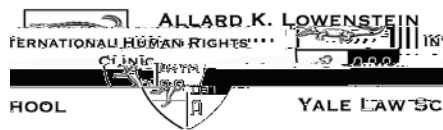
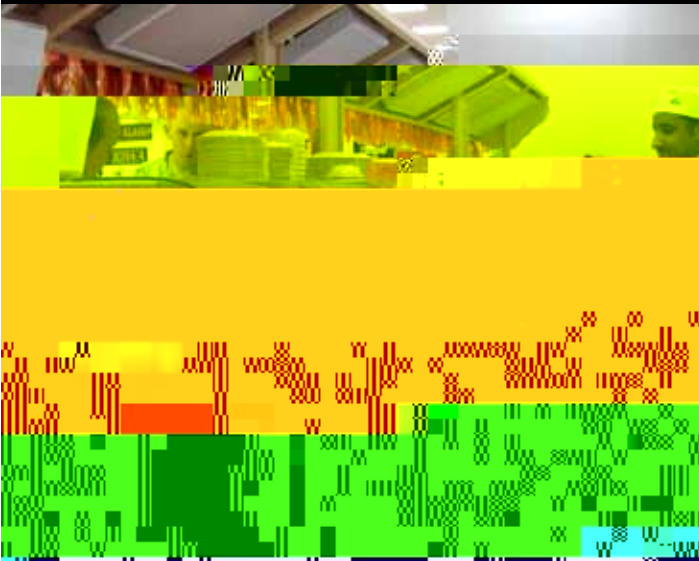


VICTIMS OF COMPLACENCY:

The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors



VICTIMS OF COMPLACENCY

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1,000 SOUTH ASIAN WORKERS STAGED PROTESTS ON THE
OUTSKIRTS OF BAGHDAD AFTER A GOVERNMENT
SUBCONTRACTOR CONFINED THEM TO A WINDOWLESS
WAREHOUSE WITHOUT MONEY OR WORK FOR AS MANY
AS THREE MONTHS.

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Executive Summary

nationals who worked previously for U.S. contractors in Iraq and Afghanistan. A brief summary of our findings and recommendations follows.

Findings: Illegal Recruitment, Trafficking, Forced Labor and Other Labor Abuses

U.S. Government contractors rely upon some 70,000 TCNs to support U.S. operations in Iraq and Afghanistan. To recruit TCNs, contractors use local recruiting agents, who target vulnerable workers—many of whom earn less than \$1 per day—in countries like Nepal, India, the Philippines, and Uganda. Many of these agents charge prospective TCNs recruiting fees of between \$2,000-5,000, and deceive TCNs about the location or conditions of the work they will perform as well as the wages and benefits they will receive. Agents may promise salaries of \$1,000 or more per month, and even recruit workers under the false pretense of job openings at luxury hotels in Dubai or Amman. The exorbitant fees they charge require many TCNs to borrow funds from loan sharks, who often resort to violence and intimidation to recover their investments from TCNs or their families.

In some cases, TCNs do not become aware that they are destined for Iraq or Afghanistan until after they reach transit points in Dubai or Kuwait City, or else upon arrival at the airport in Baghdad or Kandahar. Many TCNs arrive to learn that they will earn as little as \$150-275 a month, not the promised \$1,000, while others discover that no jobs await them at all. In such situations, some contractors hold TCNs in crowded, dirty warehouses for weeks or even months on end, forbidding them from returning home while at the same time refusing to pay them or let them seek alternative means of employment. All the while, TCNs accrue monthly interest on their debts at rates that can soar as high as 50% per year.

These deceptive hiring practices force many TCNs to remain in Iraq or Afghanistan in hopes of earning enough money to repay their loans and protect their families from retribution. Their vulnerability and fears of dismissal often prevent TCNs from reporting abuses or seeking protection. As a result, many contractors and subcontractors continue to abuse TCNs with impunity, subjecting them to twelve- and fourteen-hour workdays without overtime pay; seven-day work weeks with no vacation time for several years; salaries as low as \$150 per month; squalid living conditions; inedible food; confinement; physical and verbal abuse; and exposure to dangerous and deadly working conditions without compensation or insurance.

Findings: Violations of U.S. and International Anti-Trafficking Laws and Inadequate U.S. Government Responses to Contractor Malfeasance

This system of TCN recruitment and labor, upon which both the Department of Defense (“DOD”) and the Department of State (“DOS”) rely heavily in their overseas operations, violates the U.S. Trafficking Victims Protection Reauthorization Act (“TVPRA”), Title 18 U.S.C. § 1589 on Forced Labor and § 1590 on Trafficking, as well as the UN Trafficking Protocol, to which the United States is a party.

charging no recruiting fees, engaging in good labor practices, and upholding anti-trafficking and forced labor protocols. The prohibitions against trafficking, forced labor and other abuse apply to any such subcontractor or recruiter, and the prime contractor will be accountable for the hiring and labor practices of any subcontractor or recruiter operating on its behalf. Agencies should vet new companies to ensure that subcontractors and recruiters do not sidestep the debarment or suspension process by reformulating under a new name or license.

3. **Encourage Direct Hire of TCNs**—As many contracting companies already hire foreign workers in other locations,⁸ every USG contract should recommend that contractors hire workers directly, using their own full-time employees to recruit and hire TCNs where possible. In cases where the prime contractors engage subcontractors, the subcontractor should attempt to hire directly or only rely on proven recruiters with a history of charging no recruiting fees. In all cases, the costs of recruitment should be borne by the contractor; no TCN should pay a recruitment fee.
4. **Ensure Passport Access**—Every USG contract should require that TCNs retain access to their passports and other identification and travel documents at all times, including during transit to and from their home countries as well as throughout the entire period of their employment, except as necessary for visa and security processing and documentation.
5. **Prohibit Exploitative Worker Contracts**—Every USG contract should require the contractor to provide every TCN in its employ with a valid employment contract in advance of the TCN's departure from his or her home country. The employment contract should be written in the TCN's own language, and should specify the location and duration of employment, hours of work, job duties, wages, and benefits (including transportation, leave, accommodation, medical care, and Defense Base Act insurance coverage where applicable).
6. **Require Fair Pay and Time Off**—Every USG contract should mandate that TCNs receive monthly wages equivalent to the amounts specified in their employment contracts. In addition, no TCN should be compelled to work more than 40-50 hours per week; TCNs who opt to work more should receive overtime pay for each additional hour. Likewise, all TCNs should receive at least one day off per week, and a reasonable amount of vacation time every year.
7. **Mandate Safe and Habitable Living Conditions**—Every USG contract should require the contractor to provide every TCN with personal living space comparable to that of its other personnel, as well as with decent food, sanitary facilities, personal protective equipment, and safety training.
8. **Require Medical Care and Insurance under Defense Base Act**—Every USG contract performed outside the United States should obligate the contractor to provide TCNs with adequate medical care, as well as with Defense Base Act insurance to cover payments in the event of injury or death. The contractor should further make TCNs

aware of these benefits through formal briefings as well as through language in the TCNs' employment contracts.

9. **Facilitate Regular Contact with Home and Family**—Every USG contract should require the contractor to provide every TCN with a free calling card when he or she first arrives on location, and should further require the contractor to allow TCNs to contact family members on a regular basis. Contractors should also allow TCNs access to their embassies.
10. **Safeguard the Right of Return**—Every USG contract should obligate the contractor to provide every TCN with a return plane ticket once his or her employment contract ends, regardless of cause. At no point should the contractor deduct the cost of the ticket from the TCN's salary.

II. OVERSIGHT

In addition to incorporating the above conditions into every USG contract performed overseas, every U.S. contracting agency⁹ should take the following steps to improve **oversight and monitoring** of contractors' compliance with the prohibitions against trafficking and forced labor:

1. **Mandate Trafficking- and Labor Rights-Related Training**—Every contracting agency should mandate that agency personnel as well as contractor personnel at every level of contract and subcontract receive training on the prohibitions against trafficking, forced labor and other labor abuse, including the prohibition against: 1) fraudulent recruitment practices; 2) employer retention of identification and travel documents; and 3) inhumane living and working conditions. Such training should consist of training in the identification and assessment of trafficking violations related to both sex trafficking and labor trafficking, as well as forced labor and should be provided in a language that the worker understands.
2. **Conduct Regular Audits and Inspections to Ensure Contractors Comply with U.S. Anti-Trafficking and Labor Standards**—Every contracting agency should conduct regular audits and inspections to assess contractor compliance with the prohibitions against trafficking, forced labor, other abusive labor practices, and substandard living conditions. These audits should include thorough and unannounced reviews of contractors' compliance with each of the contract terms mentioned above.
3. **Implement Formal Mechanisms to Receive and Process Reports of Trafficking and Labor Abuse**—Every contracting agency should establish formal complaint mechanisms that enable TCNs, as well as third parties, to report trafficking, forced labor and other abuses to the contracting agency. Such mechanisms should include an anonymous hotline that allows TCNs to communicate with and report abuses directly to the contracting agency. In addition, every contracting agency should afford TCNs regular access to on-site Contracting Officer Representatives ("CORs") to

whom they can bring complaints or raise concerns outside of the presence of their supervisors.

4. **Investigate All Credible Reports of Trafficking and Labor Abuse**—Every contracting agency should investigate and respond to all credible reports of trafficking, forced labor or other abuse, and should refer all confirmed cases thereof to the appropriate body for corrective action. No contracting agency should rely on contractor self-reports to identify trafficking or labor violations.

III. ENFORCEMENT AND ACCOUNTABILITY

The U.S. Government should close the “jurisdictional gap” that permits malfeasant contractors to avoid liability. The Government should further require, rather than merely authorize, every contracting agency to impose non-criminal sanctions on contractors found to engage in, or turn a blind eye to, trafficking and labor rights abuses. To that end, the Government should:

1. **Expand Federal Criminal Jurisdiction to Include All Government Contractors**—Congress should expand the criminal jurisdiction of Article III courts to encompass every contractor operating overseas on behalf of the U.S. Government. Congress should either: a) expand the Military Extraterritorial Jurisdiction Act of 2000 (“MEJA”) to apply to every contractor, including every contractor hired in support of non-DOD missions, who commits enumerated federal crimes overseas, or b) enact the Civilian Extraterritorial Jurisdiction Act of 2011 (H.R. 2136, S. 1145) to extend criminal jurisdiction to any contractor not otherwise covered under the MEJA.
2. **Prosecute U.S. Contractors Who Engage in Violations of TCN Rights under Federal Criminal Law**—Every contracting agency should establish standard procedures for referring cases of trafficking, forced labor and other abuses to the Department of Justice (“DOJ”). DOJ should allocate adequate resources to investigate and prosecute contractors who engage in trafficking or forced labor overseas.
3. **Devise a Penalty System under which Trafficking and Labor Rights Violations Meet with Stringent Consequences**—Every contracting agency should be required, rather than merely authorized, to impose penalties on any contractor or subcontractor found to engage, either directly or through sub-agents, in trafficking, deceptive recruiting, forced labor or other abuse. Violations of the prohibitions against trafficking and forced labor—as well as failures to cooperate with timely review and investigation of suspected violations thereof—should automatically subject the contractor to remedial action, including, at a minimum, the imposition of fines substantial enough to eliminate any financial incentive for the contractor to continue committing the violations. Widespread or systemic violations should meet with contract termination and debarment from future contracts.

Methodology

This report aims to provide a comprehensive account of the ongoing trafficking, deceptive

Acknowledgements

This report was written and researched by Julie Hunter, Shari Inniss-Grant, and Leah Zamore, all members of the Allard K. Lowenstein International Human Rights Law Clinic at Yale Law School. Hope Metcalf, Clinical Lecturer at Yale Law School, and Allyson McKinney, Cover-Lowenstein Fellow at Yale Law School, supervised the research and edited the report. Devon Chaffee, Senior Legislative Counsel at the ACLU, and Steven Watt, Senior Staff Attorney with the Human Rights Program of the ACLU, were central to conceiving, planning, and editing the report.

This report has benefited greatly from the expertise of a number of key individuals who have devoted significant time and resources to this issue. We would like to thank Sarah Stillman, whose *New Yorker* article has been instrumental in bringing to light the issues addressed in this report, and who has provided us with innumerable insights gleaned from her in-depth knowledge of the lives of the men and women who leave their homelands to work alongside U.S. troops. Thanks also to Valerie Brender and the New York University Law School's Iraqi Refugee Assistance Project for their assistance in reviewing the FOIA documentation and other sources, and for initiating much of the momentum for this work.

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To the men and their family members who we interviewed in India, as well as the many other individuals who graciously shared their time, experiences, and thoughts with us, we express our deep appreciation.

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EN ROUTE TO THEIR U.S. MILITARY WORKSITE,
IRAQI INSURGENTS KIDNAPPED TWELVE OF THE MEN AND
LATER BROADCAST THEIR EXECUTION ON TELEVISION.
ALTHOUGH THE THIRTEENTH MAN SURVIVED THE ATTACK,
NEITHER DAOD, [THE SUBCONTRACTOR], NOR THE PRIME
CONTRACTOR...PERMITTED HIM TO RETURN HOME FOR
ANOTHER FIFTEEN MONTHS.

”

Introduction

In 2004, thirteen men from a village in Nepal signed contracts with local labor recruiters to work abroad. Promised jobs at five-star hotels in Amman, Jordan, the men were shipped instead to work for a U.S. Government subcontractor, Daoud & Partners, in Iraq.¹² En route to their U.S. military worksite, Iraqi insurgents kidnapped twelve of the men and later broadcast their execution on television. Although the thirteenth man survived the attack, neither Daoud nor the prime contractor, Kellogg, Brown, and Root, Inc. (“KBR”), permitted him to return home for another fifteen months.¹³ When a second group of Nepalese workers witnessed the executions on television, they requested that their employer, another KBR subcontractor, return them to Nepal. Rather than heed the men’s wishes, the subcontractor seized and withheld their passports and threatened to abandon the men on the streets of Kuwait City, with no pay, if they did not enter Iraq.¹⁴

In the ensuing eight years, the U.S. Government made ongoing attempts to eradicate such abuse, but reports of similar incidents continued. In one widely-AtT CitermiSwiSo

perform low-wage, oft-dangerous tasks, these TCNs comprise a uniquely vulnerable group of workers who regularly experience labor and other forms of abuse.

Such abuse typically begins in countries of origin, where contractors use labor brokers to recruit TCNs. Many brokers target vulnerable workers in countries like Nepal, India, the Philippines and Uganda, charge them illegal recruiting fees of \$2,500-5,000, and often deceive them about the nature and conditions of the work and the wages they will receive. Brokers promise salaries of \$1,000 or more per month, but in reality many TCNs earn less than \$500, and in some cases as little as \$150-250. What is more, some brokers recruit workers under the false pretense of job openings at luxury hotels in Dubai or Amman, sending them instead, and often without consent, to U.S. military bases in Iraq or Afghanistan. By that time, TCNs have already paid the recruitment fee and are usually heavily indebted to local loan sharks and other illicit lenders, who often resort to violence and intimidation to recover their investments from TCNs or their families.

Such deceptive hiring practices force many TCNs to remain on U.S. military bases against their will in hopes of earning enough money to repay the debts they have incurred (plus the similarly high interest rates) and thereby to protect their families from retribution. Meanwhile, fear of dismissal often prevents them from voicing complaints about other forms of mistreatment to which their supervisors subject them. In particular, they fail to report labor abuses or seek—let alone receive—fair compensation. Contractors are therefore able to abuse TCNs with impunity, subjecting them to twelve-hour work days; seven-day work weeks with no vacation time for several years; salaries as low as \$150 per month; squalid living conditions; inedible food; confinement; physical and verbal abuse; and exposure to dangerous and deadly working conditions without compensation or insurance.

These practices are not limited to U.S. military bases or to DOD contractors; similar practices have been adopted by DOS contractors working for U.S. embassies in Saudi Arabia, Iraq, Kuwait, Oman, and the United Arab Emirates.²³ There have also been widespread allegations of abuse of TCNs by DOS contractors working on the construction of the U.S. embassy in Baghdad, including the failure to provide TCNs with protective equipment; the warehousing of TCNs in unsanitary and crowded living quarters; and even reports of workers being forced to eat leftover food from a giant “pig” trough (see Section III below).²⁴

The system of recruitment and labor described above, and relied heavily upon by both the DOD and the DOS in their overseas operations, violates the U.S. Trafficking Victims Protection Reauthorization Act, Title 18 U.S.C. § 1589 on Forced Labor and 1590 on Trafficking, as well as the U.N. Trafficking Protocol, to which the United States is a party.

These methods of TCN recruitment and labor also form part of a broader economy of contractor malfeasance that wastes tens of millions of U.S. tax dollars annually. The illicit recruitment fees that TCNs pay, together with the salary cost-cutting techniques that contractors employ, enrich prime contractors, subcontractors, local recruiters, and a vast

network of organized crime that continues to profit from the trafficking and exploitation of TCNs.²⁵

In the years since media reports first surfaced of U.S. contractors engaging in these abusive practices, Congress has sought to establish mechanisms to hold contractors accountable for trafficking violations. Among other measures, it has extended military and criminal jurisdiction to include contractors who accompany the Armed Forces overseas, and



Third country nationals, or TCNs, right, serve dessert under Thanksgiving decorations at a U.S. military base in Tikrit, 130 kilometers (80 miles) north of Baghdad, Iraq, Thursday, Nov. 22, 2007. For this facility's 285 workers, all so-called "third country nationals" or TCNs, Thanksgiving is an

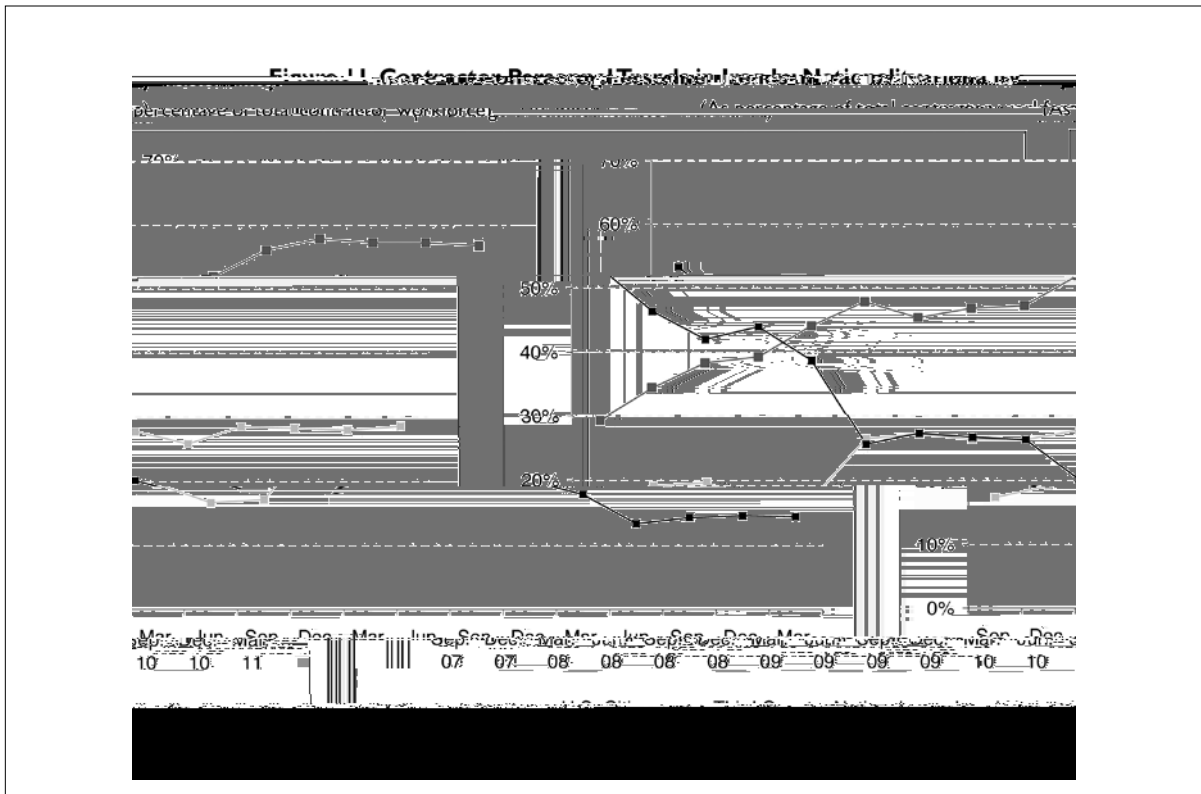
SECTION 1: Findings

Who are TCNs?

“It’s these guys from India who are supporting the military. They’re the guys doing the work, cleaning the latrines, serving the food and cooking . . . doing it all.”²⁶

—QUOTE FROM A FORMER KBR LABOR FOREMAN

Each year, U.S. Government contractors employ tens of thousands of TCNs to support U.S. operations in Iraq and Afghanistan. While exact demographic information is not publicly available, workers come from countries such as Nepal, India, the Philippines, and Uganda. Recruited to perform low-wage but essential services—including construction, security, and food services—TCNs constitute the largest and most diverse civilian workforce ever assembled in support of U.S. military operations abroad.²⁷ They represent the “army behind the army.”²⁸



(See Appendix B for additional chart illustrating the rise in TCN labor relative to U.S. personnel in Iraq and Afghanistan).²⁹

Despite the diversity of their backgrounds, TCNs share much in common. They often suffer from a lack of employment opportunities in their home countries, with many TCNs earning less than \$1 per day. Struggling to make ends meet, their aim in working abroad is simple: as one Filipino worker explained, “I wanted to save up, buy a house and provide for my family.”³⁰ In addition, many TCNs come from rural or remote areas in their countries of origin. In India, for example, regions such as Kerala and Tamil Nadu provide fertile grounds for recruiters, who travel to remote villages in search of young men struggling to wrest a living through farming.³¹ According to Tristan Forster, the Chief Executive Officer of FSI Worldwide (“FSI”), “since experienced, knowledgeable people are less willing to be bonded, corrupt recruiters look for naïve, uneducated workers with little experience working abroad.”³²

Typical Profile of Indian TCNs Surveyed in Tamil Nadu

Many TCNs are able-bodied young men who serve as the primary breadwinners for their families. They send almost the entirety of their earnings home, to enable their younger sisters or brothers to attend college, pay for their aging parents’ medical needs, or upgrade their families’ living quarters from palm-thatched huts to brick-and-mortar houses. Many TCNs postpone their own education or marriage plans until after they provide for the rest of their family.

Female TCNs

Female TCNs, such as the Fijian workers whose experiences are detailed in The New Yorker article, *The Invisible Army*, likewise pursued employment abroad to provide for their families. These women suffer from the same deceptive hiring practices as male TCNs, and may also be subjected to sex trafficking and gender-based violence. (See Sex Trafficking below.)

Due largely to their financial insecurity, TCNs constitute a uniquely vulnerable class of workers—one that regularly experiences labor and other forms of abuse for which they possess few, if any, avenues of recourse.

The Recruiting Process

Chain of TCN Recruitment (for more visuals on these actor relationships, see Appendix A):

Many contractors hire local labor brokers to recruit workers. Although diverse in location and culture, these recruiters appear to use common schemes to recruit TCNs: in particular, they 1) charge exorbitant and illegal “recruitment fees”; 2) exaggerate the compensation promised to TCNs; and 3) misrepresent the nature and conditions of the work—leaving TCNs all the more vulnerable to abuse and exploitation.

him and other prospective TCNs additional fees for supposedly mandatory food service training. When they arrived in Iraq, their “training” was disregarded

Similarly, many Filipinos expected to be working “in a completely safe job in Dubai or Bahrain,” only to arrive in a war zone.⁵⁰

Loan Sharks and Exploitative Lending

To pay recruitment fees, many TCNs borrow heavily from loan sharks and other illicit lenders. Because many TCNs earn far less than expected, they struggle just to keep up with the substantial interest rates—TCNs report interest rates on their loans as high as 30-50% per year⁵¹—which loan sharks charge. Paying off the principal can take years. Loan sharks also regularly use violence and intimidation to recover their investments. In India for example, loan sharks reportedly resort to tactics such as physical assault, extortion, harassment, and public humiliation—earning themselves names such as “the blade mafia.”⁵² A recent article in *The Hindu* details the death of a laborer who was allegedly set on fire by a loan shark to whom he owed \$100.⁵³

Reports of loan sharks collecting debts in sexual services—for instance, by taking TCNs’ female family members as collateral, forcing themselves on them, and even selling them into sex slavery—are not uncommon.⁵⁴ For example, Ramesh, a college graduate from India, borrowed \$5,000 from a loan shark to cover recruitment fees after being promised a storekeeper position in Kuwait paying \$800 per month. He was subsequently trafficked to Iraq and forced to work as a janitor on a U.S. military base for \$150 per month. Two months after his arrival, Ramesh found himself summarily terminated from his job. He returned

nearby container for weeks or months on end. One Indian TCN, for example, noted that upon arrival in Dubai, he was taken by bus to a small residence outside the airport, where he was held, against his will, for three months. During that time, he shared a tiny, crowded room with 50 other men—some of whom had been held there for more than one year. His passport was taken so he could not leave. He had no job or source of income. He could neither communicate with nor send money to his family back home.⁵⁹

It is often during transit, therefore, that TCNs first become aware of the tenuousness of their situation. Having already paid recruiting fees—ostensibly to secure visas and passage to their new jobs—they discover that neither passage nor employment is guaranteed. As TCNs interviewed by *The Hindu* stated,

[W]hen we landed at the base, for instance Camp Dwyer in Afghanistan in my case, passports and credentials were checked. A returning employee's track record was verified. If the army is not satisfied, the person could be asked to return to Odaipatti or wherever he came from. There is also a possibility of being detained by immigration in any of the transit points. All the money you spent would then be a waste.⁶⁰

Upon arrival in Iraq or Afghanistan, meanwhile, many TCNs discover that no paying work exists at all. Some wait months before obtaining employment, during which time they have no source of income to pay their debts—a situation that often leaves their families in considerable danger from loan sharks and other creditors. One Indian TCN, for example, languished in Iraq for three months without pay, watching helplessly as interest accrued on his debt—to the tune of an additional \$1,200; it took him another one and a half years working in Iraq just to break even.⁶¹ Similarly, a TCN from the Philippines borrowed money from a loan shark to secure a job in Iraq which never materialized; when he returned home, he resorted to selling drugs in an attempt to pay off the debt—and ended up in jail.⁶²

In another example, Sri Lankan TCNs hired to work in the Gulf found themselves rerouted instead to Iraq. Not only did the men lose the \$2,000 recruitment fee that recruiters forced each of them to pay, upon arrival employees of a U.S. Government subcontractor confiscated their passports and kept the men confined, against their will, in a building without heat, sanitation, or proper accommodation.⁶³

than they were when they left. Others find themselves with no choice but to remain in Iraq or Afghanistan and continue to acquiesce to the demands, however unconscionable, of their employers for as long as it takes them to pay off their debts.

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In addition, some contractors impose new responsibilities on TCNs without raising their pay accordingly; job promotions for TCNs do not always lead to salary increases. For instance, one former TCN was promoted from assistant to senior cook but still received just \$350 per month. Another was promoted from janitor to supervisor yet received the same \$275 monthly wage. There was also no increase in salary for a third worker, who was promoted from mechanic to foreman managing ten men on a base in Afghanistan.⁷⁷

On occasion, TCNs go without employment contracts for the duration of their employment. Many of those who actually sign contracts do not receive them until well after they arrive in Iraq or Afghanistan and begin work—at which point they have no choice but to accept whatever terms their employer demands of them.⁷⁸ Moreover, contracts may afford them little employment protection. Typically, contracts are drafted only in E

Hypothetical Money Trace: Fraudulent Contractor Recruitment Scenario*

*These numbers are based on typical salaries and recruitment fees reported by news sources and corroborated by the TCNs interviewed for this report, as well as contract amounts reported in the Wartime Contracting Commission Report. The amount of the kickback is estimated based on the scenario provided by Sam McCahon and Sindhu P. Kavinnamannil in their article for Fraud Magazine. The amount of savings from cutting living costs for the TCNs is speculative.

Prime contractor receives contract from the U.S. government calling for 10 food service workers to be hired for one year. Government contract allocates a yearly salary of \$12,000 per worker, or \$1,000/month, for a total of \$120,000 + 5% admin fee for the prime contractor (\$6,000). Contract totals \$126,000 of taxpayer money.

The prime contractor, instead of hiring directly, contracts out the job to a subcontractor. Subcontractor gets \$120,000 (Prime keeps \$6,000 administrative fee), and pays a recruiter \$10,000 to recruit locally. Recruiter finds 10 workers and makes each of them pay a \$3,000 recruitment fee to get the job. This \$3,000 comes from loan sharks in the country of origin, who charge workers 30% annual interest on the loan. The local recruiter collects a total of \$30,000 in recruiting fees. It gets 50% of the recruitment fee (\$1,500 per worker), and kicks back the other \$1,500 to the subcontractor. Each gets a total of \$15,000 in fees.

When the workers get to Iraq, the subcontractor is in charge of paying them and covering their living costs—but pays them only \$300 a month instead of the promised \$1,200/month. So out of the \$120,000 allocated for salaries, the subcontractor pays the ten workers only \$36,000 total in a year. The subcontractor cuts costs further by skimping on the sleeping quarters and food of the workers, spending only \$16,000 on housing and feeding all of the workers. End result: the subcontractor spends only \$62,000 (\$36,000 in salaries + \$16,000 expenses + \$10,000 recruiters' fee) the sleepin.apid;45hraxpar \$1

Living Conditions

While working in Iraq or Afghanistan, TCNs live in “man camps”—sprawling, cramped, and unsanitary compounds—nearby to U.S. military or diplomatic bases.¹⁰² In 2004, newspapers in India began referring to these compounds as “U.S. Slave Camps.”¹⁰³

Conditions within these camps—each of which holds thousands of TCNs—are often deplorable. Forty-foot containers house as many as twenty to thirty TCNs.¹⁰⁴ As one American contractor told Congress in 2007, “[f]oreign workers were packed into trailers very tight.”¹⁰⁵ Indeed, according to a former KBR contractor, “[t]hese men have 23 square feet per man. The average soldier on the base where I live and work. . . has 80 square feet. First year I was there I had 90 square feet. And now I have 160 square feet. I’ve got more space than I need.”¹⁰⁶ The containers often lack air conditioners or heaters—despite the 100-degree plus heat in Iraq and the frigid temperatures of Afghan winters—and the camps often have insufficient bathrooms and shower facilities.¹⁰⁷

In addition to overcrowded living quarters, many TCNs lack access to regular and edible meals. Several Indian TCNs hired by Gulf Catering Company, for instance, reported regularly receiving nothing but bread to eat for weeks on end.¹⁰⁸ In May 2010, the lack of food available in a camp run by Prime Projects International, a Dubai-based U.S. contractor,

“[W]hen we saw the worms in the rice, we asked for the chapatti. They said, ‘You’re South Indian, you should eat only rice, you don’t need bread.’”

led thousands of TCNs to protest. According to New Yorker reporter, Sarah Stillman, “this wasn’t the first time; empty plates had become common in the camp during the past year.”¹⁰⁹ In addition, many TCNs find themselves forced to wait in line for hours to receive a meal and, if they ever get one, it is frequently inedible. As one TCN recounted, “[w]hen we saw the worms in the rice, we asked for the chapatti. They said: ‘You’re South Indian, you should eat only rice, you don’t need bread.’” When the TCN complained, his manager told him, “you want good food, go back home to your mother or your wife.”¹¹⁰ Other TCNs reported being forced to eat leftover food off of dirt floors, as well as out of “a trough similar to pig farms.”¹¹¹

The camps themselves are heavily guarded, severely curtailing TCNs’ freedom of movement. In some cases, contractors place TCNs in “virtual lockdown,” confining them to the camps against their will.¹¹² All of the Indian TCNs interviewed received either yellow or red security badges, which either forbid them from leaving the camp altogether or required that an escort accompany them on any trips outside.¹¹³ In addition, the camps are difficult for outside individuals to access; permission and authorization is typically required to visit these camps.¹¹⁴ One KBR employee recalled, “I don’t know if they’re trying to keep people in or keep people out. There probably is no more secure place on the camp than the PPI [Prime Projects International] Indian camp. I can go anywhere on the base, but I can’t go into the Indian camp.”¹¹⁵

Unable to leave the camps, TCNs are cut off from the outside world. They lack access to telephones, computers, the internet and their embassies or consulates—rendering it all but impossible for them to report abuses, and making it exceedingly difficult for them to contact their families. Some TCNs even when they are able to access telephones receive less than five minutes of phone-time per month—a privilege for which they must pay upwards of \$30-50 dollars per calling card.¹¹⁶ Meanwhile, family members are often unable to contact TCNs, worsening their anxiety about TCNs' safety—especially amidst reports of bomb blasts and mortar attacks on bases in Iraq and Afghanistan. One TCN reported that, while working in Iraq, his father suffered a heart attack. By the time he was able to call home, it was too late: his father had already passed away.¹¹⁷

Working Conditions and Supervision

Many TCNs report that contractors subject them to twelve- to sixteen-hour workdays with no overtime pay and little or no time off.¹¹⁸ The Indian TCNs interviewed, many of whom served as cooks and mess hall workers, worked from 7am until 8pm, with two 15-minute breaks for mealtimes.¹¹⁹ One driver recalled working thirteen hours a day for several years without a single day off.¹²⁰ Regardless of the type of work they do, many TCNs rarely or never receive overtime pay. As three TCNs noted, “we were promised overtime for those extra four hours every day, but we never got any.”¹²¹ Another interviewee regularly worked sixteen-hour days during the holidays without receiving overtime pay.¹²²

“Here in India you have holiday on Sunday; but in Iraq you have to work every day.”

All TCNs interviewed received, at most, two days off per month—and several received far less than that. One interviewee worked every day for eight months without a single day off; another received one day off for every six months on the job.¹²³ As one of them remarked, “Here in India you have holiday on Sunday; but in Iraq you have to work every day—you couldn't even keep track of

the days.”¹²⁴ Another noted that he worked for four years without once receiving any leave or vacation time. He recalled wishing to return home to India for a visit, but feared that he would be unable to return to his post or would be forced to pay an additional recruitment fee if he went home even for a short time.¹²⁵ According to Tristan Forster of FSI, “TCNs need at least two days off so that they can have one day for respite and another for ongoing administrative training (medical, gun, or language training).”¹²⁶

Time off is especially important given the stressful nature of working in a combat zone.¹²⁷ As noted below, TCNs face many of the same risks as U.S troops, and the hazards of working in such conditions take a heavy toll on their mental and physical wellbeing (see Dangerous Work and Compensation for Injuries below).¹²⁸ One TCN stationed at an army base near Baghdad recalled shedding tears every day: “I had to. It was therapeutic, and helped me pull through three years.”¹²⁹ In another, particularly tragic case, “a Ugandan security guard working for Triple Canopy at Forward Operating Base Delta committed suicide by shooting himself in the head.”¹³⁰

TCNs also suffer verbal and physical abuse at the hands of their superiors. According to an American contractor who worked in Iraq in 2005 and 2006, “[m]any of the workers were verbally and physically abused, intimidated and had their salaries docked for as much as 3 days pay for reasons such as being 5 minutes late [and] sitting down on the job.”¹³¹ A Filipino TCN recalled being struck in the head repeatedly by his supervisors: “They treated us like animals,” he said.¹³² Verbal abuse often takes the form of racial slurs and discrimination.¹³³

TCNs who complain to their superiors often find themselves promptly sent home. One TCN reported that his supervisor repatriated four men after they complained about the lack of food.¹³⁴ Another TCN asked his supervisor for a raise following a promotion; the latter sent him back to India to face massive debt a few days later.¹³⁵

Contractors sometimes forbid TCNs from contacting U.S. military personnel or from discussing “internal issues or complaints” with anyone outside the company.¹³⁶ In one instance, a KBR employee reportedly instructed newly arriving TCNs not to talk to any military personnel: “You and the military have no business together. Don’t show any of your papers to them.”¹³⁷ In another, KBR forbid an employee from speaking with TCNs or from reporting abuses to outside parties after the employee spoke to a reporter about the mistreatment of TCNs.¹³⁸ In an official reprimand, KBR warned the employee, “This type of behavior will not be tolerated. . . . You are expected to refrain from further involvement regarding the working and living conditions of the sub-contract workers.”¹³⁹ (For full text of the reprimand, see Appendix H below.)

This climate of fear and intimidation ensures that even those TCNs who wish to bring complaints or report abuses rarely do so, knowing that repatriation or worse awaits those who speak out.

Dangerous Work and Compensation for Injuries

TCNs face many of the same risks that U.S. troops do.¹⁴⁰ Although no precise data on TCN injuries or deaths exist, in 2005 the non-profit organization, Iraq Coalition Casualty Count, found that TCNs made up more than 100 of the 269 reported civilian fatalities in Iraq.¹⁴¹ Since then, scores of TCNs continue to suffer casualties every year from suicide and roadside bombs, executions, beheadings, hijackings, rocket attacks, and mortar fire.¹⁴² As Bharathkumar Sekar, 25, who worked in Iraq for more than two years, recalled: “There were many rocket attacks inside our army camps. At times rockets even landed on top of my kitchen.”¹⁴³ A female TCN from the Philippines, who was wounded by shrapnel following a suicide bomb attack in the dining facility where she worked, likewise reported: “They were all just stepping over me, even if they kicked up some dirt at my face . . . because they were treating the U.S. Army first.” She was pregnant at the time of the attack.¹⁴⁴ Another Filipino

Although the United States has a system to provide compensation for such casualties, few TCNs or their family members know of its existence.¹⁴⁷ The Defense Base Act (“DBA”)¹⁴⁸ insures contractor employees, including TCNs, performing under USG contracts outside the United States. Together with a companion law, the War Hazard Compensation Act (“WHCA”),¹⁴⁹ DBA insurance is the sole recourse for workers who suffer on-the-job injuries while engaged in overseas contract work, as well as for their families in the case of a fatality. The Department of Labor (“DOL”) oversees the administration of both the DBA and the WHCA.¹⁵⁰

Unfortunately, DBA compensation remains an unwieldy and protracted process, even for American civilian contractors who attempt to file DBA claims.¹⁵¹ TCNs face added difficulties, including geographic distance, unfamiliar legal and medical systems, foreign documentation practices, and translation.¹⁵² Furthermore, in the case of death, it is all but impossible for family members to prove that the TCN was an actual employee of a U.S. Government contractor.¹⁵³ In cases where neither the employee nor the employer report an injury, the DOL remains unaware of the injury and unable to facilitate the transmission of money to the TCN or his or her family.¹⁵⁴

“I saw guys without shoes, without gloves, no safety harnesses and on scaffolding 30 feet off the ground, their toes wrapped around the rebar like a bunch of birds.”

These difficulties are all the more troubling given the lack of knowledge regarding DBA insurance among TCNs and their family members.¹⁵⁵ For instance, in April 2005, Iraqi insurgents killed a Filipino TCN named Rey Torres, leaving Mr. Torres’ widow, Gorgonia Torres, and their five children eligible for some \$300,000 in compensation. “But Gorgonia Torres knew nothing about the death benefit and did not apply. When she did learn about the insurance, two years later, it was from a reporter.”¹⁵⁶ In fact, no evidence exists to suggest that contractors inform TCNs about the latter’s eligibility for compensation under the DBA.¹⁵⁷ There is no mention of DBA insurance in the contracts that TCNs receive.¹⁵⁸ As a result, many TCNs remain

unaware that they or their families may be compensable for injuries or deaths occurring while serving on U.S. contracts overseas.¹⁵⁹

Compounding this lack of awareness, U.S. Contractors have subjected TCNs to dangerous working conditions without providing them with adequate safety equipment. According to Rory Mayberry, an American contractor who worked on the U.S. embassy project in Iraq, “every day they [TCNs] went out to work on the construction of the Embassy without proper safety equipment. . . . There were a lot of injuries out there because of the conditions these men were forced to work in. It was absurd.” He further recalled: “I saw guys without shoes, without gloves, no safety harnesses and on scaffolding 30 feet off the ground, their toes wrapped around the rebar like a bunch of birds.”¹⁶⁰ Two KBR employees affirmed that the TCNs under their supervision never received personal protection equipment and lacked

On Saturday, a Ugandan woman arrived at Camp Slayer requesting protection from a trafficking-in-persons ring. She reported having been brought to Baghdad for a job, then forced into prostitution in the city. Two other women have since arrived at Camp Slayer.¹⁷²

As well as sex-trafficking, female TCNs are at risk of other forms of gender-based violence. In 2008, female cooks and cleaners at the British Embassy in Baghdad alleged sexual abuse and harassment at the hands of their KBR supervisors. One woman reported that her KBR manager “threw many \$100 notes on the desk and said, ‘take whatever you want and stay overnight and I will pay you double [your daily pay].’”¹⁷³

More recently, New Yorker reporter Sarah Stillman described the harrowing experience of Lydia, a TCN from Fiji: “A supervisor had ‘had his way with’ Lydia . . . non-consensual sex had become a regular feature of Lydia’s life . . . the man would taunt Lydia, calling her a ‘fucking bitch’ and describing the various acts he would like to see her perform.”¹⁷⁴ On Lydia’s behalf, Stillman dialed the U.S. Army’s emergency sexual-assault hotline several times over several days, but never received an answer.¹⁷⁵

According to an Army national guardsman, the abuse of female TCNs by their supervisors is common: “I am . . . on my second tour of Iraq. . . I have seen blatant corruption among the [private] contractors [in Iraq] and even cases of outright human trafficking and forced prostitution among female third country nationals.”¹⁷⁶

Returning Home

TCNs often face enormous difficulties returning home once their contracts expire. In fact, despite obligations to the contrary, contractors often refuse to cover TCNs’ return airfares.¹⁷⁷ The meager compensation they receive together with the debts they owe make it all but impossible for TCNs to pay their own way home. Abandoned by their employers, some TCNs have languished in Iraq or Afghanistan for months after completion of their contracts.¹⁷⁸

Other TCNs face difficulties when they seek to return home before the expiry of their contracts. Although their profound financial vulnerability forces many to remain in Iraq or Afghanistan until their contracts expire, abysmal living and working conditions convince some TCNs to return home prior to the expiration of their contracts.¹⁷⁹ Rather than allow



Constantin Rodrigues, a 38-year-old Indian contractor, rests in his bed after several operations and having his leg amputated in the 28th Combat Support hospital in the Green Zone in Baghdad in this August 18, 2007 file photo. Constantin was seriously wounded by a mortar round at the pizza shop where he worked as a contractor at a U.S military base in Baghdad. (Photo credit: REUTERS/Damir Sagolj)

returning to their homes of record.”¹⁸¹ In addition, some contractors charge TCNs exorbitant “termination fees;” Najlaa International Catering Services, for example, charges \$2,500 in exchange for permission to return home early (see Appendix D below). Like the other practices identified in this Section, these prohibitive termination fees create conditions of forced labor, as they leave TCNs at the mercy of their employers, with no choice but to continue working.

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EVERYONE IS BORN FREE AND EQUAL WITH INHERENT
AND INALIENABLE RIGHTS...

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SECTION 2: International and U.S. Prohibitions on Trafficking and Forced Labor

In subjecting TCNs to trafficking, forced labor, and other abuses, U.S. Contractors violate international and U.S. anti-trafficking and labor laws.

A modern-day form of slavery, trafficking constitutes a fundamental violation of human rights. The Universal Declaration of Human Rights (“UDHR”) provides the basic framework for international legal efforts to combat human trafficking.¹⁸² The UDHR affirms that everyone is born free and equal

“[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

with inherent and inalienable rights, and further provides that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”¹⁸³ A number of international legal instruments expand upon these general proscriptions, and specifically outlaw human trafficking—chief among them, the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”).¹⁸⁴ Ratified by 119 states, including the United States, the Trafficking Protocol establishes a broad and authoritative definition of trafficking—one that encompasses common methods used by traffickers of TCNs, such as confiscation of passports and other identification documents, deceptive hiring practices, exploitation, and abuse of power.¹⁸⁵ (For more information on the Trafficking Protocol as well as U.S. obligations under international anti-trafficking law, see Appendix G below.)

In addition to ratifying the Trafficking Protocol, the United States has enacted anti-trafficking legislation, including the Victims of Trafficking and Violence Protection Act of 2000¹⁸⁶ and subsequent Reauthorizations (“TVPRA”).¹⁸⁷ Heralded as the first U.S. antislavery legislation since 1865,¹⁸⁸ these laws criminalize human trafficking and enhance civil remedies and criminal penalties for trafficking—including trafficking committed by “persons employed by or accompanying the Federal Government outside the United States.”¹⁸⁹ In addition, the TVPA imposes special restrictions on government contractors, requiring, among other things, that all U.S. contracts include a

condition that authorizes the department or agency to terminate the . . . contract . . . without penalty, if . . . the contractor or any subcontractor (i) engages in severe forms of trafficking in persons . . . during the period of time that the . . . contract . . . is in effect, or (ii) uses forced labor in the performance of the . . . contract.¹⁹⁰

Several circuit court and district court cases have found that situations involving exploitation and non-physical coercion satisfy the trafficking and forced labor definitions under the TVPA. In *U.S. v. Dann*, for instance, the Ninth Circuit ruled that severe financial coercion is sufficient to meet the “serious harm” requirement under §1589.²⁰² Several other cases from the First and Seventh Circuits, in addition to district court cases, affirm this interpretation (see Appendix F for a discussion of relevant caselaw).

Beyond recognizing the legal sufficiency of nonphysical coercion, the TVPA ensures that a trafficker’s forceful, deceptive, or coercive conduct renders immaterial any initial consent the trafficked individual may have given to the work situation. As incorporated in various statutes, it also punishes those who knowingly benefit from participation in any venture that involves trafficking and/or forced labor.²⁰³

Application of U.S. Anti-Trafficking on of U.

Perhaps the most common violation is the financial coercion that regularly occurs in the system of TCN recruitment and labor. Contractors engage local recruiters that charge TCNs high fees. To meet this fee, TCNs are compelled to borrow money from loan sharks who routinely resort to intimidation and violence

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U.S. ARMY INVESTIGATORS DISCOVERED A SEX TRAFFICKING RING IN WHICH EMPLOYEES OF VIRGINIA-BASED DYNCORP INTERNATIONAL INC. PURCHASED GIRLS AS YOUNG AS TWELVE FOR USE AS SEX SLAVES... NONE OF THE MEN INVOLVED IN THE SEX RING FACED PROSECUTION...

”

SECTION 3: **U.S. Government Responses to Contractor Abuses in Iraq and Afghanistan**

In the years leading up to passage of the TVPA in 2000, reports began to surface of U.S. Government contractors engaging in human trafficking. In Bosnia, local police and U.S. Army investigators discovered a sex trafficking ring in which employees of Virginia-based DynCorp International Inc. purchased girls as young as twelve for use as sex slaves.²⁰⁶ Despite substantial evidence of criminal wrongdoing, none of the men involved in the sex ring faced prosecution; the sole punishment for their actions was termination from DynCorp, and several escaped even that.²⁰⁷ Meanwhile, even after its attempts to conceal the incident became public, DynCorp continued to secure Government contracts, including a \$250 million contract to “re-establish police, justice, and prison functions in post-conflict Iraq.”²⁰⁸

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Such language expands federal criminal jurisdiction to include certain trafficking-related offenses committed by U.S. Government contractors overseas.²³⁷ In addition, the 2005 TVPRA states in its prefatory findings: “The involvement of employees and contractors of the United States Government and members of the Armed Forces in trafficking in persons, facilitating the trafficking in persons, or exploiting the victims of trafficking in persons is inconsistent with United States laws and policies and undermines the credibility and mission of United States Government programs in post-conflict regions.”²³⁸ The Reauthorization further acknowledges the need for additional anti-trafficking measures to ensure that U.S. Government personnel and contractors are “held accountable.”²³⁹

In 2008, Congress again amended the TVPA, expanding extraterritorial jurisdiction to include all of the crimes covered under the Act.²⁴⁰ At the same time, Congress restricted extraterritorial jurisdiction for trafficking-related offenses to cases in which the alleged offender is a U.S. national or permanent resident, or else is present in the United States, irrespective of nationality.²⁴¹

4. Declining to Prosecute Contractors Who Engage in Trafficking

Despite substantial evidence of criminal wrongdoing, the U.S. Government has yet to prosecute a single contractor for trafficking or labor abuse under the MEJA, the UCMJ, or the TVPRA. The case of the Nepali TCNs, mentioned above, illustrates this. In response to a series published in the Chicago Tribune exposing the incident, the Principal Deputy of the DOD-IG launched an investigation into the matter. Upon review, he “found no reason to question the sequence or accuracy of events outlined in the Chicago Tribune articles.” Nevertheless, DOD declined to take any action against the contractors involved in the abuses. Instead, the DOD-IG concluded that, “While it would appear that some foreign-based companies are using false pretenses to provide laborers to KBR/Halliburton subcontractors in Iraq, we must note that none of the allegations in the Chicago Tribune articles are against U.S. persons or U.S. contractors.”²⁴²

As attorney Martina E. Vandenberg stated in her testimony before the Senate Judiciary Subcommittee on Human Rights in 2007, the DOD-IG reached this conclusion without investigating the involvement of U.S. contractors:

There’s no indication that the Inspector General actually delved into the issue of criminal complicity, or even criminal conspiracy, by U.S. persons or contractors. Indeed, there is no hint of any investigation into the involvement of any of these U.S. contractors.²⁴³

Instead, the Inspector General relied upon the lack of a direct contractual relationship between the U.S. Government and the foreign subcontractors to conclude that the Government lacked jurisdiction to prosecute.²⁴⁴ As Vandenberg noted, “that’s simply incorrect as a matter of law.”²⁴⁵ Indeed, the MEJA as well as the TVPRA afford the

Government criminal jurisdiction over contractors and subcontractors at any tier.²⁴⁶ Together, the statutes give Government agencies ample authority to investigate and refer prosecutions to the appropriate bodies.

Nevertheless, such sidestepping of legal enforcement continues to arise. In response to the highly publicized incident involving 1,000 Sri Lankan, Nepali, and Indian TCNs—whom Najlaa International confined to a windowless warehouse without money or work for three months²⁴⁷



implementation guidelines, and even so, a 2011 report from the DOD-IG found that less than half of U.S. Central Command construction and service contracts contained the required clauses for combating human trafficking.²⁶⁵

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Because it requires contractors to take action only when they become “aware” of a trafficking violation, Subpart 22.17 creates perverse incentives for contractors to turn a blind-eye to violations to limit their liability. In particular, the rule discourages contractors from investigating allegations of trafficking or from allowing victims of trafficking to bring claims forward. Instead, it encourages contractors to remain willfully ignorant of any violative behavior on the part of their employees or subcontractors.²⁶⁶ As Sam McCahon testified before the House Committee on Oversight and Government Reform in November 2011, “prime contractors have a history of turning a blind eye to the practice [of human trafficking] and lack any motivation to get involved in mitigation efforts.”²⁶⁷

2. Declining to Investigate: Before and After the 2008 TVPRA

In order to lessen the Government’s reliance on contractor self-reporting and thereby improve oversight, the 2008 TVPRA introduced two additional reporting requirements. The first requirement obligates the Department of Justice to report to Congress on activities conducted by the DOD to combat human trafficking, including efforts to prevent U.S. contractors from engaging in trafficking. The second requirement calls upon the Offices of the Inspector General (“OIGs”) for DOD, DOS, and USAID to regularly investigate contracts for evidence of human trafficking and forced labor. The Reauthorization further requires the OIGs to investigate activities that heighten the risk of contractors engaging, knowingly or unknowingly, in acts related to trafficking, such as confiscation of an employee’s passport, restriction on an employee’s freedom of movement, abrupt or evasive repatriation of an employee, or deception of an employee regarding the work destination.

Prior to the 2008 TVPRA, the U.S. Government conducted remarkably few investigations into trafficking or labor abuses by Government contractors. As a study by the DC-based Center for Strategic and International Studies concluded in 2005, the United States “has been reluctant to address the security implications of misconduct by uniformed service members and civilian contractors, especially involving human rights abuses.”²⁶⁸ For instance, according to annual DOJ reports on human trafficking enforcement, which summarize investigative activity across the federal government, there were no DOD investigations into trafficking in persons in 2006 or 2007.²⁶⁹ The section detailing efforts by the U.S. military to combat trafficking is omitted from the 2008 DOJ report.²⁷⁰ This lack of investigative activity comes despite widespread media reports of contractors engaging in human trafficking published from 2006 onwards.²⁷¹

In the years since Congress passed the 2008 TVPRA, the Government has shown an increased reluctance to investigate allegations of trafficking.²⁷² According to the 2010 DOD-IG trafficking report, for instance, there was “one report of preliminary investigative activity of a contractor in Iraq” for labor trafficking violations in 2009.²⁷³ Although the DOD-IG referred the matter to the Justice Department, prosecutors “determined facts and circumstances did not warrant further action.”²⁷⁴ The 2011 DOD-IG report mentions one case during the 2010 time period, which it describes as “one TIP-related incident involving a DOD contractor or sub-contractor employee. In that case, the employee was barred from the installation by the commander and fired by the contractor.”²⁷⁵ The State Department, meanwhile, opened just one investigation into labor trafficking in all of 2009.²⁷⁶ Further, the 2011 DOS trafficking report notes, “during the reporting period, allegations were investigated and one employee was dismissed by a DOD contractor.”²⁷⁷ However, “no prosecutions occurred and no contracts were terminated” for the reporting period, although “allegations against federal contractors engaged in commercial sex and labor exploitation continued to surface in the media.”²⁷⁸

Compounding the lack of formal investigations, insufficient oversight on the part of U.S. officials in the field continues to enable contractors to engage in trafficking and labor abuse without repercussion.²⁷⁹ As the Commission on Wartime Contracting reported in 2009, “there is a critical shortage of qualified contract-management personnel in [Iraq and Afghanistan], and those that are there are stretched too thin. In particular, the number of contract-management personnel in Iraq and Afghanistan is cited in 2006 report (see 2 designating)] TJ0 -1.273 T

²⁸⁰ For instance, DOD contracting oversight continues to suffer from a roughly 50% workforce reduction between 1994 and 2005.²⁸¹ Meanwhile, the number of contracts continues to increase, such that a single Contracting Officer Representative is often responsible (see 2c)15(ontr)10(act)8(or perf)19(ormanc)15(e o)10(v)10(er)10(sight in as many as tw)5(enty-se)10

²⁸⁴ That same year, Senator Joseph Lieberman responded to reports of inadequate oversight on the part of DOS, noting, “[t]he State Department appears to be sleepwalking through its oversight obligations.”²⁸⁵

3. Finding Nothing Amiss: The Case of First Kuwaiti and the U.S. Embassy Project

For TCNs in Iraq and Afghanistan, the lack of investigation and oversight has tragic effects. In 2003, Ramil Autencio, a 37-year-old air conditioning maintenance worker from the Philippines, signed a contract with MGM Worldwide Manpower and General Services in , a

which held U.S. Army contracts worth \$600 million at the time, threatened that unless he and dozens of other Filipino workers went to Iraq, the Kuwaiti police would arrest them. “We had no choice but to go along with them,” Autencio later reported. “After all, we were in their country.”²⁸⁶

In response, in June 2005, the Philippine government placed First Kuwaiti on a “watch list” forbidding it from recruiting or employing Filipinos.²⁸⁷ The following month, by contrast, the U.S. State Department awarded the company a \$592 million contract to build the U.S. Embassy in Baghdad. Thereafter, evidence mounted of widespread trafficking and labor abuses: workers accused the Kuwaiti contractor of smuggling them into Iraq against theas.

similar misgivings about Krongard, noting that the Inspector General “had followed highly irregular procedures in exonerating the prime contractor, First Kuwaiti Trading Company, of charges of labor trafficking.”²⁹⁸ In September 2007, Congressman Waxman began to inquire into accusations that Krongard had repeatedly hindered fraud and abuse investigations in both Iraq and Afghanistan.²⁹⁹

In the meantime, the State Department awarded First Kuwaiti three additional contracts to build embassies in Saudi Arabia and Gabon.³⁰⁰ To date, no disciplinary action has been taken against the company for trafficking or labor abuses. Nor is this situation unique: as Representative Gerald E. Connolly noted at a 2011 House Oversight and Government Reform subcommittee hearing, “[h]uman trafficking by federal overseas contractors is widespread and never punished. . . . Not a single case of human trafficking, sexual assault, wage theft or related crimes has been prosecuted by the Department of Justice, and only a single case has even been referred for prosecution by the Department of Defense. . . . Neither the Army and Air Force Exchange Service nor any other component of DOD or the State Department has suspended or terminated a single federal contractor for human trafficking, even though such abuses are routine.”³⁰¹

A Better Way of Doing Business: Recent Developments and Best Practices

1. Recent Efforts by the State Department to Improve Monitoring and Enforcement

Although the State Department’s 2011 Trafficking in Persons report made little mention of the trafficking and abuse of TCNs, it found that the United States constitutes a “source, transit, and destination country for men, women, and children subjected” to various kinds of trafficking,³⁰²

- Ensuring that contractors provide a sample recruitment agreement that (a) explains the recruitment strategy; (b) gives anticipated number of workers, their skills, and countries the company will recruit from; (c) precludes recruiting fees for TCN; and mandates usage of licensed recruitment companies (rather than independent agents).³⁰⁷
- Certifying that the contractor rather than the TCN has paid the recruitment fee for DOS contracts.
-

“ethical recruitment and management result in long-term benefits both for the recruited personnel and the client companies. . . . [S]uch an approach is not only legally and ethically correct but also sustainable from a business point of view.”

2. Model Behavior: FSI Worldwide and Reports of Direct Hire among other Contractors

In terms of effecting change within the contracting industry itself, one British contractor is leading the charge. FSI Worldwide has pioneered an ethical business model for hiring TCNs that prides itself on eliminating recruiting fees and kickbacks, promoting worker satisfaction and loyalty, and selecting for skill rather than ability to pay.³¹⁶ FSI has recruited in Nepal, India, and Kenya for posts in Iraq, Afghanistan, and United Arab Emirates.³¹⁷ The company's

recruitment policies include: transferring the cost of recruitment from the TCN to the contracting company, eliminating recruiting agents and using only trusted senior personnel to conduct recruitment, and asking recruits to sign non-payment declarations and to report any attempts by staff to extort money.³¹⁸ In addition, FSI ensures its personnel speak the language of recruits, regularly reminds personnel that all fees are forbidden, and conduct random spot checks of workers' living conditions.³¹⁹ FSI further ensures that workers have compassionate leave to visit ill family members, and they wire money directly to workers' homes to ease the remittance process.³²⁰

Several other companies appear to be following suit.³²¹ For instance, one firm has “company funded and company employee manned recruiting centers in India, the Balkans, England and Kenya,” in which all interviewing, testing, and medical screening takes place.³²² Although the company does use local recruiters to help identify some candidates, it “quiz[zes] every one of the candidates about whether they were required or asked to pay anything to be informed of the opportunities or brought to the recruiting center.”³²³ The company also thoroughly screens the recruiters it uses to “closely control the process and minimize as much as is possible the possibility of extortion in the recruiting process while at the same time being able to leverage some local expertise, all leading to hiring the highest quality workforce.”³²⁴

The examples set by FSI and others belie the claim that rigorous anti-trafficking and labor standards impose unreasonable costs on contractors. On the contrary, FSI has determined that “ethical recruitment and management result in long-term benefits both for the recruited personnel and the client companies. . . . [S]uch an approach is not only legally and ethically correct but also sustainable from a business point of view.”³²⁵

3. Encourage Direct Hire of TCNs

As several contracting companies already hire foreign workers in other locations,³²⁷ every USG contract should recommend that contractors hire workers directly, using their own full-time employees to recruit and hire TCNs where possible. In cases where the prime contractors engage subcontractors, the subcontractor should attempt to hire directly or only rely on proven recruiters with a history of charging no recruiting fees. In all cases, the costs of recruitment should be borne by the contractor; no TCN should pay a recruitment fee.

4. Ensure Passport

hours, he or she should receive overtime pay for each additional hour. Further, no TCN should receive less than one day off per week, and all TCNs should receive a reasonable amount of vacation time every year. TCN salaries should increase if and when they are

should not be deducted from the TCNs' wages. Where a TCN falls ill or suffers an injury, the contractor should cover his or her transportation and medical costs during transit.

II. OVERSIGHT AND MONITORING

To ensure compliance with the above standards and prohibitions, every U.S. contracting agency should actively monitor and investigate the contractors under U.S. service. In particular, every contracting agency should:

1. Incorporate Trafficking- and Labor-Rights-Related Training and Planning into Every Overseas Mission

Every contracting agency should mandate that agency personnel as well as contractor personnel *at every level of contract and subcontract* receive training on the prohibition against trafficking, deceptive recruiting, forced labor and other abuse, including on the prohibition against: 1) fraudulent recruitment practices; 2) employer retention of identification and travel documents; and 3) inhumane living and working conditions. Such training should consist of training in the identification and assessment of trafficking violations related to both sex trafficking and labor trafficking as well as forced labor. The training must be in a language which the workers understand.

2. ~~Glnc~~BDC (R)Tjation8d1 Tf0 -2.545 TD(2.)Tj/Span/ActualTextFEFF0043BDCoaJ/Span5200530049BD

3. Implement Formal Mechanisms to Receive and Process Reports of T



adequate resources to investigate and prosecute contractors found to engage in trafficking and/or forced labor. Contracting agencies and DOJ should also review and, where appropriate, reopen referrals that they previously declined to prosecute, and should take prompt action on any new cases.

3. Devise a Penalty System under which Trafficking and Labor Rights Violations Meet with Stringent Consequences

E

IT IS SIMPLY NOT ENOUGH FOR ATTORNEY GENERAL HOLDER
TO PROCLAIM A "ZERO-TOLERANCE" POLICY A

Conclusion

On April 24, 2012, in Little Rock, Arkansas, Attorney General Holder spoke eloquently and forcefully on the problem of human trafficking in the United States. He noted that the problem was one of “crisis proportions,” that takes place both outside and within our borders. Holder described the current administration’s adoption of many far-reaching measures by numerous government agencies to eradicate trafficking wherever and however it occurs, and stated that the U.S. had a “‘zero-tolerance, one-strike’ approach” to the problem. In his speech, Holder highlighted one area of government where human trafficking has arisen—procurement or contracting.³²⁸ In fact, as this report shows, for many years now, U.S. Government contracts for services to the U.S. military based in Iraq and Afghanistan have facilitated the trafficking and forced labor of countless numbers of men and women. The ongoing trafficking and abuse of these Third Country Nationals hired under government contracts represents a grave protection failure on the part of the United States. After nearly a decade, the Government has yet to meaningfully address the abuses detailed in this report. Instead, Government agencies with the power—and the affirmative obligation—to protect TCNs continue to deflect that responsibility onto others. As Charles Tiefer, a member of the Commission on Wartime Contracting, noted in 2010: “the buck is being passed around here. And that is, the [Inspector General] sends it to somebody else, the criminal people say it’s not ours, and the program manager says it’s not ours.”³²⁹

It is simply not enough for Attorney General Holder to proclaim a “zero-tolerance” policy against trafficking. The U.S. must put that stated policy into action by fully investigating credible reports of trafficking and abuse of TCNs by U.S. Government contractors in Iraq and Afghanistan, and, where appropriate, hold perpetrators accountable. Only then will “zero tolerance” mean what it says.

Appendices

Appendix A: Major Actors in Recruitment and Trafficking

Figure 1: Network of Relationships

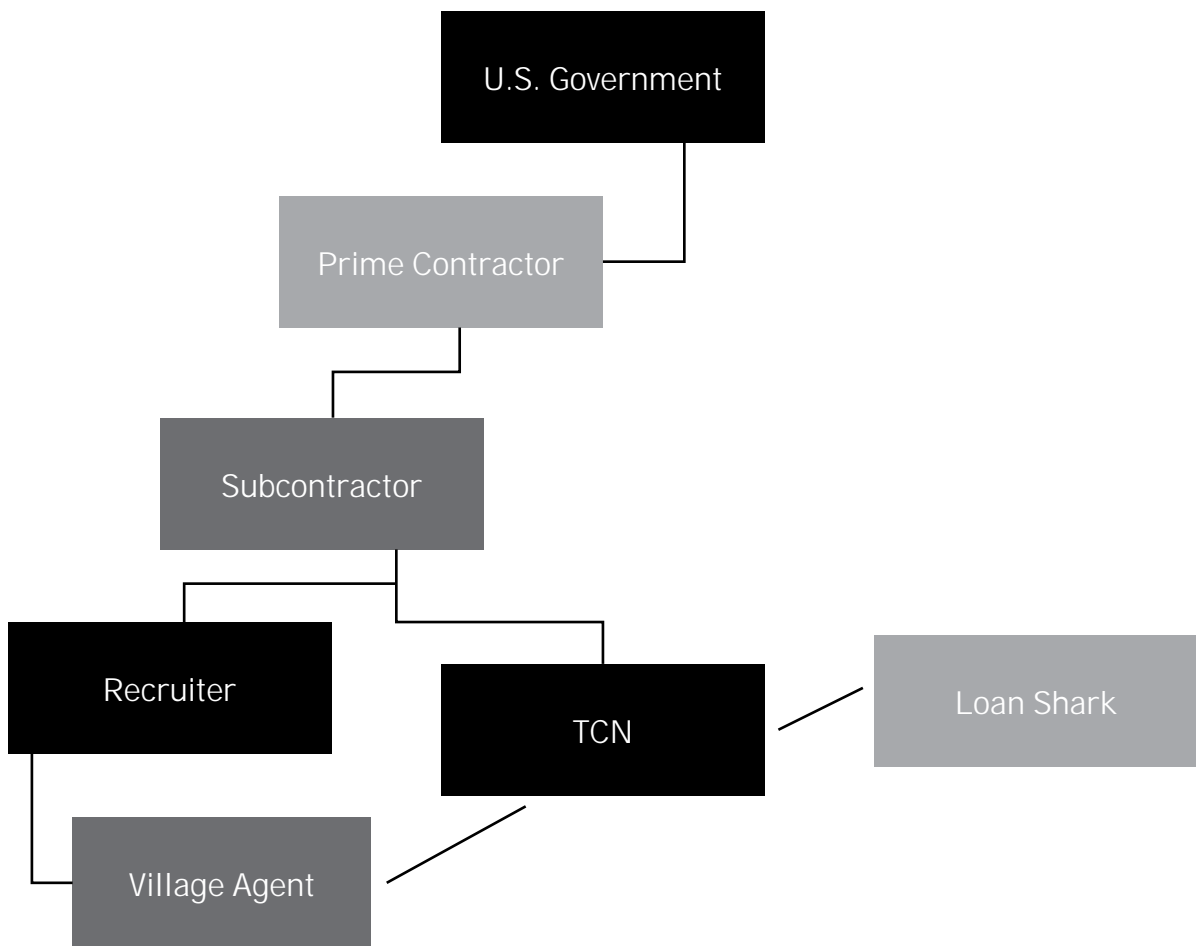
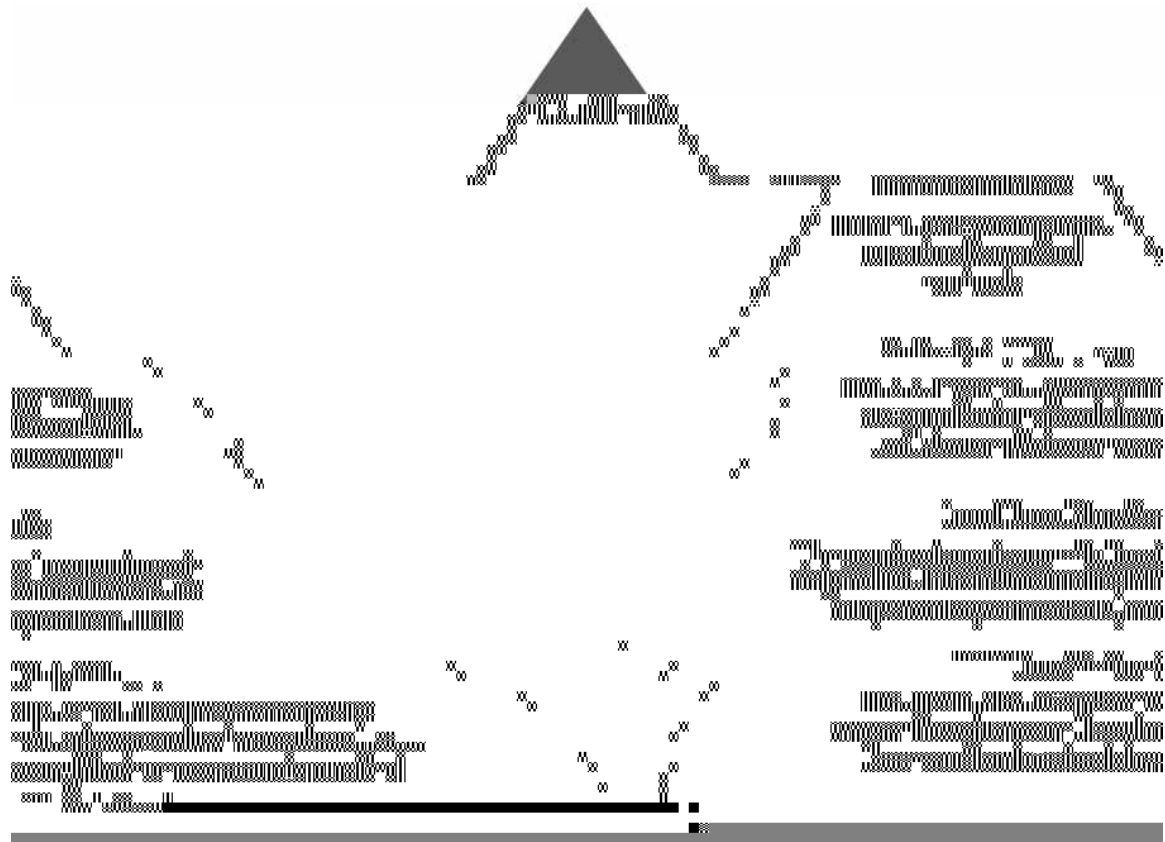
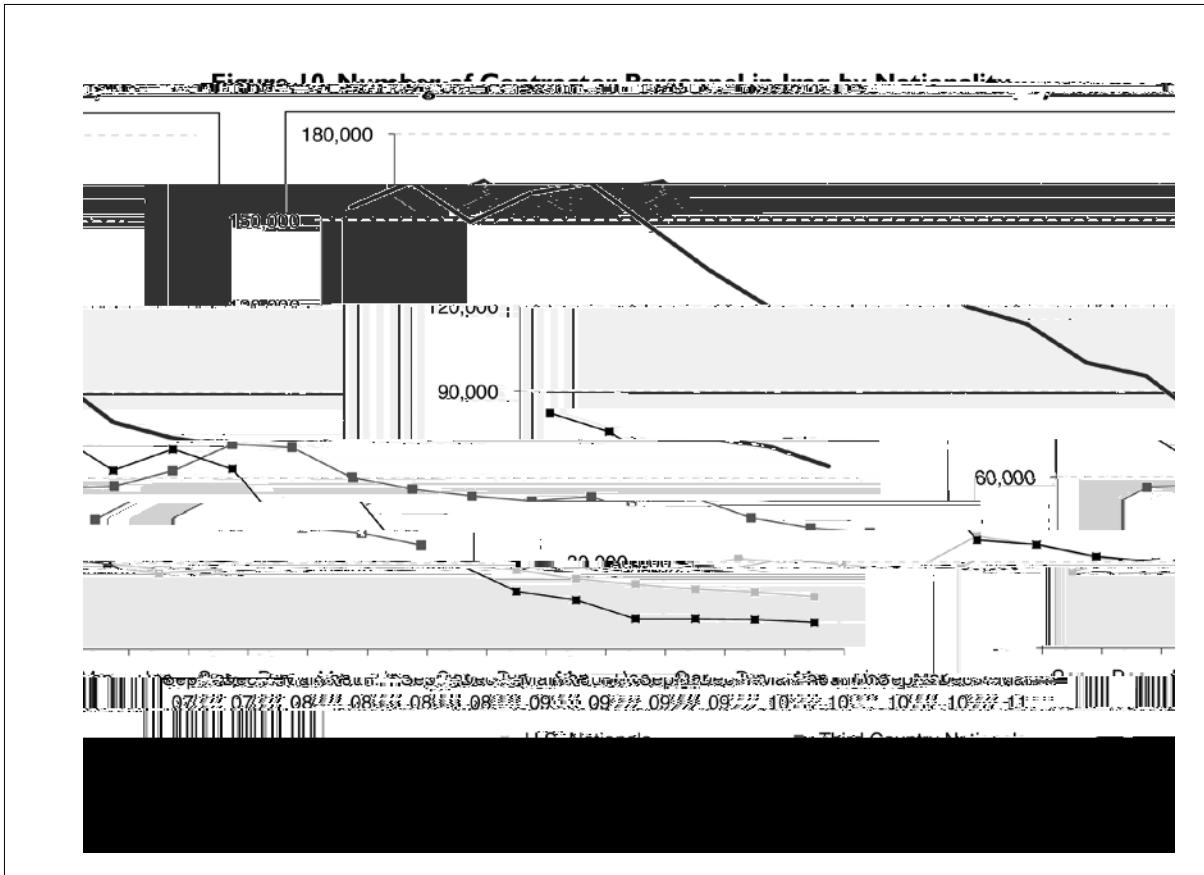


Figure 2: Recruitment Hierarchy



Appendix B:
Contractor Personnel Trends³³⁰



<http://www.fas.org/sgp/crs/natsec/R40764.pdf>

Appendix C:

Sample Online Recruitment Advertisement, found on Indian jobs websites*

Category: Workers Needed In Iraq/Afghanistan US Army

April 11, 2011 – 7:25 am

PG Qualification: Any Post Graduation

No. of vacancies: 10+

Basic/UG qualification: Any Graduate

Job category: Other

Role: Others

Posted by: placement consultant

Experience: to 3 years

Contact person: Prashant

Key skills: CATEGORY JOBS

Company name: Zenith Engineering

Country: Afghanistan

Website: NA

Description:

ECOLOG, IRAQ/AFGHANISTAN

HEAVY DRIVER (Iraq/ Afghan/GCC Rtn)- \$ 700

SAFETY OFFICER (Three years exp) - \$ 800

IT Specialist – \$ 800

Administrator – \$ 800

All candidates should speak English

All candidates should bring Original ITI Experience Certificates, Educational certificates & original PCC

Drivers should have original KBR/GCC license with minimum validity of 2 years

Passport validity should be minimum 2 years

ALL CANDIDATES SHOULD HAVE GOOD EDUCATIONAL BACK GROUND & CERTIFICATES

ALL CANDIDATES SHOULD SPEAK FLUENT ENGLISH

AGE GROUP 24 TO 42 YEARS

DRIVING LICENSE WILL BE AN ADDED ADVANTAGE

SELECTION AND AGREEMENT SIGNING IN DUBAI. CANDIDATES STAY IN DUBAI WILL BE FOR ~30

DAYS FOR COMPLETION OF FORMALITIES, FOOD AND ACCOMODATION PROVIDED BY US.

SERVICE CHARGE RS. 1 LAC 30K**ADVANCE 20K VISA SUBMISSION.

REQUIRED FOR SUPREME FOOD STUFF, AFGHANISTAN

PEST CONTROLLER – \$ 500 +100

RETAIL CASHIERS – \$ 600 +200

HEAVY DRIVER – \$ 600 + 100

ADMIN ASSISTANT – \$ 600 +200

DIESEL MECHANIC – \$ 800 + 200

SENIOR ADMINISTRATOR - \$ 1200 +200

WATER TREATMENT TECH - \$ 800 + 200

ACCOUNTANT – \$ 800 – 1200 +200

KITCHEN EQUIP TECHNICIAN - 800 +200

INVENTORY CONTROLLERS - \$ 600 +200

HVAC TECHNICIAN – \$ 800 +200

FUEL HANDLER – \$ 800 +200

WARE HOUSE MAN – \$ 600 +200

CARGO HANDLER – \$600 + 200

MAINTENANCE TECHNICIAN - \$ 650 +100

GENERAL LABORER -\$400

SAFTEY OFFICERS – \$ 600 +200

ALL CANDIDATES SHOULD HAVE GOOD EDUCATIONAL BACK GROUND & CERTIFICATES

All candidates should bring Original ITI/Trade Test, Experience Certificates, Educational Certificates/
Original PCC

ALL CANDIDATES SHOULD SPEAK FLUENT ENGLISH

AGE GROUP 24 TO 42 YEARS

DRIVING LICENSE WILL BE AN ADDED ADVANTAGE

SELECTION AND AGREEMENT SIGNING IN DUBAI. CANDIDATES STAY IN DUBAI WILL BE FOR ~30 DAYS FOR COMPLETION OF FORMALITIES, FOOD AND ACCOMODATION PROVIDED BY US.

SERVICE CHARGE RS. 1 LAC 30K ADVANCE 20K VISA SUBMISSION.

KINDLY NOTE THIS IS NOT FREE VISA.

ALL CANDIDATES MUST HAVE POLICE CLEARANCE DULY ENDORSED IN THEIR PASSPORT FROM THEIR REGIONAL PASSPORT OFFICE WITHOUT THAT NO CASES WILL BE UNDERTAKEN.

*Copied from <http://www.indiamike.com/india/chai-and-chat-f73/one-crore-t8140/>. See also <http://kottayam.olx.in/opening-for-category-worker-and-laborers-in-afghanistan-and-iraq-iid-178944297>

** At least \$2000 USD.

Appendix D:
Excerpts of Contract from Subcontractor Najlaa International Catering Services

For full contract, visit <http://s3.documentcloud.org/documents/204375/najlaa-employee-contract.pdf> or <http://www.pogo.org/resources/contract-oversight/najlaa/najlaa-employee-contract.html>

"EMPLOYMENT AGREEMENT

This Agreement is made and entered upon reaching to Iraq and valid till one year from
E

Appendix E:

U.S.C. 18 § 1589 on Forced Labor and § 1590, and Trafficking

The relevant sections of U.S.C. Title 18, Section 1589 on Forced Labor read:

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means--

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means--

Appendix F: Additional Supportive Caselaw

In *U.S. v. Dann*, the Ninth Circuit ruled that financial coercion alone can be sufficiently severe to meet the “serious harm” requirement under §1589. The case involved a defendant, Mabelle de la Rosa Dann, who kept the passport of her Peruvian live-in nanny and housekeeper, Zoraida Peña Canal, forbade the latter from speaking to anyone outside the home, and refused to pay her for two years.³³¹ Dann repeatedly threatened to send Peña Canal back to Peru; and yet when Peña Canal agreed to go home, she was told by Dann that she owed \$8,000 because she had only worked off \$7,000 of the \$15,000 worth of “expenses” that Dann had paid on her behalf.³³² Dann eventually asked Peña Canal to sign a false

There are also several district court cases which find that freedom to leave does not preclude a court from finding defendants guilty of trafficking or forced labor. In *Swarna v. Al-Awadi*, a former domestic servant and Indian citizen (Swarna) alleged that her Kuwaiti employer (Al-Awadi) subjected her to slavery, including trafficking, involuntary servitude, forced labor, and sexual abuse, and failed to pay her legally required wages.³⁴² Defendants argued that Swarna had not adequately pled slavery, forced labor, or involuntary servitude, since they paid her and that she had traveled to India twice during her employ.³⁴³ The district court ruled that “the pleading requirements of slavery, forced labor, and involuntary servitude may be met where the plaintiff alleges that her labor was obtained through force or ‘threats of force,’ ‘threats of serious harm to ... another person,’ or ‘threat of ... physical injury.’”³⁴⁴ Threats to Ms. Swarna and her family if she did not return to her workplace as well as active attempts to prevent her from leaving were “adequate to allege slavery, forced labor, and involuntary servitude within the meaning of the TVPRA.”³⁴⁵ Although Swarna is an unpublished case, the court’s decision is still powerful in demonstrating that even someone who was able to return home several times was still considered to be a trafficking victim.

such as “deception [and] the abuse of power or of a position of vulnerability,” as means of trafficking. In this way, the Protocol covers common methods used by traffickers such as debt-bondage, confiscation of identification documents, and threats of violence against family members.

Furthermore, the Protocol makes clear that the consent of the victim is “irrelevant” where traffickers’ use any of the definition’s enumerated means, such as force, coercion, deception, or abuse of power. To that end, the Protocol provides that “[t]he consent of the victim of trafficking in persons to the intended exploitation . . . shall be irrelevant where any of the means set forth [above] have been used.” Among other things, this provision eliminates consent as a defense to the crime of trafficking.

3. Purpose

The Trafficking Protocol identifies the purpose of human trafficking as

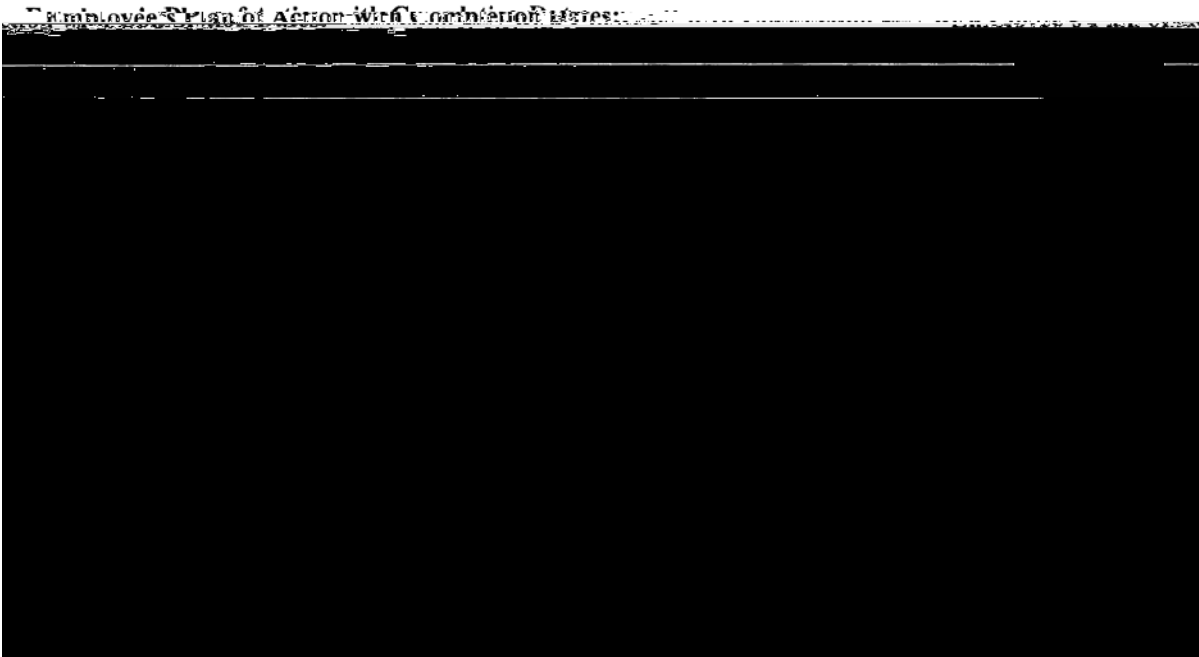
Appendix H:
Letter of Reprimand from KBR to Whistle-Blowing Employee

OWN & ROOT KELLOGG BR

VERBAL/Written COUNSELING FORM

Company: SEL COMBOS BR SEL CAS BR

Date: 6 August 2007
Name (Last, First): Land, Michael
Office: Negatives Coordinator
SAP# No: 142878
Work Location (Group): F01 DS17 / Camp Liberty



Endnotes

- 1 There is widespread use of TCNs and reports of abuses in a number of other countries, e.g. Kuwait, but our research focuses primarily on Iraq and Afghanistan. It is also worth noting that the system of illicit recruitment described in this report is common to many trafficking schemes the world over, and that attempts to combat these deceptive practices would not just benefit TCNs but would comprise part of the greater effort to eliminate human trafficking and deceptive recruitment as a global problem.
- 2 The term “U.S. Government contractor” refers to any contractor or subcontractor, including any foreign-based contractor or subcontractor, hired under a U.S. Government contract to perform services overseas.
- 3 Sarah Stillman, *The Invisible Army: For Foreign Workers on U.S. Bases in Iraq and Afghanistan, War Can Be Hell*, *New Yorker*, Jun. 6, 2011, http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all.
- 4 Adam Ashton, *Military Contractor in Iraq Holds Foreign Workers in Warehouses*, *McClatchyDC*, Dec 2, 2008, <http://www.mcclatchydc.com/2008/12/02/56910/military-contractor-in-iraq-holds.html>.
- 5 Interview with journalist on ground, transmitted via email by Sarah Stillman (Feb. 15, 2012) (email on file with authors).
- 6 In the course of our research, it became apparent that conditions in sending countries form a large part of the problem of TCN treatment. In many of the countries we examined, the business of illicit recruitment is a profitable one that involves numerous elements of society and often spills over into both organized crime and governance structures. Sending countries certainly bear some measure of responsibility for instituting and enforcing fair recruitment laws. However, this report focuses on U.S. culpability in regards to TCN treatment and addresses the problem primarily from the U.S.-side. The issue of sending country reforms is a subject for another report.
- 7 Most TCNs work for contractors hired by either the Defense Department or the State Department. However, the following recommendations apply to any contracting agency on whose behalf TCNs might serve, including USAID, among others.
- 8 See “A Better Way of Doing Business: Recent Developments and Best Practices,” in Section 3 of this report, which details the practices of FSI Worldwide and other contractors who employ variations of direct hire in numerous locations.
- 9 Contracting agency refers to any government agency on whose behalf TCNs might serve, including DOD, DOS, and USAID, among others.
- 10 *Complaint, IRAP v. Department of Defense and Department of State*, No. 1:2011cv05024 (S.D.N.Y. filed July 21, 2011).
- 11 See, http://www.aclu.org/files/assets/tcn_foia_complaint_draft_final.pdf
- 12 Cam Simpson, *Rescue Spares Some Workers: ‘They Told Us That We Had to Go to Iraq’*, *Chicago Tribune*, Oct. 10, 2005, <http://www.chicagotribune.com/chi-0510100109oct10,0,3717583.story>.
- 13 Family members of the twelve slain Nepalese workers as well as the thirteenth worker who survived have since filed suit against KBR and Daoud. See, *Ramchandra Adhikari, et al. v. Daoud & Partners, et al.*, 697 F. Supp.2d 674 (S.D. Tex. 2009).
- 14 *Id.*, supra note 12, at 9. As one of the Nepalese workers explained: “[Kuwaiti supervisors] told us that we could not return to Nepal . . . because we did not have the ticket and passport, or any money.”
- 15 David Isenberg and Nick Schwellenbach, *Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor: The Najlala Episode Revisited*, *Pogo Blog*, Jun. 14, 2011, <http://pogoblog.typepad.com/pogo/2011/06/documents-reveal-details-of-alleged-labor-trafficking-by-kbr-subcontractor.html>.
- 16 *Id.*, supra note 4. A KBR subcontractor at the time, Najlala International also serves as a prime contractor for the United States Agency for Development (“USAID”) in Iraq. See Memorandum to USAID/Iraq Mission Director, Alex Dickie, From Office of Inspector General/Iraq Director, Lloyd Miller, Subject: Review of USAID/Iraq’s Contractors’ Compliance With the Trafficking Victims Protection Reauthorization Act of 2008, Rep. No. E-267-11-002-S, Dec. 12, 2010, available at <http://www.usaid.gov/oig/public/fy11rpts/e-267-11-002-s.pdf>.
- 17 *Id.*, supra note 4.; ACLU-IRAP FOIA, email of Richard A. Albright, TCN Labor Practices in Iraq, Jan. 12, 2009, IRAP-STATE 90 (on file with authors).
- 18 *Id.*, supra note 4.
- 19 For more information on TCNs, see 3 FAM 7270, Third Country National, www.state.gov/documents/organization/85316.pdf.

- 20 See *supra* note 3. In addition to the Fijian women, the article also recounts the experiences of hundreds of other workers in Afghanistan and Iraq who faced a broad range of labor abuses.
- 21 Moshe Schwartz and Joyprada Swain, Department of Defense Contractors in Afghanistan and Iraq: Background and Analysis, *Foreign Affairs*, May 13, 2011, <http://www.fas.org/sgp/crs/natsec/R40764.pdf>, 6. This is the number of contractor personnel in both theaters of war as of March 31, 2011 (compared to 214,000 uniformed personnel). See Sindhu P. Kavinnamannil with Sam McCahon, In the Name of Progress: Illegal Human Labor Trafficking Within Government Contracts, *Foreign Affairs*, May/June 2011, 21, 22. At the height of the U.S. troop deployment to Iraq, TCNs working base support functions numbered more than 100,000 individuals; experts estimate that over 250,000 individuals over the course of the Iraq War have experienced some form of labor trafficking or abuse.
- 22 See *supra* note 21, at 10, 17. In Iraq, TCNs comprise more than 50% of all contractor personnel (37,000/64,000); in Afghanistan, they comprise roughly 27% (24,000/90,000). For an illustration of the growing presence of TCNs, see Appendix B: Contractor Personnel Trends.
- 23 See *supra* note 21, at 10, 17. In Iraq, TCNs comprise more than 50% of all contractor personnel (37,000/64,000); in Afghanistan, they comprise roughly 27% (24,000/90,000). For an illustration of the growing presence of TCNs, see Appendix B: Contractor Personnel Trends.
- 24 Howard Krongard, former State Department Inspector General, Memorandum: Construction Workers Camp at the New Embassy Compound, Baghdad, April 30, 2007, <http://oig.state.gov/documents/organization/85600.pdf>. When Howard Krongard, Inspector General for the Department of State, conducted a site visit to investigate allegations that “TCNs were forced to eat leftovers from American personnel off of the dirt floor ... food, when available, was put in a trough similar to pig farms,” he stated that he found nothing amiss. However, Krongard took pains to note that his one day site visit was “necessarily limited in scope, consisted essentially of agreed-upon or limited procedures and was designed to provide negative assurance rather than attestation, and could not be considered an audit.” For more on this incident, see Section 3.
- David Phinney, Using Asia’s Poor to Build U.S. Bases in Iraq, *AlterNet*, Oct. 15, 2005, <http://www.alternet.org/world/26660/authors/6952/?page=9>. Former KBR administrator Sharon Reynolds admitted to witnessing multiple problems with the treatment of TCNs including late payments, poor living conditions and inadequate clothing. (“TCNs had to stand in line with plates and were served something like curry and fish heads from big old pots,” Reynolds says. “It looked like a concentration camp.”)
- 25 The Commission on Wartime Contracting in Iraq and Afghanistan estimated in 2011 “that 5 percent to 9 percent of the \$206 billion in funds spent for contingency contracts and grants has been lost to fraud.” Commission on Wartime Contracting in Iraq and Afghanistan, Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks, August 2011, http://www.wartimecontracting.gov/docs/CWC_FinalReport-lowres.pdf, 90 [hereinafter *Wartime Contracting Commission Report*]. The Commission found that “U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on this source of revenue and profit.” *Id.* at 92.
- 26 Transcript of Lee Wang interview with KBR employee for the documentary “Someone Else’s War,” (February, 2006), www.someoneelseswar.com (on file with authors) [hereinafter Wang interview with KBR employee #1].
- 27 See *supra* note 21, at 10, 17. In Iraq, TCNs comprise more than 50% of all contractor personnel (37,000/64,000); in Afghanistan, they comprise roughly 27% (24,000/90,000). For an illustration of the growing presence of TCNs, see Appendix B: Contractor Personnel Trends.

- 32 Telephone Interview with Tristan Forster, Chief Executive Officer, FSI Worldwide (Apr. 26, 2012).
- 33 *Id.*, supra note 21, at 21. U.S. Department of State, Trafficking in Persons Report, June 2008, at 271, <http://www.state.gov/documents/organization/105501.pdf>. According to the State Department's annual "Trafficking in Persons Report," TCNs are frequently "coerced into positions in Iraq with threats of abandonment in Kuwait or Jordan, starvation, or force." For more information on the networks of illicit labor brokers, see *Id.*, supra note 3; Cam Simpson, Desperate for Work, Lured into Danger, *CHI. TRIB.*, Oct. 9, 2005, <http://www.chicagotribune.com/chi-nepal-1-story,0,656119.story>.
- 34 As the 2000 Victims of Trafficking and Violence Protection Act notes, "trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide . . . Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law." See also Amy O'Neil Richard, *CTR. FOR INT'L JUSTICE*, <http://www.cij.org/trafficking-in-persons>.

- 52 Preeti Kannan, Expatriates Fall Prey to 'Blade Mafia' Loan Shark, *Al Jazeera*, Sept 13, 2011, <http://www.thenational.ae/news/uae-news/expatriates-fall-prey-to-blade-mafia-loan-sharks>.
- 53 Staff Reporter, Labourer Burnt for not Returning Loan, *Al Jazeera*, Jan. 10, 2012, <http://www.thehindu.com/news/states/other-states/article2788788.ece>.
- 54 Mark Maginer, Amid Droughts and Failed Crops, A Cycle of Poverty Worsens, *Los Angeles Times*, Dec. 1, 2009, <http://articles.latimes.com/2009/dec/01/world/la-fg-climate-loanshark1-2009dec01>; see also Karen Russo, Drought Causing India Farmers to Sell Wives, *ABC News*, Sept. 17, 2009, <http://abcnews.go.com/International/drought-poverty-force-indian-farmers-sell-wives/story?id=8599840#.T0xI03pQtk0>.
- 55 *Al Jazeera*, supra note 21, at 21; *Al Jazeera*, supra note 31. Suicide among debtors is not uncommon: our interviewees related that many men they knew from their village had committed suicide when they could not pay their debt.
- 56 *Al Jazeera*, supra note 21, at 21.
- 57 *Al Jazeera*, supra note 21, at 21.

76 ACLU-IRAP FOIA, [REDACTED], supra note 73.

77 [REDACTED], supra note 31.

78 [REDACTED], supra note 35.

79 See also [REDACTED], supra note 3 (noting that Kulak Construction provides TCNs with similar contracts, which specify working hours as “Twelve (12) hours per day and seven (7) days a week.”).

80 [REDACTED], supra note 45.

81 Id.

82 ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Iraq Resident Agency, APO AE 09342, February 18, 2009, DoD-IG FOIA 46-47 (on file with authors). While this manager was eventually removed from Camp Victory and “barred from access to all United States military facilities,” the DOJ declined to pursue the case, and further investigation was dropped.

83 Casey, Gen. George & Lt.Col. Brian Mace, [REDACTED], Apr. 13, 2006.

84 Most of the Indian TCNs interviewed were based in Iraq or Afghanistan more recently, between 2007-2011, well after the U.S. government regulations requiring that TCNs retain their passports came into effect.

85 [REDACTED], supra note 31.

86 [REDACTED], supra note 35.

87 Id. This TCN was in Iraq from 2008 – 2011, after the issuance of General Casey’s Memo mandating TCN possession of their passports.

88 [REDACTED], supra note 31. The TCN noted that local Afghan police were aware of the situation in 2009, and began sending TCNs back home and made attempts to put some agents in jail.

89 [REDACTED], supra note 35.

90 See, e.g., James Risen, KBR Losing Exclusive Hold on Iraq Contracts, [REDACTED], May 26, 2008, <http://www.nytimes.com/2008/05/26/business/worldbusiness/26iht-defense.4.13211927.html?pagewanted=all> (“KBR has come under fire from the U.S. Congress and Pentagon auditors for complaints including making more than \$200 million in excessive charges . . . Government auditors concluded last year that the U.S. State Department’s \$1.2 billion contract with DynCorp for police training in Iraq was so badly managed that they could not determine exactly what was done for the money.”)

91 [REDACTED], supra note 25, at 1.

92 [REDACTED], supra note 3.

93 [REDACTED], supra note 25, at 226, 234.

94 Id. at 93.

95 Id.

96 Julie Sullivan, Hexavalent Chromium Issues: Army Secretary Says KBR Contract Still Classified, Aug. 31, 2010, [REDACTED], http://www.oregonlive.com/news/index.ssf/2010/08/army_secretary_says_kbr_contra.html. KBR’s contract with the U.S. Army’s combat mission in Iraq remains classified, even after the war’s official end.

97 [REDACTED], supra note 25, at 79.

98 Id. The Commission found that in 2002, “the Iraq general manager for Tamimi, a Kuwaiti company, gave kickbacks to KBR’s LOGCAP III managers on initial awards of contracts.” As a result of the kickbacks, KBR subsequently “awarded additional subcontracts for dining-facility services to Tamimi worth more than \$700 million.” Id. at 100. The Commission concluded, “Foreign money flooding into a culture of widespread acceptance of bribes and kickbacks can raise transaction costs and impede competition on merit.”

99 [REDACTED], supra note 21, at 22. See also Written Testimony of Sam McCahon, McCahon Law Office, LLC, Before the House Committee on Oversight and Government Reform, Subcommittee on Technology Information Policy, Intergovernmental Relations and Procurement Reform; Subject: Are government contractors exploiting workers overseas? Examining enforcement of the Trafficking Victims Protection Act?, Nov. 2, 2011 (“The contractor and recruiter also agree to the amount of the kickback paid to the contractor for giving the recruiting firm the business. This kickback is typically 50% of the money charged by the recruiter to the prospective employee.”).

100 [REDACTED], supra note 21, at 22.

101 See 41 U.S.C § 53.

- 102 *Al-Jazeera*, supra note 23. According to a 2011 Report by the State Department's Office of the Inspector General, "more than 70 percent of foreign contract workers live in overcrowded, unsafe, or unsanitary conditions."
- 103 David Rohde, *Indian Contract Workers in Iraq Complain of Exploitation*, *N.Y. Times*, May 7, 2004, <http://www.nytimes.com/2004/05/07/world/struggle-for-iraq-foreign-labor-indians-who-worked-iraq-complain-exploitation.html?pagewanted=all&src=pm>.
- 104 *Al-Jazeera*, supra note 45. See also Rory J. Mayberry, *Statement to House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs* (July 26, 2007).
- 105

law firm, Cohen Milstein, noted that “There are a host of TCN workers who don’t know about their rights; and who suffer injury and accidents and never recover worker’s compensation.” Cohen Milstein took a number of such

Inspector General Report, 172-176, Oct 13, 2009. The Department of Defense has investigated incidents of this type of misconduct; e.g. in the case of Saehal Al Sahra Group, DOD discovered that the Iraqi contractor had withheld payment, badges and work visas to strengthen its control over workers, whom it later abandoned.

181 *U.S. v. ...*, supra note 25, at 92.

182 *U.N. Doc. A/810* (1948), adopted Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948).

183 *Id.* at art. 4.

184 *U.N. Doc. A/55/25* (2001), GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/55/25 (2001).

185 See United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, Module 1, p. 4 (2009); United Nations Treaty Collection, *Ratification Status of the Trafficking Protocol*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

186 *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of the U.S.C.).

187 The TVPRA has undergone several iterations: it was first introduced as *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, amended with the *Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. No. 108-193, 117 Stat. 2875 (2003), the *Trafficking Victims Protection Reauthorization Act of 2005*, Pub. L. No. 109-164, 119 Stat. 3558 (2006), and finally with the *WilliamalTeat. 3558* (2006), and finally with the *WilliamalTe*. The TVPRA h91 undergone several iterations: it was leafsy sur119 Stu4dNo. 10119 Sginia-basdorwith 0{(Th2 TDe W.S.C.tT*[(Pc thee DynC

199 Id. In addition, 18 U.S.C. § 1589 c(2) on Forced Labor defines “serious harm” as: “[A]ny harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.”

200 Id.

201 Id.

202 *United States v. Dann*, 652 F.3d 1160, 1162 (9th Cir. 2011).

203 See 18 U.S.C. § 1589 b on Forced Labor.

204 Transcript of Lee Wang and Lucille Quiambao interview with a Filipino TCN in Manila, Philippines, for the documentary “Someone Else’s War,” (December, 2005) www.someoneelseswar.com (on file with authors).

205 See 18 U.S.C. § 1589 b on Forced Labor.

206 Office of the Inspector General, Assessment of DOD Efforts to Combat Trafficking in Persons, Phase II Report, http://www.dodig.mil/fo/Foia/HT-Phase_II.pdf. Case No. H03L88433128, p. 25. The U.S. Government uncovered similar abuses in South Korea, leading the Department of Defense Inspector General to conclude in 2003, “DOD contractor employees may have more than a limited role in trafficking.”

207 See K. Elizabeth Waits, Avoiding the ‘Legal Bermuda Triangle’: The Military Extraterritorial Jurisdiction Act’s Unprecedented Expansion of U.S. Criminal Jurisdiction over Foreign Nationals, 23 *Arizona J. Int’l & Com. L.* 493, 494 (2006); John G. Bradbury, Human Trafficking and Government Contractor Liability: Is FAR 22.17 A Step in the Right Direction?, 37 *Pub. Contract L. J.* 907, 908 (2008).

208 Kelly Patricia O’Meara, Bush Taking Battle to the SeU671 Td(200)TjdTJ/T10_1 Tf(K.opBDC ()TjEMC 2.647 0 Td{Kell}23(yir.2Kell)23(y P)10(a(a

- Protection Act, Hearing before the House Committee on Oversight and Government Reform, 11th Cong. 2, Nov. 2, 2011 (Statement of Sam McCahon), http://oversight.house.gov/wp-content/uploads/2012/01/11-2-11_McCahon_TechIP_Testimony_FINAL.pdf. As Sam McCahon testified before the House Committee on Oversight and Government Reform in November 2011, “[s]ubcontractors and labor brokers have been exploiting and engaging in modern day slavery in support of U.S. government contractors for nearly 10 years. The practice is unabated.” At the hearing, Congressman Gerry Connolly observed, “Human trafficking by federal overseas contractors is widespread and never punished.” *Id.* (Statement of Rep. Gerry Connolly).
- 216 18 U.S.C. 3261(a) (2000). See also, 146 Cong. Rec. 16, 200 (2000) (Statement of Rep. Chambliss) (“[The MEJA] will create a new Federal law that would apply Federal criminal statutes to crimes which are committed overseas by employees or dependents of members of the Armed Forces, persons employed by the Department of Defense, or contractors or subcontractors of the Armed Forces”).
- 217 The definitions given by the 2000 MEJA limit the term “employed by” to civilian employees, contractors, and subcontractors employed by the Department of Defense, as well as limit the term “accompanying” to dependents of members of the armed forces, civilian personnel and contractors. See 18 U.S.C. 3267.
- 218 See MEJA, 18 U.S.C. 3261-3267 (2000), amended by *id.* 3267 (Supp. IV 2004).
- 219 *Id.* 3267(1)(A) (2000 & Supp. IV 2004).
- 220 *Id.* at 3261.
- 221 Private Military & Security Contracts: Questions & Answers, [http://www.dod.mil/OSD/OSD-News/2007/07/20070711.html](#), (2007).
- 222 Tim Arango, U.S. Planning to Slash Iraq Embassy Staff by as Much as Half, http://www.nytimes.com/2012/02/08/world/middleeast/united-states-planning-to-slash-iraq-embassy-staff-by-half.html?_r=1 (stating that the DOS staff in Iraq “has swelled to nearly 16,000 people, mostly contractors”).
- 223 Abuse scandals in Iraq reveal the significance of this gap. In the infamous 2007 Nisour Square shootings, for instance, DOS security contractors fired without provocation upon Iraqi civilians, killing seventeen people. The incident provoked an unprecedented response from the Iraqi government, which condemned for the first time the “trigger-happy” practices of security contractors and threatened to expel them from Iraq. Although the Secretary of State apologized and promised a full investigation, the incident exposed a significant hole in the U.S. regulatory regime. See Peter Walker, Blackwater Guards Shot Iraqis Without Provocation, Report Says, <http://www.guardian.co.uk/world/2007/oct/08/usa.iraq>; Fred Attewil, Iraq Gets Tough with Foreign Security Firms, <http://www.guardian.co.uk/world/2007/sep/18/usa.iraq1>; Ewen McAskill, Rice Apologises for US Security Firm Shootings, <http://www.guardian.co.uk/world/2007/sep/18/usa.iraq>.
- 224 Currently, the MEJA provides discretionary extraterritorial jurisdiction; it does not require prosecution. Compare 18 U.S.C. §§ 3261–3267 (2006) (detailing arrest and judicial proceedings but not mandating oversight or investigation), with MEJA Expansion and Enforcement Act of 2007, H.R. 2740, 110th Cong. (2007) (detailing enforcement procedures for the FBI and the Attorney General and requiring the Department of Justice to submit a progress report to Congress).
- 225 DOD adopted implementing legislation in 2005. See 71 Fed. Reg. 8,947d, the incideiJ0971 In and truA pre86 2005. Compar

Subject: Alleged Trafficking in Persons Practices by Department of Defense (DoD) Contractors in Iraq, Apr. 14, 2006, available at <http://iwp.legalmomentum.org/reference/additional-materials/vawa-legislative-history/miscellaneous/Legal%20Options%20to%20Stop%20Human%20Trafficking.pdf>.

243 Martina E. Vandenberg, attorney at Jenner & Block, Testimony on Legal Options to Stop Human Trafficking, before the Senate Judiciary Committee on Human Rights, Mar. 26, 2007, at 9.

244 Id.

particular, FAR 22.17 implements 22 U.S.C. 7104(g), which authorizes termination of a contractor that engages in human trafficking. The rule was subsequently amended in 2007 to apply to all contracts. *Id.* at 46,336.

259 FAR 22.1703.

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of Existing Guidance and Other Actions Needed to Improve DOD's Oversight and Management of Contractors in Future Operations (Jan. 4, 2008), GAO-07-1098T, Federal Acquisitions and Contracting. Systemic Challenges Need Attention (July 17, 2007), GAO-04-854, Military Operation. DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight (July 19, 2004).

280 Commission on Wartime Contracting in Iraq and Afghanistan, At What Cost? Contingency Contracting in Iraq and Afghanistan, Interim Report, June 2009, http://www.wartimecontracting.gov/docs/CWC_Interim_Report_At_What_Cost_06-10-09.pdf.

281 Valerie Bailey Grasso, Defence Contracting in Iraq: Issues and Options for Congress, Report No. RL33834, *Congressional Research Service*, Jan. 26, 2007 at 14.

282 *Congressional Research Service*, *Contracting in Iraq and Afghanistan: A Guide for Congress*, Report No. RL33834, Jan. 26, 2007 at 14.

304 See Office of Procurement Exec., Procurement Info. Bull.2012-10: Contractor Recruitment Third Country National, Dep't St. Bull. 1, 2012, [hereinafter PIBS 2012]; Office Of Procurement Exec., Procurement Info. Bull. 2011-09: Combatting Trafficking In Pers., Dep't St. Bull. 1, 2011, (hereinafter PIBS 2011).

305 PIBS 2012 supra note 304, at 5.

306 Id.

307 Id. at 4.

308 Id.

309 Id. at 6.

310 Id. at 5

311 [▲] ¶, ¶, supra note 304, at 5.

312 Id. at 4.

313 [▲] ¶, ¶, supra note 304, at 6.

314 Id. at 5-6.

315 Id.

316 Ivana Schellongova, FSI Worldwide-Case Study 1 (2012). ("Schellongva is the Senior Programme Manager in End Human Trafficking Now, an international non-governmental organization focusing on creating partnerships with the business community in tackling human trafficking.").

317 Id.

318 Id. at, 8-9, 10-11, 13 17.

319 Id. at 11-13.

320 Id. at 13.

321 Telephone Interview with Doug Brooks, President, International Stability Operations Association (ISOA) (Dec. 12, 2011).

322 Quote from contractor representative, transmitted via email by Doug Brooks (Apr. 26, 2012) (email on file with authors).

323 Id.

324 Id.

325 ¶

determining whether the victims could have felt compelled to work by the defendants' conduct. Finally, the First Circuit found that the fact that the workers may have had the opportunity to flee was not determinative of the question of forced labor insofar as the workers reasonably believed that they could not in fact leave.

339 United States v. Calimlim, 538 F.3d 706 (7th Cir. 2008).

340 Id. at 708-09.

341 Id. at 713.

342 Swarna v. Al-Awadi, 622 F.3d 123 (2d Cir. 2010).

343 Swarna v. Al-Awadi, 06 CIV. 4880 PKC, 2011 WL 1873356 (S.D.N.Y. May 12, 2011).

344 Id.

345 Id.

346 The first international anti-trafficking laws were promulgated more than two hundred years ago. These laws arose out of two distinct but related campaigns: the movement to eliminate slavery and the movement to combat sex trafficking and prostitution. In 1815, the Congress of Vienna produced the Declaration Relative to the Universal Abolition of the Slave Trade, the first international legal document to address the issue of human trafficking. During the twentieth century, states ratified numerous additional anti-trafficking conventions, including the 1926 Slavery, Servitude, Forced Labor and Similar Institutions and Practices Convention, the 1930 Convention concerning Forced or Compulsory Labor, the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1957 Abolition of Forced Labor Convention, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. These conventions, including their definitions of trafficking and forced labor, remain relevant to international law today. See Declaration Relative to the Universal Abolition of the Slave Trade, Feb. 8, 1815, Consolidated Treaty Series, vol. 63, No. 473; Slavery, Servitude, Forced Labor and Similar Institutions and Practices Convention of 1926, League of Nations Treaty Series, vol. 60, entered into force Mar. 9, 1927; Convention concerning Forced or Compulsory Labor, 1930 (No. 29).

347 Id. at art. 4.

348 See UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 1, p. 4.

