies only to T-1 visas and not to the T-2 visas issued to family members.
- Waiting list if cap exceeded

### Expiration of T nonimmigrant status

- Per CIS regs, T nonimm. status expires 3 years after date of approval; not renewable.
- But changes in VAWA 2005: Maximum T status of 4 years, and may be extended if a federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the victim's presence is necessary to assist in the investigation or prosecution.

### Adjustment from T to LPR

- After T visa, 3 yrs. physical presence in the US OR (new in VAWA 2005) a continuous period during the investigation or prosecution of acts of trafficking, where the AG deems the investigation or prosecution complete.
- Single 90 day or aggregate 180 day absence breaks physical presence.
- Good moral character during that time.
- Compliance with any reasl. law enforcement request for assistance OR would suffer extreme hardship involving unusual and severe harm if removed from US; and
- Applicant admissible, but same waivers available as for T nonimmigrant status.
- Yearly limit of 5,000 adjustments; count principals only.

### Visas for trafficking victim's family

- Statute allows visas for:
  - Victims 21 and older - spouse and children
  - Victims under 21 - spouse, children, unmarried siblings under 18, and parents.
- Called "derivative beneficiaries" or "derivatives"
- VAWA 2005 repealed requirement that issuance of T visa to derivative be necessary to avoid extreme hardship to principal T visa holder or derivative.

### Protection from “aging out”

- Generally, “child” = unmarried and under age 21, so child who turns 21 is no longer eligible for benefits which “child” would derive from principal.
- But for T visa derivatives - as long as unmarried child derivative was under 21 on date principal filed T application and turns 21 while application is pending, then child will not age out.
- In addition, derivative parents of principal applicant remain eligible where child turns 21 while application is pending.

### Criteria for minors’ eligibility for public benefits

- Individual must be determined to be victim of severe form of trafficking
- Individual has not attained 18 years of age

#### Minor DOES NOT NEED to:

- Be willing to assist in investigation and prosecution of trafficking case
- Have either a *bona fide* T visa application or approved T visa
- Have been granted ‘continued presence’

### ORR Certification Process

- Receive fax from DHS documenting *bona fide* T visa application, approved T visa, or continued presence
- ORR contacts DOJ victim/witness coordinator for “request for victim certification” letter
- ORR coordinates benefits with ORR trafficking grantee
- Victim contacted by NGO/legal advocate and benefits and services options explained
- Victim chooses best option and ORR issues certification letter

### Federal Benefits and Services for Certified Victims

- Federal and state mainstream public assistance benefits include:
  - Temporary Assistance for Needy Families
  - Medicaid
  - Supplemental Security Income (SSI)
  - Food Stamps

### Benefits for Minors

- URM Program establishes legal responsibility to ensure that unaccompanied child victims receive a full range of assistance, care and services
- Legal authority designated to act in place of child’s unavailable parent(s)
- Reunification of minors with their parents or other appropriate adult relatives encouraged